DRN-5207369

The complaint

Mrs E has complained about the management of her son's Junior ISAs ('JISA') by Murdoch Asset Management Limited ('MAM'). She says there was a delay in the JISAs being set up and they didn't perform as well as promised. Contrary to instructions, shares were sold to pay for the fees which were higher than advised. Mrs E had wanted a cautious risk profile but the JISAs were invested in the wrong risk category. Cancellation of the agreement meant Mrs E will incur costs of around 2% to find a new financial adviser.

The JISAs was set up by Mrs E's father – who I shall refer to as Mr F in my decision – but Mrs E is the legal owner on behalf of her sons. I shall refer to Mrs E's children as 'A' and 'S' in my decision.

Mr F is representing Mrs E in bringing the complaint.

What happened

In June 2019, Mr F told MAM that he wanted to transfer his grandson's JISA accounts from the previous product provider – that I shall refer to as 'H' in my decision – and top up the value to £1,000.

The JISA accounts weren't set up until January 2021. Mr F – on behalf of Mrs E – raised his concerns about the delays in the accounts being transferred and the fees charged etc. MAM responded to the complaint in its letter of 24 August 2023. It said;

- After the meeting with Mr F on 22 April 2020 a request for an advisory report was put to MAM's paraplanner team on 28 April. Due to COVID, and adaption to remote working, the report wasn't provided until 25 October 2020. The JISAs were opened on 21 January 2021 after the necessary forms and birth certificates were received by MAM on 4 January 2021.
- Mr F had requested that the JISA fees be paid from his General Investment Account ('GIA') which although it wasn't MAM's usual procedure to do so it regularly monitored the GIA's cash levels. Because the account when into a negative cash balance, an auto-sale was carried out by the platform provider – who I shall refer to as 'T' – in my decision on 2 May 2023 to raise £120.79 to pay the JISA fees. No sales were made from the JISAs. The auto sale was outside of MAM's control and MAM had advised of this in its initial report – when the cash balance went below 0.25% of the wrapper value T would carry out an auto sale.
- MAM had advised of its fees in its letter of 23 August 2022. It charged an ongoing management fee of 0.75% and there were other associated charges not received by MAM. The initial advice fee of 3% had been reduced to 1%. Mr F had been sent a breakdown of fees charged since inception.
- MAM didn't uphold the complaint but offered £100 as a gesture of goodwill. It concluded that its service no longer met Mr F's expectations and it could no longer act as financial adviser. It advised of T's fees that would apply after 90 days of it giving notice.

Mrs E wasn't happy with the outcome and brought her complaint to the Financial Ombudsman Service. Our investigator who considered the complaint thought that MAM needed to do more to put the matter right. She said;

- MAM had suggested an Active risk profile for the JISAs, and Mrs E had agreed to this on 7 June 2022. MAM hadn't don't anything wrong.
- Mrs E had agreed to the ongoing advice charge to MAM of 0.75%. The suitability letter had detailed the other charges that would be incurred. As the fees were explained and agreed to, the investigator didn't uphold the complaint point.
- There was no evidence that MAM said the JISA would outperform the FTSE 100 Index.
- Despite COVID and the JISAs holding a suspended fund, the investigator thought the delay in the establishment of the JISAs was excessive. Mr F had instructed the transfer of the existing JISAs and top up to £1,000 in November 2019 but it took a year for MAM to request birth certificates which were sent on 30 December 2020. The ISAs were set up in February 2021 but weren't invested until July/July 2022 and here was no reasonable explanation as to why the JISAs couldn't have been set up and invested by 31 January 2020. She upheld this element of the complaint.
- MAM was entitled to cancel its relationship with Mrs E, it had given her 90 days to find another adviser and signposted her to a website for help. It hadn't charged fees since the relationship had been cancelled. The investigator didn't uphold this part of the complaint.
- To resolve the complaint the investigator thought MAM should pay £150 for the distress caused in relation to the delays. It should also work out;
    - the value of the funds gifted by Mr F on 23 August 2023 if it had been invested in the Active portfolio on 31 January 2020.
    - Work out the value on 23 August 2023 if the cash received from the suspended fund had been reinvested into the Active portfolio as soon as it became available.
    - MAM should pay any difference between the actual performance of the investment compared to how they were invested if the fair value was higher.
    - The amounts paid shouldn't impact on the annual JISA allowance.

After a response from MAM our investigator confirmed that Mr F wanted to transfer cash of £1,000 to each ISA in November 2019 so to allow for administration etc the JISAs could have been set up and invested by 31 January 2020. Mr F had made monthly contributions from February 2021 but that wasn't his choosing. And if there had been no delay the JISA would have benefitted from performance since 31 January 2020.

Neither party responded.

As the complaint remained unresolved, it was passed to me for a decision in my role as ombudsman. I was thinking of reaching a partially different conclusion than the investigator so issued a provisional decision to allow the parties to provide me with any further information or evidence they wanted me to consider. This is what I said;

<u>'The account transfer delays</u>

I’ve been given a lot of documents from which I’ve reviewed the timeline of events relevant to the transfer of the JISAs and note the following;

- 13 June 2019 – Mr F provided MAM with valuations of the grandchildren’s JISA investments held with the H in my decision – as MAM had agreed to ‘manage’ them as well. Initially MAM couldn’t transfer the accounts due to the suspension of the LF Woodford Equity Income fund they both held.
- 9 October 2019 – Further to a call Mr F messaged MAM to say that the suspended Woodford funds held for his grandchildren should be transferred as this was now possible. On 14 October 2019 Mr F messaged MAM with a reply he had received from H about the JISA transfers. It had said it couldn’t be done electronically, only via paper application and Mr F would need to contact MAM’s platform provider – who I shall refer to as ‘T’ in my decision – to complete the transfer application. MAM replied to Mr F the next day asking for the registered contact for the JISAs ie Mrs E, as she would most likely be the person needed to complete the transfer forms. A Confidential Financial Review form was attached for Mrs E’s completion for the JISAs.

  MAM wrote to Mr F say that its suitability letter of 15 July 2019 didn’t recommend that the JISAs be transferred to T because the accounts solely held the LF Woodford Equity Income fund which couldn’t be sold. However, since then, it had been possible to re-register the fund but T’s annual fee of £12 represented a high cost for small accounts and MAM didn’t consider the transfer to T to be appropriate.

  Mr F responded as he wanted MAM to manage the JISAs as a long-term investment with dividends reinvested and he wanted MAM to act in the best interests of his grandchildren. MAM replied to say that it didn’t believe transferring the JISAs was appropriate as the LF Woodford Equity Income fund couldn’t be sold and H had waived its fees for the fund so there was no immediate need to do anything with the JISAs. However, as Mr F was keen for MAM to deal with the JISAs an alternative platform provider was contacted on 17 October to consider the transfer of the Woodford holdings and advised that further forms would need to be signed.

- 4 November 2019 – MAM reconfirmed there was no immediate need to transfer the JISA as the fund remained suspended and H had waived its fee. If Mr F wanted to make additional investment into the JISAs MAM would need to know the amounts he wanted to invest plus the amounts already paid in and a recommendation report would be issued. Mr F confirmed he wanted to invest £1,000 for each grandchild.
- 17 April 2020 – Mr F wanted advice on investment for A and S and he would top up the funds to £1,000 each. And a file note records that Mr F wanted to transfer the JISAs from H to T and that he wanted to top up the amounts to £1,000 each and also add £25 per month to each plan. MAM records that a fact find would need to be completed by L and J’s parents and the transfer of A and S’s JISAs from H was agreed on.
- 23 June 2020 – MAM wrote to Mr F as there were delays in the investment report being provided because of COVID and the changes to remote working. The names of Mr F’s daughter’s children were asked for.
- 20 July 2020 – This information was chased for, and Mr F provided this on 21 July. A report for the JISAs was requested.

- 19 August 2020 – MAM apologised to Mr F for the delay in the reports being produced.
- 3 November 2020 – Mr F emailed MAM as he was thinking of raising a complaint about the delays in opening JISAs for A and S.
- 30 December 2020 – A and S's birth certificates were provided by Mrs E.
- 8 January 2021 – MAM confirmed that the JISA accounts had been set up and that transfer forms would need to be completed for the account with H to be transferred.
- 24 February 2021 – MAM emailed Mrs E as the JISA transfer from the previous provider couldn't go ahead because of an incorrect date of birth had been provided. A new form had to be signed.
- 25 August 2021 – MAM emailed Mrs E as the JISA applications had been completed but because its previous recommendation was more than six months old it would need to issue a new report and Mrs E was asked to complete a Risk Questionnaire and Financial Circumstances Update Form. A meeting was arranged for 21 September 2021.
- 16 February 2022 – Mr F chased MAM as he was still waiting for contact regarding the top ups to A and S's JISAs to £1,000.

  In its response MAM confirmed that Mrs E would need to complete a Confidential Financial Review, a call was to be arranged and which would be followed up by a formal recommendation letter.
  9 March 2022 – An internal email records that Mrs E had been called twice by MAM and messages left but contact hadn't been made. It was later confirmed that a call was arranged for Tuesday 5 April.

- 11 May 2022 – Further to the call a suitability letter with the suggested recommendations was sent to Mrs E. MAM chased for a response as the cash had been received from Mr F, but investment couldn't take place without Mrs E's agreement to the above. Both JISAs were funded by the transfer from H – £331.69 for A and £281.40 for S and Mr F was to top the amounts up to £1,000. At the time the annual JISA allowance was £9,000. Contributions were set as £25 per month. Investment recommendations were made for three funds. Risk warnings were given as well as guidance that past performance wasn't a guide to future performance.
- 1 June 2022 – Mr F emailed MAM requesting that MAM have full control over the portfolio and the money be reinvested automatically and that no fees were to be taken from the portfolio. The necessary forms were received by MAM and the investments were completed. In response to Mr F's email, MAM confirmed that the account was an advisory one and that its recommendation was that fees be deducted from the JISAs which would ensure that cash didn't accumulate on the account. And it advised the if the cash got too low T would automatically replenish the cash. That being the case MAM would only need instruction from Mrs E to approve investment switches. Mrs E was emailed to confirm that the monies had been invested as previously recommended.

It's clear from the above that Mr F wanted to transfer the JISA accounts in November 2019 and asked again about this in April 2020. While I see some of the delays in the setting of the accounts in January 2021 was because of delays with the suspension and query about the transfer of the Woodford fund, but the transfer of that fund was possible from October 2019.

So, I'm satisfied the transfer and top up to £1,000 could have been done a lot sooner after Mr F's initial request in November 2019. And while it can't be known for sure when the JISAs would have been set up if MAM had responded promptly to Mr F's November 2019 request, I don't find it an unreasonable conclusion that an efficiently handled transfer and setting up of the JISAs would have been completed by 31 January 2020. So, I provisionally uphold this element of the complaint and the JISAs should be credited with any missed performance as outlined below.

However, I think rather than an end date of 23 August 2023 for the calculation as recommended by the investigator it should be the earlier of;

- the date of transfer if Mrs E has moved the JISAs to a new financial adviser or
- 31 October 2023.

I say this because MAM cancelled the relationship on 24 August 2023 and while it wasn't responsible for the JISAs after that date, I think Mrs E should be given a reasonable period of time in order to arrange for a new financial adviser. I think two months is reasonable and is a similar timeframe to the one I have decided MAM should have been able to complete for the set up the JISAs – from November 2019 to 31 January 2020.

And I also agree that Mr L must have been frustrated with the delays so I agree that a payment £150 would be fair reflection of this.

Shares sold to pay for the fees

Mr F didn't want the JISAs to pay the fees. He wanted those charges to be taken from his own General Investment Account. There were problems with that, but that is being dealt with under a separate complaint. However, MAM has said that no sales were made from the JISAs in order for the fees to be paid. So, unless Mr F has any evidence to the contrary, that investments were sold in the JISAs for this reason, there's nothing for me to consider here and so I don't uphold this element of the complaint.

The fees

The recommendation letter sent to Mrs E on 11 May 2022 outlined the charges that would apply to the account;

	'[A]	[S]
Initial charges		
Initial Advice Charge (to Murdoch)*	1.00%	1.00%
Ongoing Charges		
Ongoing Advice Charge (to Murdoch)	1.00%	1.00%
Provider Management Charge [product provider]	0.75%	0.75%
Fund Manager Charges (OCF)	0.85%	0.85%
TOTAL	**2.10%**	**2.10%**
Product Fees		
JISA charge, £pa	£12	£12

**Reduced from 3%'*

In June 2022 Mrs E signed her agreement to the investment recommendation as well as the Client Agreement Letter and in doing so, Mrs E agreed to the charges that were outlined in the recommendation letter referred to above.

The above shows the ongoing advice charge payable to MAM was 0.75% which was in line with Mr F's. As the fees were made clear at the outset, I don't agree that Mr F or Mrs E were misinformed about them. So, it follows I provisionally don't uphold this part of the complaint.

Risk profile

Mrs E was written to on 11 May 2022 with investment advice further to her completing MAM's Confidential Financial Review document. The investment objective for the JISAs was for long-term capital growth and Mr E wanted to continue receiving Active Investment Management and it was agreed an Active risk profile should be applied to the JISAs which was defined as being;

> 'An Active risk profile means that you have a medium to high tolerance for investment risk and level of high volatility in the majority of your assets, accepting that volatility is necessary for long-term growth potential. You are prepared to invest in growth assets and can accept long periods of time when the capital value may fall.
>
> Portfolios contain predominantly medium risk assets, e.g. infrastructure, property and developed market equities, with some high risk assets, e.g. Asian and emerging markets equities.
>
> Based on the long-term investment horizon I am comfortable that you would not need to encash the investments during period when they are depressed in value.'

Mrs E had agreed to this on 7 June 2022. Based on the evidence presented to me, I can't find any wrongdoing on MAM's part. The investment objective was identified as being for long term capital growth from an Active risk profile. I've reviewed the investment recommendations that were made, and I can't see the JISAs were invested outside of the risk profile that was agreed. The implication of the risk classification was made clear in the above and Mrs E agreed to that level of risk. As such, I currently don't uphold this complaint point as I don't think that MAM has done anything wrong.

Promise of outperformance

Mr F invested in his own portfolio and the JISAs for A and S as a result of a seminar he attended that was hosted by MAM. During that seminar Mr F said he raised a question about the reasons for investing with MAM rather than say via a tracker fund linked to an index. He says he was told an actively managed portfolio would outperform an index.

This didn't prove to be the case. Mr F raised this point during a call with MAM on 8 August 2022 which I have listened to.

In response to Mr F's question during the call about the performance he was told that any growth in a tracker fund would be limited to the underlying index which, I think is a logical and reasonable comment. And I agree with the point made that for a portfolio to outperform a given index then active management would be needed. I find that explanation reasonable and Mr F accepted this point during the call. Clearly, I can't know what Mr F was told before he invested – and I appreciate he swears this is what he was told at the seminar – but, on the balance of probabilities, I think it most likely the answer he was given during the phone call – or similar – would have been given to Mr F in response to the question he raised at the seminar.

I appreciate that Mr F will be disappointed with my current opinion here, but I don't have any evidence that he was promised the investments would outperform the FTSE 100. While I accept it would be difficult for Mr F to provide such evidence, but without evidence that this is what Mr F was promised at the seminar he attended, it wouldn't be fair and reasonable for me to conclude this is what he was told.

And our service doesn't consider complaints in isolation about the performance of an investment. This is because performance is dependent on the financial markets and not something that a business can control or predict. So, on the face of the evidence, and on balance, despite what Mr F says, I can't safely say that the business behaved unreasonably just because the JISA investments didn't perform better compared to the stock market.

MAM's decision to cancel the agreement

Murdoch has provided a copy of its internal disengagement procedure document and one of the reasons given for disengagement was that it deemed the client 'unsuitable for our service' and that seems to apply in this case.

MAM terminated the relationship as it didn't believe the service met Mr F's expectations. Mr F doesn't think MAM should be able to do this. He incurred charges for the initial advice and says that it will costs around 3% of the value of the JISAs to set up with another financial adviser.

But MAM is able to cancel an agreement provided it abides by its terms in doing so and I can't see that it didn't. Equally, Mrs E would have been able to cancel the agreement on the same terms. MAM provided 90 days' notice and didn't take any further fees after the termination.

So, I can't agree there is any evidence of wrongdoing here. MAM clearly felt the relationship wasn't beneficial for either party and that it didn't meet Mr F's expectations. There is no reason it shouldn't have cancelled the relationship.

Putting the matter right

As explained above I think the JISAs could have been set up a lot earlier than they were and the JISAs have missed the opportunity of investment performance in the intervening period. Mr F also wanted to add £25 per month to the JISAs but because of the delays this wasn't done until February 2021. While those additions can't be backdated, the below performance calculations should notionally take them into account as if they had been added from February 2020 – the month following when the JISAs could have been set up – as I think it most likely Mr F made have made those additions from that date.

And I think MAM should assume that a total of £1,000 was invested – made up of the LF Woodford Equity Income fund amounts transferred plus Mr F's top up to that amount.'

As Mrs E wanted capital growth, with dividends reinvested from and Active risk profile, I thought to put the matter right MAM should calculate how much £1,000 would have been worth at end date/31 October 2023 if it had been invested on 31 January 2020 in line with the Active Risk profile. It should also include the notional £25 monthly additions with dividends reinvested and compare that with the actual value. Interest should also be paid to the date of settlement plus £150 for the distress and inconvenience caused.

Mr F responded to say he accepted the level of risk the JISAs were exposed to. But he maintained he had been promised the investments would outperform the FTSE 100 because they were managed. He reiterated his own personal financial experience that led to him raising questions about performance at the seminar he attended. Despite fees being charged the portfolio wasn't managed and went down in value. He accepted that MAM could cancel the agreement but asked whether it was fair for a customer who would need to pay further fees to set up with a new investment manager.

Mr F wasn't trying to obtain betterment but didn't want the JISAs to be financially disadvantaged because MAM didn't manage the portfolios professionally. MAM didn't do better than the FTSE 100 but worse. The accounts were financially disadvantaged due to MAM's failure to manage and he was enticed to invest to outperform the FTSE 100.

MAM didn't reply to my provisional decision.

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.

As explained in my provisional decision I appreciated that it was difficult for Mr F to evidence what he says he was told at the investment seminar he attended with MAM. I'd like to assure him I have taken into account his financial background and the reason he would have asked the questions that he did. But I equally have to take into account other information and evidence from the time and in the absence of that, I have to make my decision based on the balance of probabilities and what I think most likely happened.

MAM has been able to provide a copy of its slide pack from the 2017 seminar which I assume would have been an agenda for the meeting and a framework for the type of information it would discuss.

I can see that investment performance is referred to as well as its own portfolio performances against the benchmarks and that its priority for good performance was the choice of fund manager. But I've seen nothing to suggest that MAM would have provided any sort of guarantee against a tracker fund or similar. And while I don't doubt that Mr F would have asked questions, and his reasons for doing so are perfectly understandable as he was seeking reassurance, but there's nothing in the slide pack that would make me think that MAM was in the position to offer such a guarantee.

However, it's clear from the slides that MAM's portfolios had outperformed the benchmarks between December 2011 and December 2016 – a medium term timeframe – but there is also a slide where MAM highlights the correctness of the regulator's official risk warning that;

> 'Past performance is <u>**NOT**</u> necessarily a guide to future performance…'

And there's nothing to suggest that this slide wasn't given equal prominence as the graph slide showing MAM's outperformance compared to the benchmarks. So, there isn't the evidence available to support what Mr F has said and I remain of the opinion that I do not uphold Mr F's complaint point that he was promised the investment would outperformance a FTSE 100 tracker fund.

Mr F has asked why the portfolio performed so badly. But I would reiterate what I said in my provisional decision that this was over the short term whereas it was agreed the JISAs were to be invested over the longer term – in this case likely to be more than ten years.

And in this case, MAM's investment decisions were linked to their choice of fund manager who would manage the underlying funds held within the JISAs. And if it was MAM's core view that the fund manager had to be chosen carefully, and was the link to good performance, then it would be for MAM to change its opinion of a fund manager if necessary. But it seems unlikely that MAM would take such a short-term view bearing in mind the medium/longer term nature of investment. And the time period being complained about is over the short term.

But overall looking at the underlying funds in the JISAs I can't see that they fell outside of the risk profile agreed to. And provided a portfolio is invested in line with the attitude to risk that was agreed at the outset, and for the reasons given in my provisional decision, then it wouldn't be fair or reasonable for me to uphold a complaint because of underperformance.

I fully appreciate Mr F's strength of feeling here and also the previous experience he has had with investments and suspended investments. But overall, I'm not persuaded it was more likely that Mr F was guaranteed that the investments would outperform a FTSE 100 tracker fund, or similar. And equally while it is clear Mr F is upset by the performance of the investments, there's no evidence that MAM invested the JISAs outside of the Active risk portfolio that was agreed at the outset. It follows that I remain of the opinion that I don't uphold Mr F's complaint about these complaint points.

I note Mr F is unhappy additional costs may be incurred in finding and moving to a new investment provider. But any costs will have come about a result of MAM's decision to cancel the agreement which it was entitled to do – and Mrs E could have done the same and under the same terms. So, MAM hasn't done anything wrong.

It follows that I remain of the opinion that the complaint should be partially upheld. I appreciate that Mrs E and Mr F will be disappointed in the outcome to the complaint. But I hope I have been able to explain how and why I have reached the decision that I have.

Putting things right

For completeness I'll outline what MAM needs to do to put the matter right.

As explained above I think the JISAs could have been set up a lot earlier than they were and the JISAs have missed the opportunity of investment performance in the intervening period. Mr F also wanted to add £25 per month to the JISAs but because of the delays this wasn't done until February 2021. While those additions can't be backdated, the below performance calculations should notionally take them into account as if they had been added from February 2020 – the month following when the JISAs could have been set up – as I think it most likely Mr F made have made those additions from that date.

And I think MAM should assume that a total of £1,000 was invested – made up of the LF Woodford Equity Income fund amounts transferred plus Mr F's top up to that amount. As Mrs E wanted capital growth, with dividends reinvested from an Active risk profile, to put the matter right MAM should do the following;

- Calculate how much £1,000 would have been worth on end date/31 October 2023 if it had been invested on 31 January 2020 in line with the Active risk profile – the fair value.

- The fair value should include the notional £25 monthly additions calculated from the dates they should have been added, from February 2020 to end date/31 October 2023.
- As dividends were to be reinvested, the calculations should also include the value of any dividends paid between 31 January 2020 and end date/31 October 2023.
- Compare the fair value with the actual value of the investments as at end date/31 October 2023. If the fair value is higher than the actual value, then MAM should pay the difference into each JISA.
- The JISAs should be paid interest at a rate of 8% simple per year on any loss from the end date/31 October 2023 to the date of settlement.
- The amounts paid shouldn't impact on the annual JISA allowance as the amounts invested were well within the maximum allowance.
- MAM should also pay Mrs L £150 for the distress and inconvenience she was caused by the delay in the setting up of the JISAs.
- MAM should provide Mrs L with details of the calculation in a clear and simple format.

Actual value

This means the actual amount payable from the investment at the end date/31 October 2023.

Fair value

This is what the investment would have been worth at the end date/31 October 2023 had it produced a return using the Active risk profile.'

My final decision

For the reasons given, I partially uphold Mrs E complaint about Murdoch Asset Management Limited and the matter should be put right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 10 January 2025.

Catherine Langley
Ombudsman