

The complaint

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

What happened

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

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

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

SJP said in response, that it had analysed Mr H's switch activity. It said Mr H was carrying out frequent short-term switches, usually lasting a day. It said it thought Mr H was doing this with the purpose of him 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 Mr H would cause a conflict with its wider interests to be fair to its other customers.

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

An investigator looked into Mr H's complaint. He said he didn't think SJP had treated Mr H unfairly. He said Mr H's investment strategy was different to that of most other investors and this is why SJP treated him differently. He said he found SJP's argument persuasive that Mr 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 Mr 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.

Mr H was not in agreement with the investigator's view. He said he did not accept the investigator's conclusions. He said the investigator was happy to accept that he was being discriminated against. He said when a switch into a property fund was cancelled by SJP, and

he made a loss, it settled and paid compensation. He said it knew what was happening so far as its actions were insider dealing, in his opinion. He asked that his complaint be appealed.

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

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

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

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

But for completeness, I would have drawn a conclusion that SJP acted fairly in deciding Mr 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 Mr H carried 124 switches that amounted to a total value altogether £24,300,000. It said 90% of this by volume and value was in relation to a North American unit trust.

SJP said Mr 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 Mr H was getting what it called 'a free ride' each time he switched, and that Mr H's activities were what is known as market timing.

SJP provided persuasive analysis about what Mr 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 Mr H is doing. What is in dispute is whether Mr H should be able to carry on with his market timing activities or not and whether SJP has acted unfairly in placing restrictions on his accounts.

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

Mr H has said he is being discriminated against and is not being treated fairly. He said he just wants to be able to make switches on his accounts like other SJP account holders.

SJP has placed restrictions on Mr H's trading activity. It has either stopped Mr H from switching in certain funds or has delayed his switching request by 24 hours. SJP said it has a right to refuse Mr H's switching requests or take action that it deems appropriate. It says it has stated this in its 'supplementary information document' for his 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 Mr H and its other customers that have holdings in the unit trust that he 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 Mr 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 Mr 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.

Mr H has said on a few occasions that what he 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 Mr H against its wider responsibilities to its other customers, after it has seen Mr 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 Mr H.

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

My final decision

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

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

Mark Richardson
Ombudsman