

The complaint

Mrs and Mr M complain about the advice and service they received from Five Wealth Limited, an appointed representative of Sense Network Limited, collectively referred to as “the business”.

In summary, they say the business:

- Failed to monitor their portfolio.
- Gave ongoing unsuitable advice to remain invested in the Woodford Equity Income Fund – referred to as “the fund” or “WEIF” – which was performing badly for several years before its suspension in June 2019.

Mrs and Mr M say that they’ve suffered a financial loss as a result and would like compensation for their losses.

What happened

One of our investigators considered the complaint but didn’t think it should be upheld. In summary, she said:

- Mrs and Mr M had been a client of their adviser for many years, before joining the business in 2016.
- Their service agreement was on an ongoing advisory basis, with yearly review meetings, and six-monthly reports. In reality, they met with their adviser and/or spoke to him on the phone more frequently.
- They opted to receive advice on retirement planning, savings and investments, and estate planning.
- In 2015, they were initially advised to invest in the WEIF, before they joined the business.
- The 2016 reports, the client questionnaire – initially completed in July 2016 (but updated) – gives a detailed insight into their financial situation.
- At the time, they were both employed as directors, had a substantial property portfolio, and a considerable investment portfolio which included personal pensions, stocks and shares ISA, Unit Trust/OEIC funds, Investment bonds, and a Discounted Gift Trust (DGT).
- Their attitude to risk (ATR) was assessed to be at the low end of ‘*moderate to adventurous*’.
- Their objective was to grow the value of their wealth in order to ensure their standard of living in retirement, which was planned for 2018. But they wanted to remain invested, post retirement, in order to continue to draw an income from their investments, which suggests a long-term strategy for their investments.
- They had access to substantial cash reserves, and enough to cover any emergencies. They also had a high capacity for loss.
- They had been investing for some time and had knowledge and experience of investing. They were actively involved in their portfolio and they were comfortable with a degree of risk. Consequently, they understood the volatility of markets and

potential loss and gains.

- The WEIF holdings were part of Mrs and Mr M's DGT, ISAs and OEIC funds. But poor performance isn't an indicator of poor advice.
- Their portfolio was made up of a variety funds, with holdings in various sectors, to ensure diversification. Some holdings included a higher risk – with higher potential for gain – whilst other holdings provided a lower risk – with lower potential for gains. This is necessary in order to regulate the risk of the overall portfolio.
- The ISA, OEIC and DGT was diversified, there was no evidence of over exposure in any particular fund including WEIF. Overall, the exposure was in line with Mrs and Mr M's attitude to risk.
- The risk profile for the WEIF in 2015 was slightly above average, and its objective was to provide a reasonable level of income together with capital growth. Given their risk profile and existing portfolio holdings, it was a reasonable addition to their portfolio. There's no evidence that it was unsuitable.
- Having considered the 2016, 2017 and 2018 reports from meetings/reviews, recommendations, as well as internal notes, she is unable to agree that the business failed to monitor Mrs and Mr M's portfolio.
- Although they had scheduled annual reviews and six-monthly reports, there were a number of additional meetings/telephone calls.
- Mrs and Mr M were given recommendations in light of their circumstances, objective and risk profile and changing financial climate, so that their portfolio continued to be well diversified and there's no risk of over exposure.
- The adviser couldn't have known that the WEIF fund was likely to be suspended. He only advised based on the available information at the time.
- In this instance, the WEIF was managed by a fund manager who had a long history of investment success and was known as one of the best fund managers in recent times.
- The adviser has shown that whilst funds might've underperformed for a number of years, they're able to achieve exceptional long-term growth. The WEIF itself had gone through periods of underperformance and bounced back exceptionally well. Whilst past performance isn't a definite indicator of future performance, it's reasonable that a manager's track record is considered.
- Many firms also took the manager's reputation into account when they advised their clients to weather the storm.
- Recommendations were made shortly after the re-classification of the WEIF in April 2018 – when the fund was reclassified as a UK ALL Companies Fund instead of the Equity Income Fund. This was to reflect the changes in investments and the fact that it wasn't generating the same income as expected from the Equity Income Fund – due to the inclusion of unlisted securities which generated less income and increased risk.
- The above all shows that the business was closely monitoring the WEIF and portfolio and made reasonable recommendations to reduce the exposure and divert investments accordingly.

Mrs and Mr M disagreed with the investigator's view and asked for an ombudsman's decision. They had no further points to add.

As no agreement has been reached, the matter has been passed to me for 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 the investigators' conclusion for much the same reasons. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Mrs and Mr M say, I can't safely say that the business behaved unreasonably.

In other words, on the face of the available evidence, and on balance, I'm not persuaded that the business failed to monitor Mrs and Mr M's portfolio or that its advice to remain invested in WEIF was unreasonable. Therefore, I don't think the business is responsible for the financial loss claimed.

Before I explain why this is the case, I think it's important for me to note I recognise Mrs and Mr M's strength of feeling about this matter. They've provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope they won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by Mrs and Mr M and the business, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must take into account the relevant law, regulation, and best industry practice. But it's for me to decide, based on the information I've been given, what's more likely than not to have happened.

It's fair to say that certain questions were asked of Mrs and Mr M to arrive at the conclusion that their ATR was at the low end of *'moderate to adventurous'*. I note it was out of a set of options, which I understand from subsequent reports was akin to a score of seven on the business scale. I also note this was lower than their existing portfolio.

I note Mrs and Mr M were willing to take a risk with their investment in order to achieve their objective for gain and income – described by the business as follows:

'You are prepared to take a medium degree of risk with your investment in return for the prospect of improving longer term investment performance. Short term capital protection is not important to you and you are willing to sacrifice some long-term protection for the likelihood of greater returns. A typical moderate to adventurous investor will be invested mainly in equities but with other assets included to provide some diversification. There may be a small amount of specialised equity within the portfolio. Because you are a low end of moderate to adventurous investor there will be slightly more invested in fixed interest and cash.'

Given Mrs and Mr M's financial circumstances at the time, as set out in the background, I don't think that was unreasonable or likely to render their investment (and continued investment) in WEIF unsuitable. I'm satisfied that they were aware of the general risks involved and were content to proceed.

That notwithstanding, I should make clear that I'm not specifically looking at whether Mrs and Mr M were low end of moderate to adventurous risk investors, or specifically whether WEIF was. I'm merely considering whether WEIF was suitable for them, and I'm persuaded that it was given their aims and objectives.

Notwithstanding the points made by Mrs and Mr M, it's not for us to risk rate the funds. In this instance, based on what the business says, the funds were classed as presenting a medium risk overall, and suitable for Mrs and Mr M given their ATR. I've no reason, given the business' explanation, to think this was incorrect or unsuitable.

I understand that the WEIF holdings were part of Mrs and Mr M's DGT, ISAs and OEIC – therefore a material part of their portfolio – but their overall portfolio was also made up of a variety of funds, with holdings in various sectors, to ensure diversification, which was also very important. I note the investigator mentioned a mix of holdings, providing higher and lower risk, which I'm satisfied was necessary in order to regulate the risk of the overall portfolio.

In other words, on the face of the evidence, and on balance, I'm broadly satisfied that their portfolio – comprised of ISA, OEIC and DGT – was diversified, without any great exposure to any one particular fund, including the WEIF, and was broadly in line with their ATR and experience.

I've seen nothing to suggest that they were risk averse, or lower risk, such that they weren't prepared to take the requisite risk in order to achieve their objective. Given their circumstances I'm satisfied that they were generally aware of, and understood, the risks involved, particularly with market volatility. Based on their answers, I'm satisfied that they understood the need to monitor an investment if it goes down and see if it improves.

I'm conscious Mrs and Mr M had substantial investment experience, and therefore were unlikely to invest in anything, or remain invested, if they were feeling uncomfortable or had doubts about the investment. I note within the questionnaire it was recorded that they are:

“a very experienced time served investor, exposed to investments which fluctuate in value, for over 20 years in a reciprocal client/adviser relationship.”

I note that Mrs and Mr M had access to a substantial sum of cash if they needed it, and they had capacity for loss. In other words, they could also replace or withstand any losses even though they were planning to retire. I've seen nothing to suggest that they were risk averse or lower risk, as they approached retirement, such that they weren't prepared to take a risk in order to achieve their objective. And given their investment experience – as set out in the background above – I'm satisfied that they were generally aware of, and understood, the risks involved, particularly with market volatility.

Importantly, there was nothing to suggest that they couldn't ride out any downturn in the market if that's what they wanted to do, or that they shouldn't invest because of their age and retirement. I acknowledge that they were in a different stage of their lives, looking forward to returning to the UK and potentially purchasing a property to live in.

I understand that the suspension of the fund took investors by surprise, including the business, which couldn't have predicted or controlled what was about to happen. In other words, it was out of the business' hands and isn't something that I can blame the business for. It also doesn't mean that the recommendation to remain invested in the fund was unsuitable.

On balance, I don't think the business suspected that there were any serious problems with the fund apart from the poor performance and income yield, as mentioned by the investigator, which arguably wasn't anything out of the ordinary.

I'm persuaded that the business would've acted sooner if it thought that something was wrong. In other words, despite what Mrs and Mr M say, I think it's unlikely that the business would simply do nothing if it thought something was wrong.

Without the benefit of hindsight, it's virtually impossible to know for sure how WEIF was likely to perform. I'm mindful that notwithstanding the hope it would do well, and generate an income, no guarantees were given about its performance.

Despite what Mrs and Mr M say, I'm unable to safely say that the business didn't review or monitor their investments. I'm broadly satisfied that it did so, for the reasons set out by the investigator.

I note the adviser was available to discuss any concerns or issues raised by Mrs and Mr M, over and above the agreement they had with the business as to the contact they were entitled to. He also provided financial reports, which were reasonably detailed, up to date and comprehensive, considering their changing circumstances and financial climate. For example, by way of a snapshot in reference to what the investigator mentioned, I note the following:

- In March the 2017, Mrs and Mr M were given recommendations in relation to their ISA contributions based on their decision to maximise their ISA allowances before the April 2017 deadline. Amongst other recommendations they were also advised to increase their monthly contributions into the WEIF fund.
- Six months later, in September 2017, Mrs and Mr M had an annual review during which their future objective and ATR was re-assessed. Their portfolio was also discussed in detail. The adviser noted market volatility – given political climates both at home and abroad – and made a number of recommendations to offset the effects of any adverse market conditions including:
 - Taking an annuity from one of their pensions.
 - A 'bed and breakfast' strategy in respect of their OEIC, in order to reduce CGT.
 - Switching funds, to ensure the portfolio remains invested in funds which are within the business' recommended panels or buy lists.
- A couple of months later, I note they received another strategy which included the 'bed and breakfast' strategy and recommendation to sell holdings that showed a positive gain- before they moved back to the UK – to crystalize the gains and retain funds in WEIF and Artemis, so that they didn't crystalize any losses.
- In May 2018, Mrs and Mr M were provided with a set of recommendations (based on their previous meeting) focused on their upcoming retirement, income withdrawals, as well as reinvestment of cash.
- They were advised to reduce their exposure to the WEIF as the fund included a large number of unquoted shares, which changed the profile and subsequent expectations. They were also advised to redirect 50% of their ISA and GIA holdings to another fund.

On the face of the evidence, and on balance, I agree with the investigator that this shows that the business was monitoring and reviewing the portfolio and making recommendations in line with Mrs and Mr M's risk profile and objectives, such that their portfolio continued to be diversified. In other words, I'm satisfied that the business was providing suitable recommendations. Despite what Mrs and Mr M might say, I'm unable to say that the business hasn't given them what they paid for.

Given Mrs and Mr M longer term objectives (including post retirement) and that there was nothing to suggest that the fund wouldn't recover – I'm aware it had in the past – I don't think it was unreasonable for the business not to advise them to disinvest in the fund. On balance I'm satisfied there was nothing to suggest that it would be suspended. It's not a judgement on the part of the business that I think was unreasonable.

I note that recommendations were made shortly after the reclassification of the WEIF in April 2018 – when the fund was reclassified as a UK ALL Companies Fund instead of the Equity Income Fund. This was to reflect the changes in investments and the fact that it wasn't generating the same income as expected from the Equity Income Fund – due to the inclusion of unlisted securities which generated less income and increased risk. The above all shows that the business was closely monitoring the WEIF and portfolio and made reasonable recommendations to reduce the exposure and divert investments accordingly.

I note on 25 May 2018, the adviser recommended the following:

“I am also recommending that you reduce your exposure to the Woodford Equity Income fund due to the shift we have seen from larger cap exposure within the fund to smaller and unquoted companies, which is a change to the original expectations for investment in this fund. As a result, this fund has the potential to be more volatile than other UK Equity Income funds but will provide sector diversification in terms of investment within the UK market when compared to other UK funds you hold. I am therefore looking to re-direct 50% of the holdings in Woodford within your Aegon ISAs, and c. 1/3 of the holding in your joint Aegon GIA to an alternative fund.”

In this instance, I can't say that the poor fund performance and the losses are linked to whether or not Mrs and Mr M's investments were monitored. The fund suspension doesn't mean that their investments weren't looked after or mismanaged. In this instance their adviser clearly considered their goals and attitude to risk and recommended a change in their holdings to offset the additional risk they were being exposed to. Again, I can't say that this was as a result of anything done by the business.

Mrs and Mr M could've been advised to invest in something else, but that doesn't of itself mean the recommendations were unsuitable. I make clear that I'm not looking at whether or not there were more suitable options, I'm only looking at whether or not the WEIF was suitable, and on balance, I'm satisfied that it was for the same reasons as set out in the background.

I've seen no evidence to suggest that Mrs and Mr M were given any guarantee about the level of return or that WEIF won't be suspended. And just because they didn't receive a better return and the fund was suspended, doesn't mean that the recommendation was unsuitable or that the business didn't monitor their portfolio. I'm aware the business says that suspension of these fund was very unlikely.

I appreciate Mrs and Mr M will be unhappy I've reached the same conclusion as the investigator. Furthermore, I realise my decision isn't what they want to hear. But on the face of the available evidence, and on balance, I'm unable to uphold this complaint and give them what they want.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 9 December 2022.

Dara Islam
Ombudsman