

The complaint

Mrs and Mr C say Hargreaves Lansdown Advisory Service Limited (HLAS) made an unsuitable recommendation to invest in the Woodford Income Focus Fund (WIFF).

What happened

In May 2018, Mrs and Mr C sought one-off advice from HLAS about Mr C's HL Vantage SIPP (valued £921,214.46 at time of seeking advice) and their respective HL Vantage ISAs (valued at £200,523 and £207,646 at time of seeking advice).

At the time, Mrs and Mr C also held around £110,000 in a joint fund and share account and Mr C held £16,388 in another fund and share account. It was recorded that Mrs C was due to receive a combined pension of £6,000 from January 2020 and state pensions were due in 2022 and 2026.

HLAS recommended crystallisation of the SIPP, realising a cash free payment of £230,303.61 to then re-invest £20,000 into each ISA and £190,303.61 into the joint fund and share account. HLAS recommended retaining a cash buffer of £35,000 to £60,000, with the remainder to be invested into a portfolio of actively managed equity funds, with the ISA accounts also being realigned to the same portfolio of actively managed equity funds.

HLAS recommended a split of assets within the portfolio, with 35% in international equities, 55% in UK equities and 10% in total return. WIFF made up 12% of the overall portfolio.

Mrs and Mr C say the recommendation to include WIFF within the portfolio was unsuitable. Mr C described the fund as "a wild west", unsuitable for a pension fund, being closely linked to Woodford Equity Income Fund (WEIF). In or around June 2019, Mrs and Mr C moved to a new provider.

HLAS maintain that the recommendations were suitable at the time and they weren't responsible for providing ongoing advice.

Our investigator didn't uphold the complaint. He noted that WIFF launched in April 2017 with 94% UK equities, 3% European and 3% North Americas, split to 54% small cap, 27% mid-cap and 19% large cap. The fund changed over time and it was common ground it was removed from HL's best-buy list in June 2019. Our investigator noted there was an overlap between the funds in WIFF and WEIF, but there were no unlisted securities in WIFF and it didn't face the same liquidity concerns as WEIF.

Our investigator highlighted that the WIFF was held out as a long-term investment, HL trusted the fund manager and his past proven track record. An analysis of the fund had been undertaken by the Research and Investment Teams and WIFF's performance had fluctuated (positive and negative) over the 12 months before the recommendation was made. No guarantees were made as to performance and poor performance of itself didn't mean the recommendation was unsuitable. Further, Mr C had indicated at the time of recommendation that he was aware of market volatility and was happy being invested in the market. It was

only later that he said he had wanted a “boring portfolio”, which was inconsistent with the information recorded at the time advice was given.

Having regard to the suitability report, our investigator thought WIFF was aligned to the objective of achieving income and growth and fell within Mrs and Mr C’s attitude to risk and capacity for loss and by way of context he noted that WIFF formed only 12 % of the overall portfolio.

Mrs and Mr C disagreed with the view outcome and maintained that the inclusion of WIFF was unsuitable as it was “always a high-risk bet”. They highlighted that the fund was in the bottom quartile of the benchmarked sector, despite this HL continued to promote it. Further, HL was disinvesting in WIFF at the time that it was being promoted to them. Mr C says if HLAS had told them to cut their losses after investing there would have been no complaint and raised concern that HLAS said further advice had to be paid for.

I issued a provisional decision in January 2024, in which I recognised the strength of feeling about the complaint and I noted the wider concerns raised about a perceived culture of arrogance at HL and lack of morals. I didn’t underestimate that Mrs and Mr C have found things upsetting.

However, I thought the crux of the particular complaint against HLAS concerned the suitability of the recommendation. I considered WIFF within the context of the recommendation as a whole as Mrs C and Mr C were advised to invest in a portfolio of funds. It therefore wasn’t fair and reasonable to assess WIFF in isolation as HLAS would have been considering a broad range of factors when giving the overall recommendation. I explained that the focus of my assessment was at the time the recommendation was made, it was not fair and reasonable to make an assessment with the benefit of hindsight. I thought it was also helpful to emphasise from the outset that whilst there was some cross over between WIFF and WEIF, the funds were separate and WIFF didn’t go on to have the same liquidity issues as WEIF. The matters referred to by our investigator and the subsequent suspension of WEIF and WIFF, all happened later in 2019, post-dating the recommendation by around a year, so there were not relevant to the assessment of suitability in May 2018.

When considering suitability of the recommendation, I considered Mrs C and Mr C’s circumstances and knowledge and experience of investing, their objectives, attitude to risk and capacity for loss. I placed weight upon the suitability report, which was written at the time.

Mrs C and Mr C were looking to invest over the longer term, with a minimum term of at least five years, so as to be able to maintain their standard of living in retirement. The investment objective therefore was income and growth. Mr C had managed the investments up to the time of advice. The suitability report went into some detail about risk appetite. It was recorded that Mrs C was content for Mr C to speak on her behalf. At the time, Mr C had around 15 years’ investment experience, with a 6-7 out of 10 knowledge about investing and was aware of market-based volatility, it being recorded that it was understood the levels of volatility moving to managed equities would be far higher than that experienced with cash. It was expressly recorded that Mr C had a “high attitude to risk” and both wished to move to a “more adventurous strategy”, there was nothing from the time to show disagreement with the recommendation to move funds from cash into managed equities.

I was persuaded it was likely that Mr C understood the discussions about risk and reward. Notably it was recorded in the suitability report that if the investments fell in value by half, Mr C would not be troubled but would sit out for an upturn. There was nothing to support the claims later made by Mr C that the funds ought to have been invested in conservative investments, had it been thought that the detail captured in the suitability report about risk

appetite was incorrect I would have expected Mrs C and Mr C to have highlighted this at the time. Instead, the comments only came when WIFF underperformed.

As to capacity for loss, I took into account that Mrs C and Mr C had no outstanding debts, save for a car loan. It was accepted that they were able to withstand some losses, namely that essential income requirements could still be met even if all market-based investments and natural income fell by 50%, and it was noted that additional pension income was due over the course of the next few years.

Against this background, it was my view that the overall recommendation was consistent with Mrs C and Mr C's investment objective of income and growth, the portfolios were sufficiently diversified and overall were aligned to Mrs C and Mr C's risk appetite. The breakdown of recommended funds was set out in the suitability report, showing a recommended exposure to 35% international equities across three funds with a focus in US and Asia markets, 10% to a total return and with the balance of exposure being 55% split across five UK equity funds, with a focus towards large cap companies. In light of Mr C's experience, I was persuaded that he had sufficient experience and knowledge to be able to make an informed decision about whether to proceed.

Specifically, as to the inclusion of WIFF in the portfolio, which formed one of the five UK equity funds, I explained that there are no FCA prescribed rules as to how a financial adviser identifies which investments should be recommended to its clients. Ultimately, they are entitled to use their discretion in selecting the funds, with overall regard to the factors I addressed above. Having regard to WIFF, I thought it was fair to say it was a newer fund and as such it had a limited track record but it had potential over the longer term. No guarantees were made in respect of any of the funds recommended and whilst I accepted that WIFF did go on to underperform, I was not persuaded it was unreasonable for HLAS to include the WIFF within the portfolio when the recommendation was made in May 2018.

At the time, HL remained of the view that Woodford was an experienced fund manager who performed well over the longer term. The fund was a UK equity fund, targeting a return of around 5% in line with the investment objective outlined above and within the assessed risk appetite. I also noted that exposure to WIFF was around 12% of the overall portfolio. A higher risk fund can form part of an overall medium or even lower risk portfolio (and vice-versa) and in this instance, Mrs C and Mr C had indicated a higher risk tolerance. So, considering everything in the round, I couldn't fairly say that the recommendation to include WIFF, when viewed in context, took Mrs C and Mr C outside their risk profile. Mr C felt that too much weight was placed on attitude to risk, but I explained that it remained a relevant factor and was something I had to consider when looking at whether it was fair and reasonable to make the recommendation.

As I indicated at the outset there was some overlap between the holdings in WIFF and WEIF, but they were separate funds and WIFF did not face the same liquidity issues that WEIF went on to face in 2019.

HLAS accepted that WIFF underperformed and I noted Mr C raised concerns around December 2018. But it wasn't fair and reasonable for me to make an assessment with the benefit of hindsight and it didn't follow that HLAS did anything wrong just because the fund went onto underperform.

It was also relevant that Mrs C and Mr C elected and paid for one-off advice, so HLAS weren't obliged to provide ongoing advice. The portfolios were held on an execution only basis, which meant it was then for Mrs C and Mr C to make the investment decisions and I've seen that they moved to a new provider in June 2019.

Overall, I was satisfied HLAS acted fairly and reasonably.

Both parties have now had reasonable time to provide further information and evidence, which I have considered. Mrs C and Mr C disagree with the outcome, they are firmly of the view that WIFF was mis-sold and feel strongly that too much weight has been placed upon attitude to risk. I'd like to reassure both parties that I have considered everything provided in order to reach a final 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.

It is clear that Mr C remains disappointed with the performance of WIFF and feels strongly that his complaint has not been considered. I'd like to reassure Mr C that I have understood the complaint and no discourtesy is intended if I have not responded to each point raised. The primary complaint is that WIFF was mis-sold and it is said HLAS unfairly favoured Woodford funds.

Mr C has raised a series of questions about external, wider litigation and investigations, which fall outside the remit of our service. I think it is helpful to explain that we provide an independent, informal dispute resolution service, separate from the Courts. Where we consider disputes between a consumer and a business. Unlike the FCA we have no disciplinary powers or wider remit and no powers to tell a business or an industry sector how to operate. My decision therefore focuses on this particular complaint against the adviser. I have considered the suitability of the overall recommendation by HLAS and the inclusion of WIFF within it. I will not be commenting further on the wider matters referred to by Mr C.

The relevant time for consideration of the reasonableness of the suitability assessment is the time the recommendation was given. So, whilst I have noted Mr C's comments and concerns about later poor performance, his concerns in December 2018 and reference to a later change to fees, these aren't relevant to my assessment of matters at the time of the recommendation. I have already explained it is not fair and reasonable to make an assessment with the benefit of hindsight.

HLAS were required to consider the rules set out at COBS 9 when providing investment advice. Broadly they had to consider whether the advice given met Mrs C and Mr C's investment objectives, was such that Mrs C and Mr C could bear investment related risks consistent with the objectives and was consistent with their knowledge and experience of investing such that they could understand the risks involved in the advice being given. My role is to consider whether the recommendation HLAS made was consistent with the rules it was required to follow, given the information provided by Mrs C and Mr C at the time. It is not my role to substitute my views for those of the adviser and I've explained that as advice was given about a portfolio it isn't fair and reasonable to consider WIFF in isolation, the overall context remains relevant.

Mr C has expressly asked me not to comment on attitude to risk and says it has no bearing on his complaint. But as I've explained above, risk appetite is a relevant consideration. Mrs C and Mr C do not dispute the contemporaneous assessment of risk appetite, which was recorded as high. I can't discount that because it is a factor an adviser has to consider when devising a portfolio, it feeds directly into the type of funds that will be considered and an adviser is entitled to rely upon the responses a consumer provides. As I've said, Mr C did not seek to rectify any of the express statements within the suitability report, so I can't say HLAS did anything wrong in relying upon them. And to be clear this isn't the only factor I've considered, I have also addressed within my provisional decision knowledge of investing,

personal circumstances, the investment objectives of growth and income and Mrs C and Mr C's capacity for loss. I've not seen any new information to change my view on these findings.

I remain of the view that Mrs C and Mr C likely understood the relationship between risk and reward and I addressed this in more detail in my provisional decision, as above. It is clear from the contemporaneous report that a rebalancing exercise was being carried out and at that point in time, the move to an all-equity portfolio was something Mrs C and Mr C wanted. It may be that they felt differently after sustaining some losses and I've seen that Mr C now believes there should be a "warranty" with all advice given, but the suitability report suggests the adviser did take steps to align the portfolio to the objectives within the risk appetite. No guarantees were made as to performance. Even if a fund was underperforming at the time of giving advice that would not automatically make it an unsuitable recommendation, if it had potential to perform in the longer term and it did not unbalance an overall portfolio, which I find was the case here.

Mr C says the construction of advice around a best buy list was "nothing short of criminal." As I've explained, how advisers select investments is a matter within their professional discretion subject to the broader COBS rules I have referred to above. Despite Mr C's assertions I haven't seen any evidence that HL said the best buy list was "flawed" at this time. HLAS accept the performance of the WIFF was disappointing and it is common ground that after the suspension of the WEIF in 2019, Hargreaves Lansdown Asset Management removed the WIFF from its best buy lists. In October 2019 the investment manager of the WIFF resigned, and dealing was suspended for a period of time, but these matters significantly post-date the recommendation and I'm not persuaded they were foreseeable at the time advice was provided. Indeed, unlike WEIF, dealings in WIFF were permitted again when the fund was managed by a new investment manager.

I've also recognised that WIFF was a newer fund, launched in April 2017. According to the fund brochure, the WIFF was designed to deliver "*a high level of regular and sustainable income*" together with capital growth. According to the Key Investor Information Document (KIID), "*the fund had a discretion to invest in a range of investments*" and "*predominantly in shares of companies listed in the UK and overseas with a focus on investments that provide dividends*". As I've found above, this was in line with Mrs C and Mr C's investment objectives.

Mr C raises concern about the lack of performance data. But whilst past performance may play a part in the decision to recommend a particular investment, it isn't something HLAS could have predicted for the future and I'm satisfied they've explained why they had confidence in WIFF and the investment manager over the longer term at this point in time.

Mr C now says there was considerable overlap between the funds held within the portfolio which diluted diversity. As I explained in my provisional decision, the portfolios held a mix of international and UK equity funds with different fund managers, it may be that there was some underlying overlap, but I'm not persuaded this was so material as to make the overall recommendation unsuitable. Further, as I've explained, it is fair to say that some of the underlying securities in the WEIF were also in the WIFF, but the two funds did not invest in each other. The WIFF did not invest in unlisted securities – although some companies may have come unlisted at a later date.

I've acknowledged that concerns were raised by Mr C in December 2018 about WIFF's performance, but as I've explained by this stage Mrs C and Mr C were execution only customers, which meant it was for them to make decisions about the underlying

investments, the suitability report expressly recorded that Mr C wanted to maintain and oversee the investments after the one-off advice was given in May 2018. It's common ground there was no ongoing advisory relationship and I've seen that Mrs C and Mr C chose to move to a new provider in 2019.

Having considered everything carefully, whilst I am empathetic to the situation Mrs C and Mr C found themselves in, overall for the reasons given, I am persuaded that HLAS acted fairly and reasonably and I find that they need do nothing further.

My final decision

I'm sorry to disappoint Mrs C and Mr C but for the reasons given, I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 29 March 2024.

Sarah Tozzi
Ombudsman