

The complaint

Mrs B complains that Brooks Macdonald Asset Management Limited (BMAM) caused avoidable delays to the transfer of her pension funds, leading to a loss.

BMAM completed a loss calculation and said that the avoidable delays caused a loss of £12,382.35 on the assets Mrs B held with it. It also offered Mrs B £250 for distress and inconvenience.

Mrs B's Independent Financial Adviser (IFA) has calculated her loss on the total funds she wanted to transfer to a new provider to be £67,934.20. Mrs B considers that BMAM is responsible for her entire loss. She said her transfer from her existing provider to her chosen new provider was delayed by BMAM's actions.

Mrs B is represented in her complaint. But I'll only refer to her in my decision.

What happened

I understand that Mrs B transferred the benefits from her former employer's Occupational Pension Scheme (OPS) to a provider I'll refer to as provider S in July 2021. She then invested some of the transferred funds into the Brooks Macdonald Medium High Risk Managed Portfolio Service. And some in provider S's Pension Portfolio Two. She also held some funds in cash for upcoming tax-free cash and income payments.

Mrs B said that she and her IFA lost confidence in provider S. She also felt that BMAM's fund performance had been poor, so she decided to transfer her funds to another provider – which I'll refer to as provider A – and to use a different investment strategy.

I understand that provider A sent a request for just the uncrystallised funds to provider S on 26 September 2022 through the Origo system. And that provider S immediately rejected this as incorrect and sent it back to provider A to correct.

I understand that provider S then received two further Origo transfer requests from provider A on 30 September 2022. I also understand that while the first of these requests asked for a full transfer of funds, the value requested corresponded only with the crystallised side of the policy. Provider S said that its claims team picked this up on 30 September 2022 and marked it as out of scope. It also added notes to tell provider A what it would need to resubmit to request a full transfer of crystallised funds.

Provider S said that the second request received on 30 September 2022 was for a full transfer of the uncrystallised funds. It said having received this, it sold down Mrs B's Pension Portfolio holdings to cash immediately. And sent a request to BMAM on 3 October 2022 to do the same, then return the funds to it for onward transfer to provider A.

BMAM then started to sell Mrs B's investments to cash. It said it'd sold the majority of the stock by 12 October 2022. It said that a system limitation meant that two holdings didn't get sold, preventing the closure of the account.

Mrs B said that provider S sent its first chaser for her BMAM funds on 14 October 2022.

BMAM said that it sent a request for her account with it to be closed on 18 October 2022. It said at this point it identified some system limitations which caused issues with the sale of two small holdings. And that it escalated this on 19 October 2022. BMAM said that this issue was resolved on 31 October 2022 when the final two holdings were sold. BMAM said that the same day, provider S emailed it with a different transfer form. And that this email now clarified that the account should be closed.

I understand that provider S sent its second chaser to BMAM on 31 October 2022. BMAM said it emailed provider S on 4 November 2022 to tell it to expect funds by 11 November 2022. Provider S sent its third chaser on 7 November 2022.

BMAM said that all trades were settled on 10 November 2022. It said it then raised an account closure request.

Provider S sent its fourth chaser to BMAM on 14 November 2022. And its fifth on 18 November 2022.

Mrs B raised a complaint with BMAM on 18 November 2022 about the delayed transfer of her funds. She wanted to know why BMAM's investment team wasn't answering the phone or accepting messages. She also said that the delay was leaving her with no accessible funds. Mrs B wanted to know why her funds hadn't been transferred yet.

BMAM replied to Mrs B. It apologised for her not being able to contact it. And for the delay in the closure of her accounts with it. It said it had a reduced capacity available to answer the phone when Mrs B had called. It also said that it'd escalated Mrs B's complaint about her transfer delay to its complaints team for a full review. BMAM said it'd sent provider S a payment for £356,840.15 on 18 November 2022.

Mrs B's IFA then wrote to BMAM to further Mrs B's complaint. He said she was seeking the return of any fees paid to it during the excessive delay, as well as compensation for her time out of the market. He also said that as the rest of her pension transfer had been on hold, she'd lost out on investment return on her entire fund due to BMAM's delay.

On 21 November 2022, BMAM emailed provider S to apologise for the closure delay. The emailed noted that a complaint had been raised about this.

Mrs B said that provider S then sent funds totalling £928,456.25 to provider A on 22 November 2022. I understand that this was a partial transfer of uncrystallised funds. These funds arrived with provider A on 25 November 2022. It then paid Mrs B the tax-free cash she'd requested.

BMAM said that it contacted provider S on 25 November 2022 to tell it that it should've sent Mrs B's funds on 21 October 2022. It said it'd asked provider S to arrange for a loss calculation based on that date. BMAM said that provider S told it that it would need to get further information from provider A.

Mrs B said that her IFA then chased provider S for the remaining funds. She said that these hadn't been correctly requested by provider A. Her IFA then chased provider A. I understand that provider A submitted a further Origo request to provider S for the crystallised funds on 28 November 2022. Mrs B said provider S then sent £451,694.88 of crystallised funds to provider A on 6 December 2022, and that it received these funds on 8 December 2022. Mrs B said that she didn't immediately invest these funds as her IFA needed to confirm she was still happy with his previous investment recommendations, which were now over three

months old. I understand that the funds were fully invested with provider A on 22 December 2022.

BMAM issued its response to the complaint on 13 January 2023. It acknowledged that it'd caused delays during the account closure process and the transfer of the funds to provider S. It apologised for the distress and inconvenience this had caused. It also apologised for the difficulty Mrs B had faced when trying to call it.

BMAM said that it'd experienced various system and administrative limitations which had caused the delays. It said that all stock should've been settled on 12 October 2022. And that as it'd taken six working days for Mrs B's funds to be sent to provider S following settlement (from 10 November 2022 to 18 November 2022), it felt that payment should've been made to provider S on 20 October 2022.

BMAM said that it would carry out the loss calculation it'd offered to conduct, once it'd received the information it'd requested for that purpose.

BMAM offered Mrs B £250 compensation for the distress and inconvenience the delays and poor communication had caused.

Mrs B replied to BMAM on 20 January 2023. She refused its offer of £250. She said she was quite offended by this offer, given the anxiety she'd been through. She said she was relatively new to investing. And questioned why BMAM hadn't contacted her to let her what was going on during the period of delay.

Mrs B's IFA also replied to BMAM after receiving its complaint response. He said he'd calculated Mrs B's financial loss from the transfer delays it'd caused. He said that provider S had disinvested the funds it held for Mrs B on 30 September 2022. But that it hadn't been able to send those funds, or any other funds, to provider A due to the request being for one lump sum.

The IFA didn't agree that it should've taken BMAM until 20 October 2022 to transfer Mrs B's funds to provider S. He felt industry standard was a maximum of two weeks, which he felt meant that the transfer should've been sent on 14 October 2022.

Mrs B's IFA felt that her funds should've been with provider A on 14 October 2022 when they would've been immediately invested. He felt this would've taken a further five working days. Therefore he felt the funds should've been invested with provider A by 21 October 2022.

The IFA said that if Mrs B had invested her total funds of £1,439,284 on 21 October 2022, rather than 30 November 2022, her fund would now be worth £67,934.20 more.

Mrs B's IFA chased BMAM for an update on its calculations on 23 May 2023. It replied the following day to say that it was still waiting for the information it needed from provider S. It also said it would need the full transaction history and valuation as at the date the funds were invested with the new provider. BMAM said it emailed provider S on 25 May 2023 to ask for an update on the loss calculations. It said it also emailed provider S for an update on 5 June 2023.

Mrs B's IFA provided the information BMAM had requested from him on 20 July 2023.

BMAM wrote to Mrs B on 1, 15, 18, and 25 August 2023 to apologise for the delay in providing the loss calculation. It then wrote to her on 29 August 2023 after it'd carried out the loss calculation. It said that the earliest it would've been able to transfer funds would've been 21 October 2022, when the stock was fully settled. As it'd transferred the funds on 18

November 2022, it noted that the stock Mrs B would've purchased would've increased by 3.47% over the period of delay. BMAM said that as it'd transferred £356,840.15 to provider S, the loss on those funds was £12,382.35.

BMAM also noted its offer of £250 for the distress and inconvenience it'd caused.

On 30 August 2023, Mrs B's IFA replied to BMAM to ask it for further clarification on the system limitation it said had slowed the transfer of Mrs B's funds. He also asked it why it hadn't calculated the loss on Mrs B's total funds, noting that provider S hadn't been able to complete the full transfer due to BMAM's delay.

BMAM replied to Mrs B's IFA on 5 October 2023. It didn't think it was responsible for the loss on all of Mrs B's funds.

Mrs B brought her complaint to this service in February 2024. She still felt that her funds should've transferred from BMAM to provider S by 14 October 2022. She therefore felt that her loss to 18 November 2022 was 5.06% of the total invested value of £1,265,348.65. She said this was £64,026.65.

Mrs B felt that BMAM should've foreseen that the delays it'd caused would impact her total funds transferred. She also noted that she hadn't been able to contact BMAM throughout the period of delay.

Mrs B explained how she felt let down by BMAM. And that it'd caused her to feel upset and to be fearful, leading to anxiety and sleepless nights.

Mrs B said she wanted BMAM to take the following steps to put things right:

- To apologise to both her and her IFA.
- To investigate its system limitations and the causes of the delay.
- To change its business practices to prevent other customers suffering similar issues.
- To acknowledge the distress it'd caused by offering respectable compensation to her and to her IFA, including compensation for the extra work he'd carried out.
- To accept responsibility for the loss on her total fund value and to compensate her for all of her losses.

Our investigator first considered whether this service could consider the merits of the complaint. She noted that it'd been brought to this service more than six months after BMAM had responded to the complaint on 13 January 2023. She explained that this would normally mean that this service couldn't investigate the merits of the complaint. But that because she wasn't satisfied that BMAM's January 2023 complaint response could be considered a valid final response, as it didn't meet the required standards of a final response letter, she felt the complaint was one this service could consider.

Our investigator then considered the merits of the complaint. Having done so, she felt she couldn't reasonably ask BMAM to pay Mrs B the amount her IFA had calculated as the loss she'd suffered on all of her transferred funds as a result of BMAM's delay to the transfer of the funds held with it. She was satisfied that BMAM should only be responsible for the amount it'd held. She therefore considered that BMAM had taken reasonable steps to put things right when it'd calculated the loss caused by the delay from 21 October 2022 to 18 November 2022 on the funds Mrs B had held with it. Our investigator also felt that the £250

BMAM had offered Mrs B for the distress and inconvenience it'd caused her was fair under the circumstances.

Mrs B didn't agree with our investigator. She said she'd complained to provider S and was satisfied with its response. She shared that response with this service as she felt this covered the main reason BMAM should be found liable for her total loss. Mrs B felt that as provider S needed to send her funds to her new provider as one lump sum, it had to wait for the transfer from BMAM before it could send it on. She therefore felt that BMAM had delayed the whole transfer.

Our investigator then asked BMAM for a copy of all correspondence between it and provider S relating to the transfer so she could understand how each party communicated about the transfer and how BMAM's actions affected the complete transfer. This was provided.

Our investigator considered Mrs B's points. But they didn't change her opinion. She still felt that the compensation BMAM had already offered was fair in the circumstances. She felt BMAM didn't know how its actions would impact the overall transfer, as it didn't know it was part of a larger transfer to another business. She therefore felt that BMAM couldn't have foreseen how its actions could impact the overall transfer.

Mrs B still felt that BMAM could've foreseen the wider harm caused by its delays.

Mrs B told this service that she'd tried to contact BMAM throughout the autumn of 2022 as she'd been so anxious about what was happening. She said if she'd been able to speak to someone BMAM would've been made fully aware of her cashed-in funds and accruing losses. Mrs B said that provider S had sent five requests to BMAM. She felt that although it may not have been aware of her further funds being held up, it shouldn't be excused from the consequences of its inaction.

As agreement couldn't be reached, the complaint has come to me for a review.

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.

Having done so, I agree with our investigator that the compensation BMAM has offered to pay Mrs B for the delays it caused and the steps it's agreed to take to put things right are fair under the circumstances of this complaint. I know this will be disappointing to Mrs B. I'll explain the reasons for my decision.

I'd first like to say that I agree with our investigator, and for the same reasons, that this is a complaint this service can consider. I therefore went on to do that.

Mrs B considers that BMAM delayed her entire transfer and is therefore responsible for her entire loss, rather than just the loss on the part that it managed. She said it took seven months for BMAM to determine her funds with it had lost over £12K due to the delays it'd caused. But she felt she'd suffered far greater losses from her cashed-in funds sitting with provider S while it was waiting for her funds from BMAM so that it could transfer her whole pension in one lump sum.

BMAM explained why it felt 21 October 2022 was the first reasonable day that Mrs B's transferred funds could've been invested. It therefore acknowledged that it'd caused a delay to the transfer of the funds it held from 21 October 2022 to 18 November 2022, when it'd made payment. But it felt that it was only responsible for a loss on the funds it'd held for Mrs

B. It said that these would've increased by 3.47% over that period. And that as the fund it'd transferred had been worth £356,840.15, Mrs B had lost 3.47% of that amount, which was £12,382.35.

I've considered the documentary evidence and what both parties have told this service. Having done so, I'm not persuaded that BMAM should be held responsible for the loss Mrs B feels she's suffered on her entire fund, rather than simply the funds she held with it. I'll explain why.

The evidence shows that provider A made Mrs B aware from the start that she could expect the transfer to take some time. I say this because its initial request to provider S stated:

Throughout the transfer period, we will remain in touch with the ceding scheme to ensure any updates or changes are progressed, and if we have yet to receive monies within 8 weeks we will chase this with them.

If you wish to chase this transfer within the 8 weeks, we recommend you contact the ceding provider as they will be able to provide an update from their end.

The evidence also shows that provider S followed its normal process when it encashed Mrs B's funds as soon as it received a correct transfer request from provider A. Therefore I'm satisfied that it was always going to be the case that Mrs B's funds would be out of the market for a period of time.

The evidence also shows that, in the end, Mrs B's crystallised funds were transferred separately from her uncrystallised funds. Therefore, although provider S said it would have to transfer her funds as a single lump sum, in reality, this wasn't the case.

I've not been presented with any evidence that BMAM was ever informed that the money it held for Mrs B was part of a wider transfer. And while I appreciate that Mrs B said she would've explained this to BMAM if she'd been able to, I'm not persuaded that it would've been fair and reasonable to hold BMAM responsible for the wider loss even if Mrs B had explained her situation.

I say this because it wouldn't be fair or reasonable to hold BMAM responsible for the funds over which it had no control. While it is fair to expect BMAM to transfer the funds it held for Mrs B in line with its own normal service standards, I'm not persuaded that it would be fair to hold it responsible for the wider impact on the other funds Mrs B wanted another provider to transfer for her. Had provider S's process allowed it to transfer her other funds to provider A in more than a single lump sum, she would've been able to transfer the funds she held with it in isolation of the funds she held with BMAM. Therefore any delay impacting the BMAM transfer wouldn't have impacted the wider transfer.

I also note that if Mrs B had decided in the first instance to transfer all of the benefits from her OPS to BMAM, and then to transfer her entire funds to provider A from it, I would've fairly and reasonably considered the financial impact of any delay BMAM then caused to that entire fund. But as she didn't, it wouldn't be fair for me to hold BMAM responsible for Mrs B's decision to transfer some of her funds elsewhere.

Another way of looking at this is to note that the redress BMAM has offered Mrs B would've put her back to the position she should've been in but for its delays on her whole fund if it'd managed her whole fund. As it didn't, because she didn't want it to, it wouldn't be fair to ask it to cover the losses she suffered on the rest of her fund due to other providers' requirements, over which BMAM has no control.

I understand why Mrs B didn't immediately invest her funds. I can see that they were only fully invested with provider A on 22 December 2022. But I'm not persuaded the delay to the investment was caused by BMAM, for the same reasons I've explained above. I also note that the delay to the transfer of the crystallised funds on 28 November 2022 doesn't seem to have been caused by BMAM.

Overall, I'm satisfied that BMAM's loss calculation is reasonable. I say this because it has been carried out in respect of the funds it held for Mrs B over the period of delay that BMAM caused, assessed against its normal service standards. I therefore don't require BMAM to amend its offer of financial redress.

I next considered the distress and inconvenience caused.

Distress and inconvenience

Mrs B has told this service how much anxiety she suffered during the transfer process. She said that her entire investments were in the hands of two financial institutions, and she couldn't access her funds or benefit from any growth whilst in this transitional phase. She said that as a new investor, she'd yet to develop full confidence in the investment process. And that while she'd understood the risk of market losses, she'd not realised that the companies she was dealing with might fail to act. Mrs B said this left her feeling emotionally vulnerable. And that this affected her day-to-day living and her relationships.

The evidence shows that Mrs B raised a complaint with BMAM on 18 November 2022. BMAM apologised to her for the delay and for not being able to contact it. A week later, on 25 November 2022, BMAM contacted provider S to acknowledge that it should've sent Mrs B's funds on 21 October 2022. And to ask for the information it needed to carry out a loss calculation based on that date. BMAM sent Mrs B its complaint response in January 2023.

I don't doubt that the delay BMAM caused led to significant worry for Mrs B. But, as I noted earlier, I'm not persuaded that BMAM was responsible for all of the problems during the transfer process.

I also consider that the evidence shows that BMAM quickly acknowledged the delays it'd caused. It confirmed that it would conduct a loss calculation a week after Mrs B complained. While I appreciate that the calculation then took some time to carry out, the evidence shows that this was because BMAM needed information from both provider S and provider A which wasn't provided for some time.

BMAM has also acknowledged that the delays it caused led to distress and inconvenience for Mrs B. It offered to pay her £250 compensation.

Having considered all of the circumstances of this complaint, I'm satisfied that BMAM's offer is reasonable. I say this because although I can see that the delay caused considerable anxiety over a short period of time, BMAM's offer is in line with what I would've otherwise recommended.

Therefore, while I uphold the complaint, I'm not going to ask BMAM to take any additional steps over those it's already offered to put things right.

BMAM has confirmed to this service that it hasn't paid Mrs B any compensation yet as she rejected its offer.

Putting things right

My aim in awarding fair compensation is to put Mrs B back into the position she would likely have been in but for BMAM's delays. I think this would have meant the funds she held with BMAM would've been transferred and then invested by 21 October 2022.

When BMAM first calculated the £12,382.35 loss, I'm satisfied that it represented the value by which Mrs B's transferred fund was lower than it should've been on 18 November 2022. However, for Mrs B to be in the same position as she would've been in at the date of my final decision, but for BMAM's delays, it will need to increase that sum in line with the growth on Mrs B's transferred portfolio with provider A.

Any loss Mrs B has suffered should be determined by obtaining the notional increase in her whole portfolio from 18 November 2022 (the date at which BMAM has calculated the £12,382.35 loss) to the date of my final decision from provider A. This is X%. BMAM should then increase the £12,382.35 compensation it has already offered Mrs B by $(1+X\%)$. If Mrs B's portfolio with provider A has not increased between 18 November 2022 and the date of my final decision, BMAM's offer of financial redress remains at £12,382.35.

The compensation amount should if possible be paid into Mrs B's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mrs B as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mrs B has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to their likely income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.

BMAM must also pay Mrs B the £250 it offered her for the distress and inconvenience caused.

If payment of compensation isn't made within 28 days of BMAM receiving Mrs B's acceptance of my final decision, interest must be added to the compensation at the rate of 8% each year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If BMAM deducts income tax from the interest, it should tell Mrs B how much has been taken off. BMAM should give Mrs B a tax deduction certificate in respect of interest if she asks for one, so she can reclaim the tax on interest from HMRC if appropriate.

My final decision

For the reasons set out above, I uphold Mrs B's complaint. Brooks Macdonald Asset Management Limited must take the action detailed in "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 23 December 2024.

Jo Occleshaw

Ombudsman