



<u>Decision Ref:</u>	2022-0089
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Online Share Dealing
<u>Conduct(s) complained of:</u>	Failure to inform of drop in value Complaint handling (Consumer Protection Code) Failure to provide product/service information Failure to process instructions
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant held an online Execution Only account with the Provider which provided him with an online dealing service, facilitating him to trade in certain non-complex financial instruments such as shares, across Irish, UK, European and US markets.

As part of his share portfolio, in **October 2019** the Complainant held 538 shares with Share Company A. This complaint concerns the Provider's suggested failure to update or record on its website a share price for Share Company A on **2 October 2019** that reflected its actual value on that date, which then gave the Complainant the impression that his shares were less valuable. The Complainant says that as a result, given the low value displayed, he did not sell his shares and if he had, he would have realised an overall profit on the transaction. The complaint also concerns the Provider's suggested failure to deal with the Complainant's complaint appropriately.

The Complainants' Case

The Complainant set out his complaint in the **Complaint Form** he completed to this Office on **17 November 2019**, as follows:

"In summary, I have an online account with [the Provider] that enables me to trade in shares. It is an execution only account.

I held a portfolio of a number of different shares with [the Provider], one of which is [Share Company A] (formerly known as [named redacted]). On 2 October 2019 I read online that [Share Company A] had publicly announced a proposed acquisition of [an online poker gaming company].

I expected this to have a positive impact on the [Share Company A] price. I logged onto my [Provider] online account which stated the [Share Company A] share price was €63.80, and marked in red. In fact, unbeknownst to me, the [Share Company A] share price was at €100.70 at the time I logged on. Had I been informed of that fact by [the Provider] I would have sold my [Share Company A] shares at that price, thereby not only recovering previous losses on that aspect of my portfolio but realising a profit also.

I did not learn of the spike in the [Share Company A] share price (reaching in excess of €103 per share) until Sunday 6 October 2019 when having a conversation with a friend of mine. I contacted [the Provider] about this on 7 October...In a telephone call [Mr R.] (on behalf of [the Provider]) admitted that the information provided on my online platform pertaining to the [Share Company A] share price had been incorrect. Accordingly, [the Provider] has admitted the wrongdoing.

As the emails will show, [the Provider] have sought to excuse the wrongdoing on a number of different bases, none of which are sustainable – a fact which [the Provider] has not refuted. [The Provider], in acknowledgement of [its] liability, did in fact make a proposal by way of settlement. However, that misconceived proposal fell far short of compensating me for my loss and in fact would have resulted in my crystallising a loss.

[The Provider] failed to properly deal with my grievance and I was passed from one person to the next. Ultimately, I was put in contact with [Mr S.], head of wealth management, and...I set out in detail my complaint by email dated 17 October 2019. [Mr S.] responded that day to say that he had forwarded the matter to the compliance department...I sent a further email on 21 October 2019 asking [Mr S.] when I might expect a response. [Mr S.] has not, to this day, replied to that email. Indeed, I have received no contact from [the Provider] on this matter since 17 October 2019 – something that I find inexplicable and disgraceful in the circumstances.

Given the manner in which [the Provider] has treated me I since opened a trading account [elsewhere] and moved my entire portfolio, but for the [Share Company A] shares, [there]. I sent, by email, a letter dated 25 October 2019 to [Mr S.] explaining this to him. Again, [Mr S.] failed to respond to this letter at all.

For completeness, however, I did receive an email from [the Provider] acknowledging the request to transfer and informing me on the completion of same. In short, owing to the admitted wrongdoing of [the Provider] I was deprived of the opportunity to sell my [Share Company A] at €100.70, a level at which they have not yet returned ...

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I wish to be compensated in such a manner so as to be provided the difference between the present [Share Company A] and that of €100.70 ... In addition, in the circumstances and given the failure on the part of [the Provider] to provide a proper service I ought to be recompensed commission and fees ...”

The Complainant says he emailed an official complaint to the Provider’s Head of Wealth Management, Mr S. on **17 October 2019** regarding the Provider displaying an incorrect share price for Share Company A on its website and that Mr S. responded later that day to advise that the matter had been escalated to the Compliance Department.

The Complainant says he sent a follow-up email to Mr S. on **21 October 2019** asking when he might expect to hear from the Compliance Department.

The Complainant says that at the time of his completing his **Complaint Form** to this Office on **17 November 2019**, he had received no response from Mr S. to his email of **21 October 2019** or from the Compliance Department, and that he had had no contact from the Provider whatsoever since **17 October 2019**.

The Complainant says that on **25 October 2019**, he emailed Mr S. a letter instructing the Provider to transfer all his holdings to a different stockbrokers, save for his Share Company A shares, which he advised were to remain with the Provider *“for the time being pending resolution of subject matter of my complaint”* and asked *“that no charges will be incurred on my part in respect of the transfer”*. The Provider emailed the Complainant on **4 November 2019** to confirm that the transfer of certain holdings to a different stockbrokers was complete.

The Complainant says that shortly after his completing his **Complaint Form** to this Office on **17 November 2019**, the Provider telephoned him on **19 November 2019** offering to place a sale of his holding in Share Company A at **€100.70** on his account, commission free. This was the price at **11:43** on **2 October 2019** when the Complainant logged in to the Provider website. The Complainant agreed to this offer and the Provider sold his 538 shares in Share Company A for the total consideration of **€54,175.35**, with the Complainant realising a capital gain of **€3,402.00** on the sale.

The Complainant says that later on **19 November 2019**, after the sale of his holding in Share Company A, he emailed the Provider requesting a cash transfer to his account with his new stockbrokers. Following the completion of the transfer of his securities and cash in **November 2019** to that account, the Complainant’s account with the Provider was closed.

The Complainant’s complaint is that the Provider:

- Failed to update or record a share price for Share Company A on **2 October 2019** that reflected its actual value on that date, which then gave the Complainant the impression that his shares were less valuable and as a result, given the low value displayed, that the Provider denied him an opportunity to sell his shares at a profit.

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- Failed to provide adequate customer service when responding to the Complainant's complaint, in that the Provider failed to respond to various emails from the Complainant on occasions when he required further information and as a result, it failed to deal with his complaint in a timely manner.

The Provider's Case

The Provider says that the Complainant held an online Execution Only account with the Provider. The Provider says this account provided an online dealing service to the Complainant, facilitating him to trade in certain non-complex financial instruments such as shares, across Irish, UK, European and US markets. The Complainant could view his portfolio, transaction history, account information, client notifications and access market information through the online portal. All financial instruments brought through the account were held in electronic form using a nominee company on the Complainant's behalf. The Provider says it received dividends on behalf of the Complainant, and executed all corporate actions related to his holdings, according to his wishes.

The Provider says it is not permitted to give investment advice in any form, to Execution Only online clients, or to advise in relation to circumstances that might affect a share price either way. The Provider is obliged to notify its Execution Only online clients of corporate actions such as takeovers, open offers, rights issues and other offers of capital reorganisations, and to implement clients' instructions in relation to same.

The Provider says that on the morning of **2 October 2019**, Share Company A announced to the market that it planned to acquire an online gaming company. The Provider says it learned of this on the announcement.

The Provider says that share prices may move as a result of corporate activity. When this occurs, it is reflected in the share price information that the Provider receives from third-party providers without additional measures being taken, and it is used to update the share price information provided to online clients in line with the service notice, and in compliance with **Section 32(3)** and **Section 32(4)** of the **EU Markets in Financial Instruments Regulations 2017**.

The Provider says that on **2 October 2019**, when an online client logged in to the Provider website, they were presented with the Dashboard as the default landing page. The Dashboard shows a client's top five shareholdings. If Share Company A formed part of the client's top five holdings then the online client would see an up-to-date price for Share Company A, in line with the following service definition:

"Prices are based on closing prices from the previous day with the exception of securities which have a full listing on the UK main market, these are valued based on approximately 15 minutes delayed prices".

The Provider notes the same client would also see the same pricing on their Portfolio page.

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The Provider says that Share Company A is treated as an Irish company on its online platform and its share price is therefore based on the closing price of the previous day on both the Dashboard and Portfolio pages. The share price for Share Company A on the Complainant's Dashboard and Portfolio page was updated on **2 October 2019** to **€85.62** to reflect the previous day's closing price in line with the service notice. This price was not updated throughout the day.

The Provider notes that on the Markets page of the website, which is a completely separate section of the site, displaying delayed pricing and other general market information, users are notified that:

"Prices are up to 30 mins Delayed".

During the period preceding the Share Company A acquisition announcement and on **2 October 2019** the Provider says it was unaware that the Markets page of the website was displaying a share price of **€63.80** for Share Company A, with the time and date attached as **16:30** on **27 May 2019**. The Provider notes that this share price within the Markets page, although not current, was accurate as it clearly stated the date at which the price applied.

The Provider believes that the manner in which it provides pricing information to online clients is in compliance with **Section 32(3)** and **Section 32(4)** of the **EU Markets in Financial Instruments Regulations 2017**. However, the nature of a financial pricing service and the very dynamic nature of the market data, means that pricing issues can intermittently occur. It is for this reason that the Provider highlighted to the Complainant in his **Client Agreement** that:

"Information provided is obtained from sources deemed to be reliable, is provided solely on a best efforts basis for your convenience and [the Provider] and its content providers do not guarantee the completeness or accuracy of such information. [The Provider] and its content providers does not accept any liability for any loss or damage arising out of negligence or otherwise as a result of use or reliance on this information".

The Provider also notes that the **Client Agreement** provides that:

"Prices displayed are indicative prices only and may not therefore be real time prices for the purposes of buying/selling securities or making any other investment".

The Provider says the share prices displayed in the Dashboard and the Portfolio screens which reflects the client's holdings, are the closing share prices from the previous day, except in the case of shares which have a full UK listing, in which case prices are approximately 15 minutes delayed. In that regard, depending on the share in question, the price of a share shown may reflect the official closing price from the previous day, or a more recent price which is approximately just 15 minutes delayed. The Provider says that the price displayed is therefore indicative of a recent price the share traded at in the market and is not a real time price nor is it the actual last traded price for the share. The indicative price

may therefore be very different from the real time last traded price of a share, depending on the share in question or the market on that day.

The Provider says that the share values it displays on its website and that it uses to calculate portfolio values are supplied to it by a third party financial pricing provider which collects this information from the various financial exchanges. The Provider relies on the integrity of the information that it receives from this third party.

The Provider is satisfied that the value of the shares of Share Company A displayed on the Dashboard and Portfolio pages of its website on **2 October 2019** correctly reflected the closing price from the previous day.

The Provider says the pricing data in the Markets page of its website is provided by a separate pricing provider as this section of the site aims to provide intraday updated prices. The Provider notes that the price information feeding the Markets page of the platform failed to show an updated value of Share Company A and was instead clearly displaying an outdated share value with the date as at **27 May 2019**.

The Provider says that when the Complainant logged in to his account at **11:43** on **2 October 2019**, he was presented with the Dashboard as the default landing page. The Dashboard showed his top five shareholdings, and showed the correct closing price for Share Company A from the previous day of **€85.62**. Had the Complainant selected to view his Portfolio, he would have seen the closing price from the previous day for Share Company A of **€85.62**.

The Provider concedes that the price for Share Company A reflected on the Markets page on **2 October 2019** was the outdated price of **€63.80**, though it notes that this value was correctly identified as the price at **16:30** on **27 May 2019**. While not available on the online portal, the Provider notes the real time price for Share Company A at **11:43** on **2 October 2019** was **€100.70**. This price was higher than the previous day's closing price of **€85.62**, as the news of Share Company A's proposed acquisition was well received by the market.

The Provider sets out a timeline of key events relevant to the Complainant's complaint, as follows:

At **11:43** on **2 October 2019**, the Complainant logged in to the Provider website. At that time, Share Company A share price was trading at **€100.70**. Dashboard, which shows the Complainant's top five holdings, was displaying an approximate price for Share Company A of **€85.62**, the closing price of the previous day. The Markets page was displaying a price of **€63.80** as at **27 May 2019**.

At **09:58** on **7 October 2019**, the Complainant telephoned Internet Support to raise an issue with the price displayed on the website for Share Company A. Internet Support asked the Complainant to email with a screen shot of what the issue is.

At **10:13** on **7 October 2019**, the Complainant emailed Internet Support and advised that:

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“ ... Having checked my account this morning online the problems persist. My account shows [Share Company A] to be at €63.80 which I now know to be incorrect. As I stated, I missed the opportunity to sell my [Share Company A] shares last week when they spiked up as far as €103.80. It has been my intention for some time to sell off various parts of my portfolio in the event of the share prices increasing so as to recoup losses incurred over the last while.

I checked my account online when I heard the news of [Share Company A] purchasing [an online poker gaming company] as I though[t] there would be some uplift. However my account provided me with the wrong information. I did not find out about the uplift until I spoke with a friend on the weekend. I missed the opportunity to sell as a result ...”

The Provider says that the Complainant attached a video of his terminal and what he saw when he logged in to the website, wherein he viewed the Dashboard which showed the closing price of the previous day, and selected the Market Page. He selected ‘View All’, showing the ISEQ index components including Share Company A, and when he selected Share Company A, the price shown was **€63.80 at 16:30 on 27 May 2019**.

At **11:12 on 7 October 2019**, Internet Support emailed the Complainant requesting screen shots rather than video.

At **11:16 on 7 October 2019**, the Complainant emailed Internet Support with images of his computer terminal showing the price of Share Company A as **€63.80 at 16:30 on 27 May 2019**.

At **14:25 on 7 October 2019**, Internet Support emailed the Complainant to confirm that the Provider was looking into the matter.

At **14:32 on 7 October 2019**, the Complainant emailed Internet Support to acknowledge its email response.

At **16:14 on 7 October 2019**, Internet Support emailed the Complainant to advise that the matter had been escalated internally for review and that he was to expect a telephone call, if not by close of business that day, then certainly the following day.

At **16:19 on 7 October 2019**, the Complainant emailed Internet Support to acknowledge its email response.

At **15:18 on 8 October 2019**, the Complainant emailed Internet Support seeking a response to his query.

At **15:30 on 8 October 2019**, Internet Support emailed the Complainant confirming that the Provider would revert to him.

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At **16:28** on **8 October 2019**, Mr R., Team Leader Execution Desk, telephoned the Complainant to explain why the share price for Share Company A was displayed as **€63.80** on the Markets page. The Complainant confirmed he would have sold his holdings if he had known of the increase in Share Company A share price on **2 October 2019**.

At **14:28** on **9 October 2019**, Mr R. telephoned the Complainant, who asked if he could return the call later.

At **14:35** on **9 October 2019**, the Complainant telephoned Mr R., who proposed an offer to resolve the matter. The Complainant requested Mr R. to email him the details of this offer.

At **16:07** on **9 October 2019**, Mr R. emailed the Complainant setting out the Provider's proposed offer to resolve the matter, as follows:

"As a gesture of goodwill and in full and final settlement of the issue at hand, we are prepared to sell all or some of your [Share Company A] shares and input the sale at the Volume Weighted Average Price (VWAP) from 2nd October, which was €93.73. At the time of sending this email, the current share price is €87.50. [The Provider] will absorb half the different between the VWAP price and the current share value".

At **16:29** on **9 October 2019**, the Complainant emailed Mr R. seeking some further information and advised, among other things, that:

" ... [The Provider] has admitted to failing to provide accurate information on the market page of the online portfolio. To suggest, as you did yesterday, that had I made a trade in any event it would have been processed at the correct price is, with respect, a nonsense. The decision to make a trade is based on the earlier information [the Provider] provide. On the basis of the information provided by [the Provider], i.e. a [Share Company A] share price of €63.80, I did not sell my shares because by so doing I believed I would crystallise a loss...Due to the admitted failings of [the Provider] I was deprived of the opportunity to make a properly informed decision to sell my [Share Company A] shares at a point in time when I would have recovered my losses.

Whilst you acknowledge the wrong, your unwillingness to immediately seek to fully and properly remediate the wrong is remarkable ... "

At **16:52** on **9 October 2019**, Mr R. emailed the Complainant, cc'ing his colleagues Mr P. and Mr D., to acknowledge the Complainant's response and to advise that Mr P. would revert with the additional information and that should he wish to accept the offer, to contact Mr D.

At **16:53** on **9 October 2019**, the Complainant emailed Mr R. to acknowledge his email.

At **13:48** on **10 October 2019**, the Complainant emailed Mr R., cc'ing Mr P. and Mr D., acknowledging that Mr R. was on leave and asking for a timeline to the Provider's response to his queries.

At **17:00** on **10 October 2019**, Mr P. emailed the Complainant to advise that he would send the information and clarifications requested the next day.

At **17:05** on **10 October 2019**, the Complainant emailed Mr P. acknowledging his email.

On **11 October 2019**, the Complainant received a dividend of **€324.69** in respect of his Share Company A shares.

At **14:19** on **11 October 2019**, Mr P. emailed the Complainant and answered his previous queries, set out the Provider's position on the matter and restated the proposed resolution offered by Mr R. in his email at **16:07** on **9 October 2019**.

At **16:36** on **14 October 2019**, the Complainant emailed Mr P. acknowledging the previous email and disputing the Provider's view on the matter and setting out his grievances. The Complainant stated in this email that if the Provider did not see fit to compensate him, by way of him receiving the equivalent benefit of having sold his shares at **€100.70**, by not later than **17 October 2019**, then he would issue legal proceedings and/or make a complaint to the appropriate regulatory body.

At **17:14** on **15 October 2019**, Mr P. emailed the Complainant inviting him to submit an official complaint to Mr S., the Head of Wealth Management. The Provider says that at this juncture it was apparent that the matter could not be resolved by the Support Team and that the matter should be escalated to a formal complaint. As is protocol, Mr P. directed the Complainant to the official complaint process as set out in Section 3.17 of the **Client Agreement** which states:

"Should you have a complaint regarding the service you have received and the matter cannot be resolved by the person with whom you are dealing, you should refer the matter to the Head of Wealth Management ... "

At **15:57** on **16 October 2019**, the Complainant emailed Mr P. to confirm he would submit a complaint to Mr S. and requested his email address so that he could do so.

At **17:01** on **16 October 2019**, Mr P. emailed the Complainant the email address for Mr S.

At **09:55** on **17 October 2019**, the Complainant emailed an official complaint to Mr S.

At **11:44** on **17 October 2019**, Mr S. emailed the Complainant confirming receipt of his complaint and that the matter had been escalated to the Compliance Department.

At **12:06** on **17 October 2019**, the Complainant emailed Mr S. acknowledging his email.

At **14:41** on **21 October 2019**, the Complainant emailed Mr S. asking when he might expect to hear from the Compliance Department.

At **14:43** on **25 October 2019**, the Complainant emailed Mr S. with an attached letter to the Provider instructing a transfer of all his holdings to a named stockbrokers, save for his Share

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Company A shares, which he advised was to remain with the Provider *“for the time being pending resolution of subject matter of my complaint”* and he asked *“that no charges will be incurred on my part in respect of the transfer”*.

At **10:07** on **31 October 2019**, Mr P. emailed the Complainant confirming that the Provider was in the process of transferring certain holdings as requested and that it would waive the charges for the transfer.

At **10:12** on **31 October 2019**, the Complainant emailed Mr P. asking for confirmation when the transfer was complete.

At **16:19** on **4 November 2019**, Mr P. emailed the Complainant to confirm that the transfer of certain holdings to a different stockbrokers was complete.

At **16:22** on **4 November 2019**, the Complainant emailed Mr P. acknowledging the transfer.

At **16:08** on **17 November 2019**, the Complainant emailed Mr S. referencing the lack of any substantive response to his email complaint of **17 October 2019** and no response to his email of **21 October 2019** and advising that he had filed a complaint to the Financial Services and Pensions Ombudsman.

At **11:00** on **19 November 2019**, Mr R. telephoned the Complainant offering to place a sale of his holding in Share Company A at **€100.70** on his account, which was a level higher than the market at the time, commission free. This was the price at **11:43** on **2 October 2019** when the Complainant logged into the website and that he had said he would have sold at. The Provider offered to absorb the difference between the lower market price at the time and **€100.70**. The Complainant agreed to this offer and the Provider sold his 538 shares in Share Company A for the total consideration **€54,175.35**. The Complainant realised a capital gain of **€3,402.00** or 6.7% in addition to dividends of **€1,311.03** received, bringing his total gain on his investment in Share Company A to **€4,713.78** or 9.3%.

At **19:12** on **19 November 2019**, the Complainant emailed Mr R. acknowledging the sale of his holding in Share Company A and requesting a cash transfer to his account with his new stockbrokers.

At **13:04** on **20 November 2019**, Mr R. emailed the Complainant confirming dispatch of the contract note for sale and plan to transfer cash to his new stockbrokers.

At **13:18** on **28 November 2019**, Mr S. emailed the Complainant, as follows:

“I acknowledge that you are awaiting a response letter to your complaint dated 17 October 2019, from our Compliance Department.

In the meantime, however, [Mr R.] mentioned to me that at the end of last week, we executed the sale of your shares in [Share Company A], at the price of €100.70. I understand that the price you received was equivalent to the market price at the time you logged on to your account on 2 October 2019. The trade was executed at nil

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commission and the proceeds, €54,175.35 will now transfer to [your new stockbrokers] as agreed.

Considering this transaction, do you view this as a satisfactory outcome to your complaint or would you like our Compliance Department to continue with their review of the matter”.

At **17:58** on **28 November 2019**, the Complainant emailed Mr S. confirming that he had escalated the matter to the Financial Services and Pensions Ombudsman.

On **6 January 2020**, the Provider issued its **Final Response** to the Complainant.

At **19:12** on **14 July 2020**, the Complainant emailed Mr S. in relation to the erroneous imposition of an annual fee on his account.

At **08:30** on **16 July 2020**, Mr D., Head of Trading and Execution - Wealth Management emailed the Complainant confirming that the online fee would be reversed and the account closed.

At **08:34** on **16 July 2020**, the Complainant emailed Mr D. acknowledging his email.

At **08:19** on **17 July 2020**, Mr D. emailed the Complainant to confirm that the online fee had been removed and the account closed.

At **08:30** on **17 July 2020**, the Complainant emailed Mr D. to acknowledge his email.

The Provider notes that, in response to the Complainant’s comments that it did not appropriately action or respond to his complaint email, the Complainant sent an email to its Head of Wealth Management Mr S. at **09:55** on **17 October 2019**. The Provider says that Mr S. responded to this email on the same day at **11:44**, confirming that the matter had been escalated to the Compliance Department which would revert to the Complainant in due course.

The Complainant subsequently sent an email to Mr S. on **21 October 2019** enquiring as to a timeline on a reply from the Compliance Department. The Provider says Mr S. did not reply to this email immediately as he did not have a timeline on the reply from the Compliance Department, at the time.

The Provider acknowledges that it was an oversight not to have replied to the Complainant’s email of **21 October 2019**. The Provider says this was not intentional but rather was a lapse which subsequently became overshadowed by the Complainant’s letter of **25 October 2019** in which he instructed the Provider to transfer most of his portfolio to another stockbroker. The Provider’s Internet Support then liaised with the Complainant to transfer his holdings, while the Compliance Department continued to consider the matter of the complainant.

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The Provider notes the Complainant suggests that he fell foul of a systematic and fundamental failure on the part of the Provider to realise and rectify an error in the price for Share Company A over a sustained period, in that during the period from **27 May 2019** until **2 October 2019** the Markets page on its website reflected an outdated price for Share Company A of **€63.80**.

The Provider notes that during this period, the Complainant was awaiting recovery in the price of Share Company A. As his average cost of acquiring his Share Company A holding was **€94.37**, the Provider submits that the Complainant was therefore awaiting a recovery in the share price to **€94.37** or above. As this recovery did not come about until **2 October 2019**, the Provider does not see the basis for the Complainant suggesting having suffered a loss prior to this date.

The Provider notes that at the time of log in by the Complainant on **2 October 2019**, the price from the previous day for Share Company A of **€85.62** was displayed on the Complainant's Dashboard, the default landing page. The Provider says this price would also have been reflected on the Complainant's Portfolio page, had he chosen to review his portfolio. The Complainant elected to proceed to view the Markets page, which contained an outdated price for Share Company A of **€63.80**. The Provider says the price on the Markets page, though not updated, was still accurate as it clearly stated the date at which the price applied as **16:30 on 27 May 2019**.

The Provider says it does not see the basis for the Complainant's assertion that he was denied the opportunity to sell his shares on **2 October 2019**. As normal, the closing price from the previous day was presented to the Complainant on the Dashboard on first logging in to the website. The Complainant proceeded to review the Markets page where he was presented with an outdated price, showing the date as **16:30 on 27 May 2019**. As the date was attached, the Provider says it was clearly evident that the price for Share Company A on the Markets page, was a historic price.

As the updated price on the day is not available on the Dashboard or Markets page, the Provider says the Complainant was free to telephone its Online Support Team to enquire as to the real time price. It was also open to the Complainant to enquire by means of the pre-order screen as to a recent, albeit delayed price, which would have displayed a price at the time of his log in on **2 October 2019** of approximately **€101.30**.

The Provider cannot speculate as to why it did not occur to the Complainant to take these steps to establish a more recent price when he was presented with a price on the Markets page displayed as at **27 May 2019**, and a price on the Dashboard from the close of the previous day, particularly when he had anticipated a rise in the share price that morning.

The Provider notes that if the Complainant had wanted to attempt to sell his Share Company A shares, during his log in on **2 October 2019**, the actual real time price would not have been displayed to the point of sale. Had any client attempted to place an order in this instrument at this time, the Provider says a price variation warning would have been triggered as the

indicated price exceeded the previous day's closing price by more than 10% and the client would have been advised to contact support to proceed with placing the order.

The Provider notes that in his email to its Head of Wealth Management Mr S. at **09:55** on **17 October 2019**, the Complainant confirmed how he wished for the Provider to make amends for the suggested wrongdoings. The Complainant stated that he wanted to receive the equivalent benefit of having sold his Share Company A shares at **€100.70**, the price at which the shares were trading when he logged in on **2 October 2019**.

The Provider says that by **19 November 2019**, the share price of Share Company A had risen, and the Provider offered as a goodwill gesture to sell the Complainant's shares at **€100.70**, the level at which he had originally felt would compensate him for the suggested failures. The Complainant accepted this offer and the Provider sold the shares, giving him the price of **€100.70**, therein absorbing a loss of **€468.06** and forfeiting commission payable of **€395.88**. The Provider says it therefore resolved the matter in line with the Complainant's wishes.

The Complaint for Adjudication

The complaint is that the Provider:

- Failed to update or record a share price for Share Company A on **2 October 2019** that reflected its actual value on that date, which then gave the Complainant the impression that his shares were less valuable and as a result, given the low value displayed, that the Provider denied him an opportunity to sell his shares at a profit
- Failed to provide adequate customer service when responding to the Complainant's complaint, in that the Provider failed to respond to various emails from the Complainant on occasions when he required further information and as such, it failed to deal with his complaint in a timely manner.

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

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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 **17 February 2022**, 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, within the period permitted, the final determination of this office is set out below.

I note that the Complainant held 538 shares in Share Company A in his online trading investment portfolio account with the Provider when, on **2 October 2019**, Share Company A publicly announced a proposed acquisition of an online poker gaming company.

The Complainant logged in to the Provider website at **11:42** on **2 October 2019** as he had anticipated that the Share Company A announcement would have resulted in an increase in its share price, but he says the Markets page on the website displayed a price for Share Company A of **€63.80**.

The Complainant says he learnt a few days later that the actual share price for Share Company A at the time he logged in to the Provider website on **2 October 2019** was **€100.70**. The Complainant says that if the Provider had displayed the correct share price on its website on that day, he would have sold his shares and realised a profit.

I note that the Provider says that when the Complainant logged in to his account at **11:42** on **2 October 2019**, his default landing page was the Dashboard, which showed his top five shareholdings and included the correct closing price for Share Company A from the previous day of **€85.62**. The Provider says this is in line with the following applicable service definition:

“Prices are based on closing prices from the previous day with the exception of securities which have a full listing on the UK main market, these are valued based on approximately 15 minutes delayed prices”.

The Provider also says that if the Complainant had accessed his Portfolio page during his session on **2 October 2019**, he would also have seen the same correct closing price for Share Company A from the previous day of **€85.62**.

The Provider has advised that users to the Markets page are notified that:

“Prices are up to 30 mins Delayed”.

I note that the Provider has acknowledged that the Markets page of the website was displaying a share price of **€63.80** for Share Company A, but it points out that the time and date attached to this price was clearly listed as **16:30** on **27 May 2019**.

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I note from the documentary evidence before me that the Complainant emailed some screenshots of his online account to the Provider on **7 October 2019**. Although the Complainant's photograph shows the Markets page displaying a price for Share Company A of **€63.80**, I am satisfied that this photograph also confirms that this price was clearly identified as being the share price as at **16:30 on 27 May 2019**. I therefore take the view that the Complainant was on notice that the displayed share price was not the current price.

The Provider has advised that the updated price on the day was not available on the Dashboard or the Portfolio pages, as these were correctly showing the closing price for Share Company A from the previous day of **€85.62**. Neither was it displaying on the Markets page, as this was showing the price as at **16:30 on 27 May 2019**. The Provider therefore says that it was open to the Complainant to have telephoned its Online Support Team to enquire as to the real time price, or he could have checked the pre-order screen as to a recent, albeit delayed price, which would have displayed a price at the time of his log in on **2 October 2019** of approximately **€101.30**.

While I am satisfied that the Markets page clearly identified that the price it was showing for Share Company A during the Complainant's log in on **2 October 2019**, was the price as at **16:30 on 27 May 2019**, it is nevertheless disappointing that the Markets page was displaying a share price that was out-of-date by some four months, particularly given that users are advised that the prices may only be up to 30 minutes behind real time.

In the **Complaint Form** he completed to this Office on **17 November 2019**, the Complainant submitted that:

"... I wish to be compensated in such a manner so as to be provided the difference between the present [Share Company A] and that of €100.70 ... In addition, in the circumstances and given the failure on the part of [the Provider] to provide a proper service I ought to be recompensed commission and fees ..."

Two days after completing his **Complaint Form**, I note the Provider telephoned the Complainant on **19 November 2019** offering to place a sale of his holding in Share Company A at **€100.70** on his account, commission free, *"even though [the share price was] tracking at below [€]100 at the moment"*. This was the same price as at **11:43 on 2 October 2019** when the Complainant logged in to the Provider website. The Complainant accepted this offer and the Provider sold his 538 shares in Share Company A for the total consideration of **€54,175.35**, with the Provider advising that the Complainant realised a capital gain of **€3,402.00** on the transaction.

I am satisfied that this offer was a reasonable approach for the Provider to take in this matter and I am mindful that it was the resolution the Complainant had sought in his **Complaint Form** to this Office two days earlier.

The Complainant first contacted the Provider about this matter on **7 October 2020** and he contends that the Provider did not appropriately respond to his complaint.

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I note the Provider telephoned and emailed the Complainant two days later on **9 October 2019** with a proposed offer to resolve the matter.

When this offer and further communications between the Complainant and Provider failed to resolve the matter, I note the Provider emailed the Complainant on **15 October 2019** inviting him to submit an official complaint to its Head of Wealth Management, which was in accordance with Section 3.17 of the **Client Agreement** which states:

“Should you have a complaint regarding the service you have received and the matter cannot be resolved by the person with whom you are dealing, you should refer the matter to the Head of Wealth Management ... ”

The Complainant emailed his complaint to the Head of Wealth Management on **17 October 2019** concerning the incorrect share price listed for Share Company A on the Markets page of his online trading investment portfolio account when he logged in on **2 October 2017** and advised that:

“ ... I require to receive the equivalent benefit of having sold [my Share Company A] shareholding at €100.70, that being the actual price when I logged in ... ”

The Head of Wealth Management emailed the Complainant later that same day, **17 October 2019**, to acknowledge the complaint and advise that the matter had been escalated to the Compliance Department.

The Complainant emailed the Head of Wealth Management on **21 October 2019** asking when he could expect to hear from the Compliance Department, but this email was not responded to.

I note the Provider acknowledges that it was an oversight not to have replied to the Complainant's email of **21 October 2019** and says that this was not intentional but rather was a lapse which subsequently became overshadowed by the Complainant's letter of **25 October 2019** in which he instructed the Provider to transfer most of his portfolio to another stockbroker.

I note the Complainant emailed the Head of Wealth Management on **17 November 2019** referencing the lack of any substantive response to his email complaint of **17 October 2019** and no response to his email of **21 October 2020** and advising that he had filed a complaint to the Financial Services and Pensions Ombudsman.

I note the Head of Wealth Management emailed the Complainant on **28 November 2019**, as follows:

“I acknowledge that you are awaiting a response letter to your complaint dated 17 October 2019, from our Compliance Department.

In the meantime however, [Mr R.] mentioned to me that at the end of last week, we executed the sale of your shares in [Share Company A], at the price of €100.70. I

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understand that the price you received was equivalent to the market price at the time you logged on to your account on 2 October 2019. The trade was executed at nil commission and the proceeds, €54,175.35 will now transfer to [your new stockbrokers] as agreed.

Considering this transaction, do you view this as a satisfactory outcome to your complaint or would you like our Compliance Department to continue with their review of the matter.”

The Complainant replied to this email later that day same, **28 November 2019**, as follows:

“You are correct that I have not received any response from your Compliance Department. Moreover, I have not received any indication as to when a response might be provided, despite so requesting of you on a number of occasions.

The only effect of the transaction last week is to bring to an end my relationship with [the Provider] as my entire portfolio has now been transferred to [a different stockbroker].

Lest there be any doubt, my complaint remains live. Moreover, as you are aware I have escalated the matter to the Financial and Pensions Ombudsman given your failure to engage with me at all.

I will not be advising [the Provider] as to how to proceed, that is a matter for [the Provider]”.

The complaint that the Complainant set out in his email to the Head of Wealth Management on **17 October 2019** focused on the fact that the Share Company A price had been incorrectly listed on the Markets page when he logged in to his online trading investment portfolio account on **2 October 2017**.

In that regard, I am of the opinion that it is somewhat understandable that the Provider may have regarded the Complainant’s acceptance of its offer on **19 November 2019** to place a sale of his holding in Share Company A at **€100.70** on his account, to have resolved his complaint, particularly given that this is the resolution the Complainant had sought in his complaint email of **17 October 2019**, as follows:

“... I require to receive the equivalent benefit of having sold [my Share Company A] shareholding at €100.70, that being the actual price when I logged in ... ”

At some point after he emailed his complaint to the Head of Wealth Management on **17 October 2019**, and which was escalated to the Compliance Department on that date, the focus of the Complainant’s complaint shifted to the lack of response from the Compliance Department.

The Complainant confirmed to the Provider in his email of **28 November 2019** that his complaint remained unresolved.

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I note the Compliance Department subsequently sent its **Final Response** to the Complainant on **6 January 2020**. This is 24 working days after the Complainant confirmed in his email of **28 November 2019** that his complaint had not been resolved. In taking 24 working days to issue its **Final Response**, I do not consider that the Provider unduly delayed.

As the evidence shows that the Provider responded quickly to the issue which the Complainant had raised, and that it redressed the Complainant's grievance with the resolution he had sought, I do not accept on the evidence before me, that there is any reasonable basis upon which this complaint should be upheld.

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.



MARYROSE MCGOVERN
Financial Services and Pensions Ombudsman (Acting)

11 March 2022

PUBLICATION

Complaints about the conduct of financial service providers

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.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.

