

The complaint

Mrs H has complained about restrictions that St James's Place UK plc (SJP) has put on her account. She said she has been told to cease switching in and out of certain unit trusts. She doesn't feel she has been treated fairly. She wants to be able to switch without any restrictions going forward.

Mrs H has been represented by her husband, Mr H. He has been providing comments and responding on Mrs H's behalf. But for ease of reference and because she is the complainant, I have instead used Mrs H's name and referred to her throughout.

What happened

Mrs H holds accounts with SJP. She has been investing in unit trusts either through an individual savings account (ISA) or an investment account. She said she received a letter from SJP in April 2022, notifying her that it was going to place restrictions on her switching activities within the accounts.

Mrs H said SJP agreed that her frequent switching in and out of specific funds was not illegal. But, she said, SJP went ahead and imposed restrictions including delaying her switching instructions by 24 hours and not allowing her to switch into specific funds altogether.

Mrs H said she was being discriminated against as the restrictions only applied to her and not to any other customers. She said SJP are in breach of contract, and she just wants to be treated the same as every other SJP client. She said she wants to be able to switch funds without restrictions.

SJP said in response, that it had analysed Mrs H's switch activity. It said Mrs H was carrying out frequent short-term switches, usually lasting a day. It said it thought Mrs H was doing this with the purpose of her benefiting from an upward movement that had not been priced in. It said this was called market timing and had a detrimental impact on other customers.

SJP said it had overriding responsibilities to all its clients. It referred to terms within its own documentation along with Financial Conduct Authority (FCA) regulation and in particular principles for businesses to adhere to, from the handbook. It said permitting frequent switching activity from Mrs H would cause a conflict with its wider interests to be fair to its other customers.

Mrs H was not happy with SJP's response and referred her complaint to our service.

An investigator looked into Mrs H's complaint. He said he didn't think SJP had treated Mrs H unfairly. He said Mrs H's investment strategy was different to that of most other investors and this is why SJP treated her differently. He said he found SJP's argument persuasive that Mrs H's frequent switches had a negative impact on other investor's returns. He referenced guidance issued by the Investment Association and a note from the FCA. He said the guidance issued outlined the negative impact of Mrs H's investment strategy and that firms

can turn business away in these circumstances. He concluded that SJP's actions were not unfair in the circumstances.

Mrs H was not in agreement with the investigator's view. She said she did not accept the investigator's conclusions. She said the investigator was happy to accept that she was being discriminated against. She said when a switch into a property fund was cancelled by SJP, and she made a loss, it settled and paid compensation. She said it knew what was happening so far as its actions were insider dealing, in her opinion. She asked that her complaint be appealed.

So as this is the case, Mrs H's complaint has been passed to me, an ombudsman, to look into.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

What is the role of The Financial Ombudsman Service?

I have read all submissions provided by both parties and in doing so I think it is worth explaining from the outset about the role of The Financial Ombudsman Service as an informal dispute resolution service. As an ombudsman, I make decisions on the balance of probabilities, and as an impartial decision maker I look to make findings that are fair and reasonable in the circumstances of a complaint. My role does not involve applying any regulatory or disciplinary powers and it is not in my remit to tell a business how it should or shouldn't operate.

In the circumstances of Mrs H's complaint, I have looked at two questions. Firstly, was it fair of SJP to decide Mrs H had been undertaking a market timing strategy? If it was, then were the actions taken by SJP to place restrictions on her account on balance, fair and reasonable or not?

I will not be looking into Mrs H's comments about SJP and insider dealing. Mrs H has made comments that are of a regulatory nature. I am not the regulator, the FCA are. Mrs H can send her comments to them if she wants to.

Did SJP act fairly in deciding Mrs H had been undertaking a market timing strategy?

It isn't really in dispute that Mrs H is carrying out a market timing strategy. She has not denied the strategy she has deployed, what or how she is doing it or why. It is acknowledged by both sides here what is happening. Furthermore, Mrs H has stated she is willing to encourage more people to engage in the same strategy. She is open about what she is doing and doesn't believe she is doing anything wrong.

But for completeness, I would have drawn a conclusion that SJP acted fairly in deciding Mrs H was engaged in market timing anyway.

I say this after considering the analysis provided by SJP that it carried out over a quarter during 2022. It could see that Mrs H carried 90 switches that amounted to a total value altogether £11,800,000. It said 90% of this by volume and value was in relation to a North American unit trust.

SJP said Mrs H was frequently switching into the North American unit trust when there was an upward movement in an underlying US index. It said this wouldn't have been reflected in

the unit trust price, due to the price being calculated at the close of the last business day. SJP explained that Mrs H was getting what it called 'a free ride' each time she switched, and that Mrs H's activities were what is known as market timing.

SJP provided persuasive analysis about what Mrs H has been doing and why. Again, I don't think SJP has unfairly drawn the conclusions it has here.

So, with all I have said above, it is not in dispute between the parties what Mrs H is doing. What is in dispute is whether Mrs H should be able to carry on with her market timing activities or not and whether SJP has acted unfairly in placing restrictions on her accounts.

Did SJP act fairly when it placed restrictions on Mrs H's accounts?

Mrs H has said she is being discriminated against and is not being treated fairly. She said she just wants to be able to make switches on her accounts like other SJP account holders.

SJP has placed restrictions on Mrs H's trading activity. It has either stopped Mrs H from switching in certain funds or has delayed her switching request by 24 hours. SJP said it has a right to refuse Mrs H's switching requests or take action that it deems appropriate. It says it has stated this in its 'supplementary information document' for her accounts.

Within the SID document, it states under 7.4 Refusal to Act,

"If we reasonably believe that something you ask us to do might not follow the law, rules or regulations that apply, we can delay taking action whilst it considers the request or refuse to act."

I have looked through and read the SID document that SJP has referred to. I can see that by delaying or refusing to act, SJP was seeking to follow the terms provided in this document and in particular term 7.4 (given above). It has provided further information that it says supports the action it has taken under its own terms here.

It has referred to two principles for businesses, within the FCA handbook that it thinks are relevant here. These are:

Principle 6: Customers' interests – a firm must pay due regard to the interests of its customers and treat them fairly.

Principle 8: Conflicts of interest – a firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.

SJP said it has had to in this instance, manage a conflict of interest, between Mrs H and its other customers that have holdings in the unit trust that she frequently switches in and out of.

SJP has also submitted to our service guidance written by the Investment Association about market timing. The guidance was published by the association to highlight the damaging effects of market timing on the wider client base of a unit trust. It also gives guidance on what a business can do about it including applying restrictions or turning business away. At the back of the guidance is a note written by the FCA also about market timing. SJP said it had followed the guidance when it applied the restrictions to Mrs H's accounts.

I have read the Investment Association guidance on market timing and the FCA note that was given as an appendix. The guidance outlines the issues with customers engaged with market timing and the negative impact this has on most investors that are holding units for

the long term. SJP has explained the conflict of interest it had here in allowing Mrs H's trading activity to continue and has referenced FCA principles about this, given above.

I have also read a report written by the European Securities and Markets Authority about market timing, that it issued in 2015. The report was called "Investigations of Mis-practices in the European Investment Fund Industry". The authority stated the need for a firm to take action to ensure the wider protection of its investors. I think when I look through all of this, I can see the reasons why SJP has taken the actions it has, and I don't think it has acted unfairly or unreasonably in doing so.

Mrs H has said on a few occasions that what she is doing is not breaking the law or rules. but I don't think that's the point here. SJP have had to balance its responsibilities to Mrs H against its wider responsibilities to its other customers, after it has seen Mrs H greatly benefit at their expense. SJP has listed guidance, regulation, and its own terms to support the action it has taken to protect its wider customer base. In looking through all that it has done and the reasons why, I am satisfied it has not acted unfairly to Mrs H.

In conclusion, based on everything I have read and the findings I have given, I don't uphold Mrs H's complaint.

My final decision

My final decision is that I do not uphold Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 18 October 2023.

Mark Richardson
Ombudsman