

The complaint

Miss M has complained about the way Capital Managers LLP has managed her investment portfolio. In particular, she feels that her instruction not to remain in the Woodford Equity Income Fund (WEIF) wasn't adhered to.

What happened

Miss M has been a customer of Capital Managers since 2010. They provide an advisory service for her and she has been invested in the WEIF as part of her portfolio since 2015.

Miss M met with her adviser from Capital Managers in April 2019. Her investment in the WEIF was discussed, amongst other matters. Capital Managers acknowledged that the investment had been under review for some time due to the fund performance. Miss M says that a different adviser at a different firm told her in September 2018 that they weren't comfortable with the fund anymore, but Capital Managers advised her to retain her investment in the fund.

Further to the April 2019 meeting, Capital Managers sent Miss M a report and following on from that further emails were exchanged regarding separate matters with Miss M's father. The WEIF was suspended on 3 June 2019. Miss M then complained to Capital Managers, she says that she asked them to sell her investment in WEIF during the meeting. She was also unhappy that the report hadn't been issued quicker and that she should have been advised sooner to sell her investment in WEIF.

Capital Managers responded to say that it had good reason to think it was worthwhile holding the investment in WEIF at that point in time. Whilst it acknowledged the meeting report should have been sent sooner, it said that there had not been any request to sell the holdings which they had not acted upon.

Unhappy with the response Miss M brought her complaint to this service where it was assessed by one of our investigators. He was of the view that there was not enough evidence from the April 2019 meeting to conclude that Miss M had instructed Capital managers to sell her WEIF holding. He also said that he didn't think the delay in receipt of the report warranted compensation and understood the reasoning for advising Miss M to remain invested in WEIF.

Miss M remained unhappy. She maintained that an instruction to sell had been given and that there was a requirement to act on a best execution basis. She also said that the delay in receiving the report and lack of action regarding WEIF shows they acted negligently. As no agreement could be reached, the complaint has been passed to me to decide.

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 am not upholding this complaint. I'll explain why. For ease I have divided my reasoning into what I see as the three main complaint headers, as the investigator did.

Was there an instruction to sell?

When Miss M and Capital Managers met in April 2019, she says she instructed her advisor to sell her investment in WEIF. I can't be sure what was discussed or agreed. There is no recording of the conversation, minutes or even detailed notes of what was said.

Capital Managers didn't have a discretionary mandate for Miss M's investments. This means that they needed her instruction to sell an investment and couldn't do it on her behalf.

There is also nothing further to the meeting which would suggest that the instruction had been given. There was no correspondence regarding the sale or asking for confirmation. And indeed, no confirmation such as a contract note was issued.

A report was issued some weeks after the meeting and gave a recommendation to sell the holding. But it does not suggest that such an instruction had already been given. Miss M says that this was a dishonest account of the meeting. However, I haven't seen any evidence that she responded to the report to say it wasn't correct or ask why it recommended a sale of a fund, if the instruction had already been given.

So, in light of this information, it doesn't seem to me that Capital Managers failed to act or indeed ignored any instruction to sell by Miss M. I find it reasonable that if Miss M was concerned about the performance of the fund and had instructed her advisor to sell her holding at the meeting in April, she would have queried why she hadn't received any confirmation of the transaction sooner than she did.

Delay in receiving the report

Miss M has also complained about the time that passed following the April meeting, before she received the report from Capital Managers. I can see that it was more than five weeks before it was issued, longer than I would expect it to take.

I am looking at whether, had the report been issued sooner and in a timely manner, the sale of the WEIF would have gone through before the fund was frozen in June 2019. But from the information I have seen I don't think it would have.

The report was sent on 8 May 2019 and the fund was frozen on 3 June 2019. An instruction to sell could have been given in writing and didn't need to be in person. I appreciate that Miss M says she felt she had already given her instruction. However, I don't feel any delay in sending the report made any real difference here. Whatever was discussed or agreed in April, there was enough time for Miss M to confirm she wanted to sell her holding after receipt of the report and before the fund was frozen. I also haven't seen that receipt of the report was chased up, which suggests Miss M wasn't waiting for it to make an urgent switch.

Advice to remain invested in the WEIF

Miss M is obviously unhappy with what has happened and I can understand this. She had a significant amount of money invested in the fund before it was frozen. However, hindsight can often play a big role in these types of complaints.

For me to decide Miss M's complaint I need to look at what Capital Managers would have reasonably known at the time about the fund and whether its advice/recommendations were reasonable in light of this. No adviser is able to tell what will happen to a fund in the future and unfortunately no adviser will make the right decision every time.

It is obviously hoped that they do, and this is what they are paid for, but ultimately all an adviser can do is base their advice on what they know of the relevant fund and markets at the time. In this case, the WEIF was managed by a fund manager who had a long history of investment success. He was widely known as one of the best fund managers in recent times. And while past performance isn't a definite indicator of future performance, it is reasonable that a manager's track record is taken into account by advisers and investors alike.

I have no reason to doubt that if Capital Managers had felt something dubious was happening within the fund that it would have made a different decision. There was no benefit to Capital Managers keeping Miss M invested in the WEIF when it was struggling, unless it truly believed the fund would recover. Further to this I haven't seen anything to suggest it knew any more than what was out there in the public domain, so it would seem Capital Managers did what it felt was the right thing at the time. And this isn't something I can decide was wrong when considering what was known then.

Capital Managers previously made an offer to Miss M of £23,000, which they say was in the hope of resolving the matter and ensuring an ongoing relationship. They say it was based on the calculation from the time they first met, to the meeting follow up. This was rejected and then withdrawn when the case came to this service. We wouldn't expect this to happen when a consumer brings a case to us and Capital Managers have now confirmed they will honour that offer. Miss M will need to contact them directly to arrange this.

I appreciate this will be very disappointing for Miss M. She has lost a significant amount of money following the suspension of the WEIF. However, I am not satisfied that she instructed Capital Managers to sell her holding in the WEIF or that they did anything wrong following the meeting or in their advice regarding this fund generally.

My final decision

My final decision is that I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 21 March 2022.

Yoni Smith
Ombudsman