DRN-3091251

## The complaint

Mr J complains that Wilfred T Fry (Personal Financial Planning) Limited (Fry) failed in its duty of care because it didn't tell him to sell some or all of his investment in the Woodford Equity Income Fund (WEIF) ahead of it being suspended and later closed. Mr J says he's suffered a financial loss, which he expects Fry to put right.

## What happened

Mr J sought investment advice from Fry in relation to a portfolio of investments. His main investment objective was to achieve long term capital growth. Mr J's attitude to risk was assessed as 'low/medium' and he describes himself as a "*conservative*" investor.

Part of the service agreement with Fry was that Mr J would receive annual reviews to check his investments remained suitable.

In a letter sent in March 2015, Fry suggested that Mr J reduced his exposure to fixed interest securities. It recommended switches from "*strategic bond funds*", which held at least 80% of their value in cash and fixed interest securities leaving a maximum of 20% in equities. It also made other recommendations aimed at diversifying Mr J's portfolio – by reducing his largest holdings, which accounted for about 45% of the portfolio. It seems it was around this time that an investment in WEIF was first mentioned. Fry said it was satisfied its recommendations continued to meet the proposed asset mix level of 4 – low/medium and Mr J's objectives.

During a discussion in 2016, Fry again confirmed the recommendation for Mr J to invest in WEIF along with a different Equity Income fund. It said it would then need to look into a further recommendation concerning a Managed Balanced fund to see if it was still appropriate. It thought this might tie in with Mr J's requirement to gain more exposure to equity markets at their low points. According to Fry's note, Mr J confirmed he was happy with Fry's recommendation to invest in WEIF and he says he invested £15.078.24 in March 2016. Mr J's objectives and risk attitude remained the same during the 2016 review.

Fry prepared a risk report for Mr J in March 2017. Having assessed his answers to a risk questionnaire, it said his risk tolerance level remained low/medium.

During the annual review in November 2018, Fry said it needed more information from Mr J's accountant regarding capital gains tax (CGT) and any losses Mr J had suffered. It requested more information about this. It again said that a portfolio re-balance would be needed since two of the funds Mr J was invested in were considered "*overweight*".

Fry produced a recommendation letter on 3 May 2019, which largely centred around Mr J using his CGT and ISA allowances. It said that having sold some shares in a particular fund, Mr J again needed to diversify his portfolio by reinvesting the proceeds from the sale. It said the recommendations it made provided exposure to equities in the UK and globally.

A decision was taken around 3 June 2019 by Link Fund Solutions (LFS) the authorised corporate director (ACD) to suspend WEIF from trading.

Mr J called Fry on 12 June 2019 to follow up on matters that it wrote to him about in May 2019. He also wanted to discuss his investment in WEIF, which was apparently worth about £12,084 at that point. Fry explained that the initial 28-day suspension was likely to be extended. It didn't think any action needed to be taken at that point but said it would keep Mr J and other clients updated on developments. However, it suggested that when WEIF reopened for trading, Mr J and his adviser would need to decide whether it was appropriate for him to sell his investment or retain it.

WEIF was later closed. I understand Mr J received two amounts from the sale of his assets totalling £7,795.42. And according to a statement he'd received, a further £1,919.68 might be paid at a future unknown date. That still left a shortfall compared to the amount he'd originally invested.

Mr J complained to Fry in early June 2020. He said his risk category had always been "*conservative"*. He didn't invest to buy luxury items, but principally to protect the value of his money against inflation. He said Fry was aware of those principals when advising him to invest in WEIF. Yet, throughout the time he'd held the investment, Fry had never told him to sell it fully or partly. Mr J felt that the service and duty of care he'd paid for from Fry hadn't been delivered. He said he expected Fry to compensate him for his losses.

In its response, Fry explained the background leading to Mr J's investment in WEIF. It pointed out that, during the September 2019 review, whilst WEIF didn't feature on its own approved fund list, it remained rated by its analyst. It was therefore satisfied it remained suitable in terms of Mr J's risk profile and met his objective of capital growth.

Mr J complained to the Financial Ombudsman Service as he wasn't happy with Fry's response.

One of our Investigators looked into the complaint, but he didn't think Fry needed to take any further action. Amongst his reasons, the Investigator said he wouldn't expect Fry to recommend Mr J disinvest in WEIF given that the suspension happened around seven months after the last annual review. And at the time of that review in 2018, WEIF still featured on the analysts' 'to buy' list. The Investigator explained that, for him to uphold Mr J's complaint, he'd need to see clear evidence that Fry was responsible for the financial loss Mr J said he'd suffered. He wasn't persuaded that was the case.

Mr J responded to the Investigator. Amongst his comments he said he hoped Fry wasn't using the time between his last annual review in 2018 and the collapse of WEIF in 2019 as an *"excuse*" for not advising him to sell shares sooner. Mr J didn't agree that Fry hadn't contributed to his financial loss. He asked an Ombudsman to review the matter afresh. It's been given 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.

This complaint isn't about the suitability of the advice to invest in WEIF. But for completeness and in order to decide whether Fry acted fairly and reasonably overall, I've also thought about whether it was reasonable for it to recommend WEIF to Mr J in the first place. That's because assessing the suitability of an investment is an important part of Fry's regulatory responsibilities - as set out in COBS 9.2 of the Financial Conduct Authority's (FCA) handbook.

And, based on the evidence I've seen, on balance, given Mr J's long term investment goals; his apparent investment experience; his risk attitude; and the proportion of the portfolio that was invested in WEIF, I think it was reasonable for Fry to recommend an investment in WEIF around 2015/16. I say that for a few different reasons.

As I understand the position, around the time of Mr J's investment, WEIF was investing in larger companies providing equity and was a successful equity producing fund with a medium risk level. As indicated earlier, its inclusion in Mr J's portfolio appears to have come about as a result of Fry concluding that the portfolio needed to be rebalanced. In particular, I can see that Fry felt Mr J should reduce his exposure to fixed interest securities given the limited growth that was likely to be achieved over the following few years.

Although relatively secure, and on the face of it suited to a low/medium investor like Mr J, I'm aware that fixed interest securities perhaps didn't provide the long-term growth that Mr J was striving for. And in Mr J's particular case, I can see that Fry explained he had invested in "*strategic bond funds"* that held at least 80% of their value in cash and fixed interest securities leaving a maximum of 20% in equities. Given Mr J's investment aims, it didn't seem unreasonable to me that Fry would recommend an investment like WEIF, especially given its previous success as an equity producing fund. But it also had to be considered within the context of his portfolio overall.

From the information I've seen, it appears that Mr J had held other amounts in cash; bonds and equities; (amongst a range of investments). So, the investment in WEIF seemed reasonable as part of a diverse portfolio typically considered appropriate for a low/medium investor. I haven't seen any persuasive evidence to suggest that an investment in WEIF tipped the overall risk rating of Mr J's portfolio into a category that was higher than his attitude to risk would allow. Neither has Mr J suggested that's the case. So, I'm satisfied it was fair and reasonable for Fry to recommend the investment.

I appreciate that WEIF started to underperform and didn't recover ultimately leading to its suspension in 2019. Further to this, I understand it was re-categorised in March 2018 to an all companies fund to reflect the decrease in the income the fund was producing. It also started to invest more and more in unlisted securities from this time. But, I don't think the position was such that, by the time of the 2018 review, or afterwards, Fry should definitely have recommended Mr J switch out of WEIF. Therefore, I can't fairly conclude it was remiss in not doing so.

I say that because Fry would likely have been aware of other periods of volatility with the fund before it saw some improvement. It would no doubt have been aware of the fund manager's previous record of successful investments too. And Mr J was investing for long term growth. Therefore, I wouldn't immediately expect an adviser to step in simply because one of the funds within an overall portfolio was experiencing a downturn. That's particularly relevant in a case like this where Mr J's investment of around £15,000 represented a small part of his overall portfolio which was worth in excess of £550,000 in total. Also, whilst some rebalancing was apparently again discussed in 2018, as far as I can tell, both Mr J and Fry were satisfied that his portfolio overall, including the investment in WEIF, continued to meet his overall risk category and investment objective of achieving long term capital growth. So, for those reasons, I don't think Fry acted unreasonably in not recommending a switch around the time of the 2018 review, or afterwards.

Whilst I'm aware that WEIF was suspended soon after, I need to keep in mind here that the decision to suspend trading in WEIF wasn't Fry's. It was taken by LFS in its role as the ACD of WEIF. I've seen no evidence to suggest Fry had advance warning of or was a party to the decision. Therefore, it wouldn't be fair to suggest it should have done something in anticipation of the suspension decision being made.

Mr J seems to be saying that his loss is the difference between the amount he originally invested in WEIF versus the amount he's received from the fund since. But I think it's worth making the point that even an investment suited to a low/medium risk investor like Mr J isn't guaranteed, meaning there will definitely be no loss at all.

In any event, for all of the reasons I've set out earlier, on balance, I'm not persuaded Fry acted unfairly or unreasonably by recommending WEIF in the first place, or by not recommending a fund switch ahead of WEIF being suspended. Therefore, I can't fairly conclude that it's responsible for the losses Mr J says he's since suffered.

## My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 30 April 2024.

Amanda Scott
**Ombudsman**