

The complaint

Mrs B, through her representative Mr B, is complaining about the advice she was given in 2017 by Killik & Co LLP (Killik) to invest part of her individual savings account (ISA) into the Woodford Equity Income Fund (WEIF). She has said the WEIF was unsuitable for her given she only had a low tolerance for risk. She's also complained that Killik didn't assess her needs and also didn't communicate with her about what was happening with the fund leading up to its suspension. As a result, she has suffered significant financial loss as the fund has now collapsed.

What happened

Mrs B had been a client of Killik since 2006. Mrs B has confirmed that Mr B made many of the investment decisions on her behalf but always with her authority.

In 2017 Mr B contacted Killik to explain he wanted to change some of the assets within Mrs B's ISA due to underperformance. He stated the objective was for wealth preservation and some income and asked Killik for recommendations. One of the funds put forward was the WEIF. After conducting his own research Mr B, with the agreement of Mrs B, agreed to invest in WEIF. The total portfolio invested in WEIF was 30% at this point in time.

The WEIF was suspended in June 2019 and was closed down a few months later. As a result many investors including Mrs B found their investments in the WEIF frozen or at best significantly reduced in value.

On Mrs B's behalf Mr B has said that Mrs B only wanted to invest in long term relatively low risk investments She didn't want a fund with large volatility and wanted to make some growth over the years. He's said Killik didn't assess Mrs B's needs when it gave advice in 2017 to invest in the WEIF. Killik described the fund as defensive and high quality but it was later found to contain unlisted securities so it can't have been suitable for Mrs B at the outset. He has also said that Killik didn't inform Mrs B of the problems the fund experienced in the lead up to its suspension. Overall, he feels Killik has been negligent in its duty to Mrs B.

Killik investigated the complaint but concluded that it hadn't done anything wrong. Mr B therefore brought the complaint to this Service where it was assessed by one of our investigators. She was of the view the complaint couldn't be upheld. She was satisfied the advice was suitable for Mrs B at the time and ultimately given the relationship held with Killik it was Mrs B's responsibility to make the decisions about whether to invest or not and to ensure the portfolio remained suitable thereafter. She also was satisfied that Mr B was the designated manager of Mrs B's ISA.

Mr B didn't agree with the assessment. He remained of the view the WEIF was not suitable for Mrs B from the outset and that Killik had failed in its duty to her. He was also adamant that he was not and never had been the designated manager of Mrs B's ISA.

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 the complaint.

Much information has been provided by the parties of this complaint along with many points of argument. However it seems to me that the crux of the matter is whether the advice Mrs B was given to invest into WEIF was suitable and whether Killik fulfilled its duty to her in its commutations about the fund up to the point of its suspension. So if I've not mentioned a particular point, it's not because I haven't considered it. It's because I've focussed on what I believe to be the key issues in this case.

However, having said this, while I don't feel this point is relevant to my decision, I think it would be prudent to clarify the point of the designated manager, a point Mr B has concerns over.

I can see that Killik wrote to Mrs B on 2 February 2016 explaining what the role of a designated manager was. It wrote again in March 2016 setting out that Mr B was named as the designated fund manager on Mrs B's account. The letter invited Mrs B to tell Killik if this should be changed via her broker. Mrs B nor Mr B contacted their broker or even Killik about this so as stated Mr B remained as the designated fund manager. If this wasn't what either of the wanted, they had the opportunity to change this.

Also, even though Mr B says those letters were never received by them the addresses on them are correct and I have no reason to think they weren't sent, and they weren't received. Therefore, despite what Mr B is currently arguing, given this information it seems reasonable that Killik thought Mr B was Mrs B's designated fund manager.

But as I have said, this isn't relevant to my findings because while its clear to me that Mr B was the one doing most of the liaising with Killik on Mrs B's behalf and contemplating the investments, whether he was a designated manager or not Mrs B was present when the final discussion about the WEIF was had and she gave her authority to make the investment.

Turning now to the issue of the suitability of the advice, I see nothing wrong with WEIF being recommended to Mrs B in 2017. Contrary to what Mrs B has said at that point in time it wasn't a high risk or volatile fund. It had been a very popular and successful income producing fund which didn't contain a high proportion of unlisted securities in 2017. It was used in many portfolios of clients wanting an income producing fund and for those who were happy to take a low to medium level of risk. So at the time of advice, in my view it fitted with Mrs B's risk appetite. Furthermore, in 2017 there was no reason to think the fund would encounter such significant problems as it did from around 2018 onwards.

In addition to this, Mrs B didn't invest solely in the WEIF – her portfolio contained other investments and the WEIF made up only 30%. The rest of her portfolio contained further UK based equities and cash. When a portfolio is involved the assets within it must be looked at as a whole when assessing the risk level of the portfolio. There will always be assets which are more towards the medium risk end of the risk spectrum but these would be balanced out by those more towards the low/no risk end of the spectrum. And from what I have seen of Mrs B's portfolio in 2017 this appears to be the case.

Its also worth noting that in order to provide the income Mrs B stated she wanted equities had to form part of her portfolio therefore under Killik's way of doing business an "unrestricted" approach was required. The terms and conditions define three different risk levels that Killik used:

- Restricted lower risk – the advice will normally be restricted to the lower risk

investments including cash, cash equivalent and short dated gilts, and to the collective investment vehicles that invest in those instruments. You must accept this may mean the opportunity to seek enhanced returns can be reduced. It also doesn't mean "no risk".

- Restricted medium risk – will normally be restricted to medium and lower risk investments including medium and long dated gilts, investment grade bonds and certain collective investment vehicles investing predominantly in these securities. This category is only appropriate if you accept there may be fluctuations in the capital value of your investments over both the shorter and medium terms in order to allow you to seek higher returns.
- Unrestricted – the range of securities will be unrestricted and drawn from across the United Kingdom and international markets. These may include investment regarded as lower, medium or higher risk, including direct equity investment and collective investment vehicles which predominantly hold securities other than investment grade bonds and money market instruments.

So I am satisfied that Mrs B and Mr B should have been aware of the investment strategy employed by Killik from the start of their relationship and therefore would have been fully aware that equities would have had to have formed part of her portfolio in order to produce the income she was looking for.

Killik has also stated that the low risk selected by Mrs B in 2006 when she opened her account was an internal risk rating and that the low risk only applied to cash. Again, this is confirmed in the terms and conditions. Therefore, Mrs B and Mr B would have been aware of Killik's procedures and internal explanations of investing. And given no complaint exists for the time between 2006 and 2017 I can only assume that all other advice given by Killik during this time was satisfactory for Mrs B and that she understood the terms and condition under which she and Killik were bound.

The nature of the relationship between Mrs B and Killik is also worth considering at this point. Mrs B held an *advised dealing service* with Killik. Under the terms and conditions, it is stated that:

You (meaning Mrs B) or the person you have designated as the Primary Contact of your account are the manager of your investments.

We (Killik) will provide you with advice that is suitable for you at the time the advice is given but as you (or the Primary Contact) are the manager of your investments and not us we will not undertake to ensure any advice we have given remains suitable for you after that time.

So, it can be seen that Killik had a duty to ensure the advice was suitable for Mrs B in 2017 but thereafter it was for her (or her primary contact) to keep abreast of the performance of the portfolio and amend it if she felt necessary. Killik clearly had no obligation to monitor the portfolio and advise on an ongoing basis about potential changes to it unless it was asked for advice.

So while Mr B has complained that Killik didn't communicate with Mrs B sufficiently about the WEIF and the performance problems it began to have from around the beginning of 2018 it clear from the terms and conditions that Killik was not obligated to do this under the terms and conditions of the relationship it had with Mrs B.

Overall therefore, I am satisfied that Killik has acted in line with the terms and conditions of the relationship with Mrs B. It wasn't obligated to provide ongoing advice to Mrs B or to

communicate at length with her about her portfolio. It was Mrs B's responsibility to ensure that her portfolio remained suitable for her after the initial point of investing in 2017. I am also satisfied that the advice to invest in WEIF in 2017 was suitable for her. And while the fund experienced problems from 2018 onwards and its risk level changed due to the increased levels of unlisted assets it was for Mrs B to be aware of this and initiate any changes she wanted to her portfolio.

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 Mrs B to accept or reject my decision before 15 August 2022.

Ayshea Khan
Ombudsman