

The complaint

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

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

Mr F is representing Mrs L in bringing the complaint.

What happened

In November 2019 Mr F told MAM that he wanted to set up JISAs for his two granddaughters with an investment of £1,000 each.

However, the JISA accounts weren't set up until January 2021. Mr F – on behalf of Mrs L – raised his concerns about the delays in the accounts being set up 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 15 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 would regularly monitor the GIA's cash levels. Because the account went 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 in 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 to Mr M. 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 the T's fees that would apply after 90 days of it giving notice.

Mr F wasn't happy with the outcome and brought Mrs L's 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;

- She wasn't going to uphold the complaint made about the level of risk as it had been requested that L and J's JISAs be invested on the same basis as the ISAs for Mr F's two other grandchildren. There wasn't any evidence that the level of risk was assessed as being suitable, but it was likely the cash invested was in the Active portfolio.
- There wasn't any evidence that Mrs L agreed to pay any fee to MAM so it should refund all the fees paid by Mrs L's daughters.
- Despite COVID, the investigator thought the delay in the establishment of the JISAs was excessive. Mr F had instructed the JISAs be set up in November 2019, but it took a year for MAM to request birth certificates which were sent on 30 December 2020. The JISAs were set up but it was likely they weren't invested until June/July 2022. There was no reasonable explanation as to why the JISAs could not 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 L, 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. And it should also work out;
 - o the value of the funds gifted by Mr F on 23 August 2023 as if those funds had been invested in the Active portfolio since 31 January 2020.
 - o Compare the value of the above to the actual performance of the JISAs and pay any difference between the actual performance of the investment compared to how they were invested.
 - o MAM should pay any difference between the actual performance of the investment compared to how they were invested.
 - o The amounts paid shouldn't impact on the annual JISA allowance.

MAM agreed with the outcome, but Mr F didn't.

He said the portfolio wasn't actively managed as he'd been advised. MAM had said the portfolio would outperform the FTSE 100 so this complaint point should be upheld. Mr F was very concerned about the performance and had asked about this at a MAM seminar. He had been told that an actively managed portfolio would do better than the FTSE 100.

Mrs L hadn't agreed to pay the fees and MAM had said the fee was 1% in any event. And Mr F questioned whether it was fair for a business to terminate a contract when the fees were up to date, and it would cost 2% of the portfolio value to find another financial adviser. The investigator hadn't addressed the complaint point about shares being sold to pay the fees.

As the complaint couldn't be resolved, it was passed to me for a decision in my role as ombudsman. I thought the complaint redress calculations should be different and that MAM should refund the fees depending upon evidence I asked for. Here's what I said;

'Delay in setting up the ISA

I've been given a lot of documents from which I've reviewed the timeline of events relevant to the setting up on the JISAs and note the following;

- 4 November 2019 – Mr F confirmed to MAM that he wanted to set up JISAs for L and J. In response he was asked how much he would want to invest and then MAM would write a recommendation report. Mr F replied on 7 November 2019 to confirm the new investment was £1,000 for each grandchild.
- 17 April 2020 – Mr F emailed MAM again as he wanted to set up JISAs for L and J with £1,000 each. An internal file note dated 22 April records that Mr F also 'wishes to set up two Junior ISAs for his two new grandchildren, again for £1,000 each with a £25 per calendar month regular contribution.' And on 28 April 2020 it's noted by MAM that a fact find would need to be completed by L and J's parents.
- 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 Mrs L's children were asked for.
- 20 July 2020 – This information was chased for, which Mr F provided 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. An internal document of 24 August indicates the JISAs were to be set up with an Active risk profile.
- 24 August 2020 – An internal report indicates the investments were being proposed. A file note of 24 August records that 'Active risk decided on basis the donor of gifts (grandfather [Mr F]) wants to achieve long term capital growth and the grandchildren will have a considerable time until they can access the JISA money.'
- 25 October 2020 – MAM wrote to Mrs L with its recommendation for the investment of £1,000 plus monthly payments of £25 into the JISAs for L and J. If Mrs L agreed, she would need to sign and return the enclosed Confidential Financial Review and the Client Agreement. MAM would also need to see copies of L and J's birth certificates or passports.
- 3 November 2020 – Mr F emailed MAM as he was thinking of raising a complaint about the delays in opening JISAs. Mr F returned the forms that needed to be completed and signed by Mrs L on 15 November.
- 14 December 2020 – MAM confirmed to Mr F it would need to see copies of L and J's identity documents – birth certificates or similar.
- 4 January 2021 – MAM confirms receipt and returns the birth certificates to Mr F. In turn MAM forwarded the forms on so the JISAs could be set up. On 8 January MAM confirmed that the JISA accounts were still waiting to be set up. Mrs L's nationality was asked for by T on 14 January. The ISAs are set up on 15 January.
- 1 February 2021 – MAM confirms Mrs L's nationality to T. On 3 February

2021 Mr F noted he had paid in the £1,000 lump sums for L and J and that the monthly direct debit had been set up. Mr F asked how he could view a copy of the valuation at the start, and he was advised by MAM this was being set up for him.

- 24 October 2021 – Mr F emailed MAM as it was going to have a review for Mrs L and her two children. MAM confirmed that as Mrs L was the legal owner of the JISAs, she would need to be involved in the review. The next day Mrs L was emailed with some suggested meeting dates and was asked to complete a risk profile questionnaire.
- 26 November 2021 – MAM chased Mrs L for a response to the above.
- 16 December 2021 – Mrs L was chased again for a reply.
- 20 January 2022 – Mr F replied as it wasn't possible for Mrs L to deal with the questions at the time. There is an internal MAM email querying whether discretionary fund management would be a better route if MAM was to manage the JISAs, but it was confirmed this couldn't be done.
- 14 February 2022 – An internal file note indicates that Mrs L had to be included on any reviews for the JISAs, but she was too busy to do so and on 15 February it was confirmed that as the JISAs were the legal property of Mrs L, MAM would need to speak with her in order to provide advice. On 19 February Mr F was advised that MAM would need to speak with Mrs L in order to bring the Confidential Financial Review up to date as the JISAs were advised portfolios. A call needed to be arranged.
- 8 August 2022 – Mr F confirmed after discussion with Mrs L that L and J's attitude should be increased to the same level of risk as Mr F's other two grandchildren's JISAs.
- 26 September 2022 – MAM messaged Mr F for a response.
- 2 December 2022 – Mr F was emailed again suggesting a call regarding the above which was agreed for 7 December.

It's clear from the above that Mr F wanted to set up 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 Mr F/Mrs L, I'm satisfied this 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 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 it should be the earlier of;

- the date of transfer if Mrs L 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 L 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 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 and a payment of £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 ('GIA'). There were problems with that, but that issue 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

Our investigator who considered the complaint concluded that the fees should be repaid as there was no evidence that she had agreed to pay the fees. But I'm not persuaded this is the correct outcome.

I say this because if have seen a copy of the recommendation for investment that was sent to Mrs L on 25 October 2020 – I've not seen an updated one. In order for those recommendations to go ahead Mrs L had to sign and return the Confidential Financial Review and Client Agreement. As far as I can see from the file those forms were returned on 15 November 2020. And in signing that Agreement Mrs L was agreeing to the information provided to her in the recommendation letter which I note said 'the only ongoing fees being deducted from each child's account are as follows...0.75%'.

Mr F has told us that it had been agreed with MAM that for L and J's JISAs he would be charged the same fees that he was charged for his account. And those charges were;

Initial Charges

Initial Advice Charge (to Murdoch)*	1.00%
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Ongoing Charges

Ongoing Advice Charge (to Murdoch)	0.75%
Provider Management Charge [provider]	0.48%
Fund Manager Charges [manager]	0.93%
TOTAL	2.16%

ISA charge, £pa	£12
GIA charge, £pa	£0

**Reduced from 3%*

...

The above suggests the ongoing advice charge payable to MAM was 0.75% which was in line with Mr F's. And I note the same was agreed for Mr F's other two grandchildren when he set up their JISAs.

Mr F doesn't believe the above fees applied so in response to this provisional decision MAM should provide me with evidence that they did to ensure that I am not mistaken here. I ask for this as the charges aren't outlined in the letter of 25 October 2020 in the same format they are in the other MAM recommendation letters I've seen, and I can't see the investments went ahead at that time and a further recommendation letter may have been provided. If the fees are different, MAM should explain why.

If MAM does provide evidence that the same charges applied to L and J's JISA accounts, I don't intend on upholding this complaint point as I'm satisfied that Mrs L agreed to the 0.75% ongoing advice charge to MAM when she signed and returned the Client Agreement in response to the recommendation letter. I assume the same charges would have applied to any subsequent recommendation letter and investment. So, I provisionally don't think those charges need to be refunded, irrelevant of the fact they were paid for by Mr F, as Mrs L was the legal owner of the JISAs.

Risk profile

MAM has provided a copy of a file note of 24 August 2020 which recorded that;

'Active risk decided on basis the donor of gifts (grandfather [Mr F]) wants to achieve long term capital growth and the grandchildren will have a considerable time until they can access the JISA money.'

Further to that, MAM provided its recommendations and suitability report to Mrs L on 25 October 2020. Under the attitude to risk section of the report it said Mrs L hadn't completed a risk questionnaire at the time, but it went on to say;

'However, as the money is being gifted from your father and your children will not be able to access the money currently until they are 18 years old so the money is to be invested to achieve capital growth over the long term, we agreed that an Active risk profile is suitable which is summarised below:

An Active risk profile means you have a **medium to high** tolerance for investment risk and **high** level of volatility in the majority of your assets, accepting that volatility is necessary for long term capital 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 0.75% developed market equities, with some high risk assets, e.g. Asian and emerging market equities.'

The Active risk profile was number five on a range of one to seven with seven being the highest risk. From the evidence I've seen the suggested investments didn't go ahead and a further review was to take place in October 2021 and Mrs L had to complete a new risk profile questionnaire – I assume because the previous advice was now out of date.

Mrs L was chased for a response, but Mr F replied on 20 January 2022 on her behalf because of extenuating circumstances. He said for the risk rating it;

‘... is NOT to be the highest but the next one or two down...’

To me, this ties in with the risk rating of Active. As referred to above out of a range of one to seven ‘Active’ was a risk profile of five making it not ‘the highest but the next one or two down...’ So, this seems to fit with what Mr F requested.

I haven’t seen a valuation of the actual investments made so I can’t assess whether the investments made were in line with an Active risk profile. But by looking that the investment recommendations that were made and the fact that Mrs L has complained she wanted a cautious risk, this suggests to me that a higher than cautious risk portfolio was invested into. And this would be in line with an Active profile or similar.

So, it follows that – based on the evidence provided to me – I consider it most likely that the JISAs were invested within an Active risk profile, which I’m satisfied is what was requested. 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 L and J 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 and he 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

MAM 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 cost around 2% 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 which I can't see that it didn't. Equally, Mrs L 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 didn't meet Mr F's expectations. There is no reason it shouldn't have cancelled the relationship.'

I concluded by saying 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. And that 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 couldn't be backdated, my suggested 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.

As Mrs L wanted capital growth for the JISAs, with dividends reinvested from an 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 February 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 **NOT** 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 outperform 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.

As MAM didn't respond to my provisional decision, I haven't been given any evidence about the charges that were agreed to. But equally I haven't seen anything to suggest that Mrs L didn't agree with the same charges that applied to Mr F's own account and his other grandchildren's JISAs. Where I don't have all of the evidence, I have to base my decision on the balance of probability – what I think was most likely the case. Upon reflection, and in the absence of additional evidence, I am satisfied that despite the different format of fees as laid out in MAM's letter of 25 October 2020 its more likely the same fees applied. So, those fees don't need to be refunded.

It follows that I remain of the opinion that the complaint should be partially upheld. I appreciate that Mrs L 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

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.

As Mrs L wanted capital growth, with dividends reinvested from and 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

My final decision is that I partially uphold Mrs L's 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 L to accept or reject my decision before 10 January 2025.

Catherine Langley
Ombudsman