DRN-5207392

The complaint

Mr F has complained about the service he received in the management of his portfolio from Murdoch Asset Management Limited ('MAM'). To put the matter right Mr F would like to be put in the position he would have been in if he had invested in a FTSE 100 tracker fund plus compensation for the time he has spent trying to resolve the issue.

What happened

Mr F had been a client of MAM since July 2019. Assets valued at just under £24,000 were transferred at the end of November 2019 for Mr F's ISA and £535.59 outside of his ISA. Mr F also had a holding of LF Woodford Equity Income Fund which was suspended but valued at around £10,500.

Mr F wasn't happy with what had happened with this account. He wasn't satisfied the with time taken to open his account, shares were sold to pay fees which he hadn't wanted, incorrect information about the fees being charged and not being provided with details about the error on his ISA account. He raised his concerns with MAM in July 2023.

MAM addressed those concerns in its letter of 24 August 2023. It didn't uphold the complaint but did offer £100 as a gesture of goodwill. It said;

- Despite requesting advice on opening junior ISAs ('JISAs') for his grandchildren in April 2020, due to COVID and adaption to remote working, the report wasn't provided until October 2020. The accounts weren't opened until January 2021 because of the need for documentation.
- MAM had changed its normal procedure so that the fees for the JISAs were taken from Mr F's General Investment Account ('GIA') but in May 2023 there was a negative balance on the account and sales were automatically carried out by the platform provider. Mr F had been informed of this. No sales were made in the JISAs.
- MAM received an ongoing management fee of 0.75%. The other charges were detailed which included the initial charges (reduced to 1% from 3%), the platform provider, the fund manager and the product fees.
- When the error had been discovered on Mr F's ISA an investigation had been carried out and Mr F was written to about that along with the loss calculation which Mr F had accepted.
- MAM terminated the relationship as it believed the service no longer met Mr F's expectations. He was in the process of moving to another adviser.

Mr F was unhappy with the outcome and brought his complaint to the Financial Ombudsman Service. He said he was promised an actively managed fund that would outperform a tracker index, charges were agreed at 1% but this didn't happen, he had wanted a cautious approach to the investment, and MAM had sold shares to pay fees which it had been instructed not to do. Our investigator who considered the complaint said the following;

- She was only considering Mr F's portfolio and not a complaint about JISAs which had been dealt with separately.

- MAM had defined Mr F as being a cautious risk investor and the investigator was satisfied that the assets held were in line with a cautious risk portfolio.
- It was agreed in July 2019 that Mr F would pay an ongoing charge to MAM of 0.75%. It had also been explained to Mr F that other fees – the platform provider, the fund managers, annual ISA charge and initial advice fee were also charged.
- There wasn't any evidence Mr F was told that MAM would outperform the FTSE 100 or any market.
- There was no evidence that the delays in transferring Mr F's assets to MAM was caused by MAM. It was likely caused by the suspended fund held in the portfolio.
- Some assets had been sold in Mr F's GIA when the cash balance fell below 2% to fund the fees which Mr F wanted to pay directly, but this wasn't possible. And Mr F had agreed to the terms that assets would be sold if there was less than 0.25% held in cash.
- MAM was entitled to cancel the relationship and gave him 90 days to find a different provider and it stopped taking fees immediately. It hadn't don't anything wrong.
- Our investigator concluded that overall, MAM hadn't done anything wrong, so she didn't uphold the complaint.

Mr F didn't agree. He had invested with MAM on the basis that he was told it would outperform the FTSE 100 because his investments would be managed. The investigator's investigation should have proved he was cautious and likely to ask questions which had prompted MAM's comment about performance. Mr F had been advised by a third party that the shares held didn't reflect his risk profile, and if the shares had been managed effectively, they would have mirrored his attitude to risk and not crashed like they had.

He hadn't understood the fees and it was only recently he was made aware of them. The investigator hadn't mentioned Mr F agreed to 0.75% and then been charged 0.5% plus fees. Nor had she mentioned that MAM had withdrawn its adviser where the platform it used needed an adviser to manage the accounts.

Mr F requested that his complaint be reviewed by an ombudsman, so it was passed to me for decision. I considered that Mr F should be awarded a payment for the distress and inconvenience he had been caused so issued a provisional decision to allow the parties to provide me with any further information or evidence they wanted me to consider. Here's what I said;

> 'I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.
>
> After doing so, I'm thinking of reaching a partially different outcome than the investigator. This is limited to an award of £150 for the distress and inconvenience I think Mr F suffered. I should confirm that I am only considering Mr F's complaint about MAM in this decision. His complaints about his grandchildren's JISAs are being dealt with separately.
>
> I'm aware I've set out the background to this complaint in far less detail than the parties and I've done so using my own words. The Financial Ombudsman Service was set up to be a quick and informal alternative to the courts. And the purpose of this decision is to explain what I think is fair and reasonable in the circumstances, not to offer a point-by-point response to everything the parties to the complaint have

said. So, I will not refer to every submission, comment, or relevant consideration. Instead, my decision sets out what I think are the most important points in order to explain my decision in a way that is intended to be clear and easy to understand.

Delay in the transfer and investment

I've reviewed the timeline of events relevant to the transfer of Mr F's investments from his previous platform provider and subsequent investment and note the following;

- Mr F met with his MAM financial adviser in April 2019. In advance of the meeting MAM wrote to Mr F on 24 April regarding his current portfolio of collective investments and one directly held equity. It was initially recommended the funds were sold.
- On 13 June 2019 Mr F was asked for a recent valuation of the ISA he held with his previous product provider – who I shall refer to as 'H' in my decision – which Mr F provided on the same day plus information about his directly held shares in BT. MAM sent its formal suitability letter on 15 July 2019. It was advised that Mr F's BT shares plus shares held with a further provider – I shall refer to as 'B' – be re-registered into a General Investment Account and switched into MAM's preferred funds.
- On 26 July 2019 MAM sent Mr F the necessary forms for him to go ahead with the recommendation. These included a stocks and shares ISA application for T, an asset transfer form and a CREST transfer form for the BT shares, a portfolio application and dealing instruction. Mr F had a holding of Woodford Patient Capital with H which he needed to sell himself. Mr F also had a holding of LF Woodford Equity Income fund. On the same day Mr F sought clarification about what he needed to do, and this was replied to.
- There was conversation on 7 August 2019 about forms and progressing the transfer and documents were re-emailed to Mr F on 13 August. Mr F returned the forms and expressed his concerns about how long the transfer was taking.

  It was recorded by MAM on 7 August 2019 that Mr F didn't want to invest £40,000 into ISAs as had been recommended for him and his wife at that time as he wanted to monitor MAM's performance on the transfers before investing more money. It was also confirmed that Mr F had already transferred the investments in B to his ISA account with H in the previous year.

- I note there was a delay in the ISA transfer form being sent onto T as Mr F hadn't sold the Woodford Patient Capital Trust fund which he later did on 12 August and the ISA transfer request was sent to the T on the same day. There was also a delay in the transfer of the BT shares as T needed an additional form to be signed by Mr F which was received and processed by MAM on the 20 August. MAM confirmed to Mr F on 28 August 2019 that T had requested the transfer of Mr F's ISA investments and BT shares from H.
- Mr F chased MAM on 26 September 2019 as he hadn't heard anything and had called H and was told it was waiting for instruction from T. He was also told that it would be possible to transfer the suspended LF Woodford Equity Income fund.

However, H had also confirmed to T that it was working on a backlog which was why it hadn't been able to transfer the money yet. H was being chased weekly. A file note of 26 September 2019 records that during a conversation with Mr F that the;

> '[T] and [MAM] had been monitoring and chasing the position regularly and that, as far as we were aware, [H] have everything that they needed to progress matters.'

- On 9 October 2019 Mr F emailed MAM further to a call as it had been agreed to transfer the LF Woodford Equity Income Fund to T.
- As Mr F had transferred his B account to H an additional form was needed to transfer to T. He was asked whether he wanted to re-register with T or he could sell the shares online. Mr F agreed to the first option and the form was sent to T on 21 October 2019.
- On 4 November 2019 MAM confirmed that H had said it hadn't received anything from B, so it was transferring his ISA held with H valued at around £23,600 plus the suspended LF Woodford Equity Income fund.
- On 7 November 2019 MAM confirmed the investments had been transferred to T and that;

  The BT shares had been switched into MAM's recommended funds in the GIA.

The following four funds had been sold at the previous platform provider and the cash was being invested into MAM's recommended funds.

- Woodford Patient Capital Trust
- Artemis Strategic Assets Retail
- Invesco Japan
- Barclays UK Core
- suspended LF Woodford Equity Income fund.

- On 25 November 2019 the LF Woodford Equity Income fund had been re-registered into Mr F's ISA with T and on 13 February 2020 74% of the value of the W fund had become available and a switch recommendation was to be put to Mr F on 20 March 2020.

So, overall, the transfer took seven months from April to November 2019.

I haven't included details of a lot of the correspondence that took place between the various parties and while I accept the situation must have been frustrating for Mr F its clear there were complications with the transfer. The most significant were the potential transfer, or otherwise, of the LF Woodford Equity Income fund, the backlog with H, additional forms being needed for BT and the confusion about whether the B account had previously been transferred to H.

However, over and above those delays there were some other delays, but this was because there were a lot of forms that needed completing and processing etc. This is normal during a transfer like Mr F's. But I think it's clear that MAM proceeded with the transfer request as efficiently as it could and was regularly chasing H for a conclusion to that transfer in spite of H's evident backlog.

Taking all of the above, and the other correspondence I've seen. I don't agree that MAM caused any unnecessarily significant delays during the transfer process, so I don't uphold this complaint point.

<u>Risk profile of the portfolio</u>

The Confidential Financial Review form of 29 April 2019 stated that Mr F's 'General Financial/Investment Objectives' were for 'Growth/Income' and for the medium term which was stated as being for five years or more.

As a result of a risk tolerance questionnaire completed on 5 July 2019 it was concluded that Mr F had a cautious attitude to risk which was defined as being;

> '**Cautious**
>
> A Cautious risk profile means that you have a **low** tolerance for investment risk and volatility in most of your assets. You are prepared to invest some of your money in growth assets for the potential of higher returns over the longer-term, accepting the potential for loss, particularly in the short-term. Portfolios in this category contain mostly low risk assets, e.g. cash and fixed interest, but also hold some medium risk assets, including infrastructure, property and developed market equities.'

This was also confirmed in MAM's suitability letter of 15 July 2019.

Having reviewed the portfolio, I'm satisfied that the investments aren't outside the level of risk that I would expect to see for a cautious portfolio as defined by MAM. So, it follows that I don't uphold this part of Mr F's complaint.

<u>Sale of assets to fund the fees</u>

Mr F wanted to pay the fees directly as he didn't want to sell stock to cover them and lose the ISA allowance over the years. And when the JISAs were opened for Mr F's grandchildren in early 2021 he also wanted to pay the fees for those accounts as well. There is a lot of correspondence on file about this point and it's clear that MAM had a diary note system set up in order to monitor the cash position in Mr F's GIA in order to ensure sufficient funds were held in order to pay the fees for Mr F's own accounts and those of his grandchildren.

As it was an advisory account, if there were insufficient funds held, Mr F would be written to with disposal recommendations which he needed to agree to before those sale could go ahead. I can see Mr F was written to on 25 October 2020 about the fees for his grandchildren's JISAs and it was recommended that £213 be disinvested from his GIA to cover the charges. He was chased for a response on 25 January 2021 and responded to say that MAM could undertake any recommendation it saw fit. However, this was an advisory account and MAM did need to give recommendations and seek agreement to make any sales from Mr F in advance of doing so.

However, investments valued were sold and in its email to Mr F of 3 May 2023 regarding the sale of shares MAM said;

> '[T] do this automatically if the cash value drops below 0.25% of the overall value (this will include the JISA values). It looks like something has gone awry with the system that was in place.'

It confirmed that nothing had been sold from the JISAs. Mr F was told that it wasn't possible to set up a direct debit other than for a fixed amount.

However, it looks as though MAM's diary note system was set up on a best endeavours basis and couldn't be guaranteed. While I acknowledge Mr F agreed to the terms and conditions about assets being sold if the cash amount held fell too low, but he had been given assurance by MAM that it would monitor the cash position and it would let him know if any action needed to be taken. But that was only on a manual basis and could be prone to human error which I assume is what happened here.

The sale of investments must have been frustrating for Mr F. It's evident from the file that he consistently asked that investments not be sold but despite his best efforts to make sure this was done, this happened. I appreciate MAM went out of its way to set up the diary note and manually monitor the cash position, and this wasn't something it usually did, but if this was a service it couldn't guarantee then it should have made this clear to Mr F. So, I think MAM failed to provide the service that it said it would. Because of this, I uphold this complaint point and provisionally think Mr F should be awarded £150 for the frustration he was caused as shares were sold against his wishes and he was clearly distressed by this.

Charges

Mr F has said that 0.75% was to total fee to be charged to the portfolio. Mr F was charged an initial fee of 1% for all of the family investments (reduced from 3% and as agreed in June 2019) by MAM and ongoing costs of 0.75% per annum. I can see from the suitability report issued to Mr F in July 2019 they were laid out;

> 'The charges for the selection of funds detailed in section 7.0 are as follows:
>
> **Initial Charges**
>
> Initial Advice Charge (to Murdoch)* 1.00%
>
> **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%*

Please note, where the cash balance falls below 0.25% of the wrapper value, [T] carry out an auto-sale of assets each month to restore a positive cash balance of at least 2% of the value of the wrapper.'

MAM's letter of 24 April 2019 sent in advance of the first meeting provided a performance comparison table and referred to MAM's performance figures of taking 'account of the following charges:

- 'Included – Fund manager charges (OCF)
- Not included – Provider management charges and product fees

- Not included – Initial and ongoing advice charges'
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So, I think it's fair to say that from the outset of his relationship with MAM Mr F was made aware there were additional charges applied to his account.

I can see that Mr F was emailed on 3 February 2021 regarding the management fees and he was advised that 0.75% was the annual management fee paid monthly based on the value of the underling portfolio. But that fee only referred to the ongoing advice fee payable to MAM and not the other charges incurred. I appreciate this might have confused Mr F in that he may not have recognised that more than 0.75% would be deducted – and Mr F told us he didn't initially understand the charges. But it's clear from the original suitability letter I've quoted above the Mr F was told of those additional charges at the outset, so I don't uphold Mr F's complaint.

Promise of outperformance

Mr F has referred to what he says he was told when he attended a seminar hosted by MAM in advance of him agreeing to invest. Mr F says he asked a question at that seminar about the reasons for investing with MAM rather than say an index tracker fund. He says he was told that an actively managed portfolio would perform better than a tracker fund. Clearly, I can't know what Mr F was told at the meeting, but I've listened to a recording of a call Mr F had with MAM on 8 August 2022.

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 fully appreciate Mr F's concerns though and don't doubt he raised such a question at the seminar. I say this because Mr F has explained he had experienced poor share performance and suspended assets in the past which had a big impact on his finances and it's understandable he wouldn't want this to be repeated. But overall, I find it unlikely that Mr F was given a guarantee by MAM that it would outperform an index or a benchmark.

I also note that during the call of 8 August 2022 Mr F was told that over the longer-term MAM had outperformed index trackers and benchmarks, but Mr F had only been investing over the short term and during a period when markets had been volatile. As such he would likely have underperformed a tracker fund at that time which I don't think is an unreasonable point to have made. MAM accepted in the call that it couldn't evidence a future return and that Mr F would need to see it for himself.

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.

I can see that Mr F was given risk warnings about the performance of investments 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 investments didn't perform better compared to the stock market.

Because of this I don't uphold this complaint point.

<u>MAM's decision to cancel the agreement</u>

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 portfolio 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, Mr F 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 and there is no reason it shouldn't have cancelled the relationship.'

Overall, I partially upheld Mr F's complaint and said that MAM should pay him £150 for the distress and inconvenience he was caused by the sale of investments to pay fees.

Mr F didn't agree. He said there wasn't any evidence of the management of the fund – it was just left to run, and he questioned why the portfolio had performed so badly when the market was going up and not been updated despite him raising this. He wouldn't have invested if the performance hadn't been guaranteed. Mr F reiterated his own financial background and experience and the reasons he was so cautious about agreeing to invest with MAM – hence his questions about performance at the seminar he attended. He asked me to reconsider my decision and make an award considering it was a managed/advisory fund.

Mr F was concerned whether I would take note of the circumstances surrounding his statement about what was stated at the seminar and that I would give equal weight to that. His whole reason for going to the seminar was to get an understanding of investment and the risk attached. As he had lost so much money previously, he was concerned about investing again which is why he asked the question regarding the FTSE 100 tracker. A FTSE 100 tracker would have performed better and been cheaper.

MAM didn't respond 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 office 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 his investment would outperformance a FTSE 100 tracker fund.

Mr F has asked why his portfolio performed so badly and why no action was taken with his investments. Mr F's transferred investments were reinvested in November 2019. Mr F later voiced his concerns about the performance of his investments, but I would reiterate what I said in my provisional decision that this was over the short term whereas Mr F had agreed to invest over the medium term of five years or more.

And in this case, MAM's investment decisions were linked to their choice of fund manager who would manage the underlying funds held within Mr F's portfolio. 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 Mr F's portfolio I can't see that it fell outside of the Cautious profile he agreed to. The portfolio included investment bonds, exposure to infrastructure funds and equities as examples. And providing 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 his investments would outperform a FTSE 100 tracker fund, or similar. And equally while it is clear Mr F is upset by the performance of his investments, there’s no evidence that MAM invested his portfolio outside of the cautious 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.

Putting things right

But I find that Mr F suffered distress and inconvenience because of the sale of investments to pay fees and that MAM should pay him £150 in recognition of that.

I appreciate that Mr F will be disappointed in the outcome to his complaint. But I hope I have been able to explain how and why I have reached the decision that I have.

My final decision

My final decision is that I partially uphold Mr F’s complaint about Murdoch Asset Management Limited in part and it should pay £150 as outlined above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr F to accept or reject my decision before 10 January 2025.

Catherine Langley
Ombudsman