DRN-4101094

Financial Ombudsman Service

The complaint

Mr B complains that Hargreaves Lansdown Advisory Services Limited (HL) wrongly advised him to invest in the Woodford Equity Income Fund (WEIF).

What happened

The WEIF

The WEIF was managed by Neil Woodford, who left Invesco Perpetual in 2013 to set up Woodford Investment Management (WIM). The WEIF was launched in May 2014, with a £1 per unit fixed offer price until 18 June 2014. The Authorised Corporate Director (ACD) of the fund was Capita Financial Managers, later known as Link Fund Solutions (Link).

The WEIF broadly tracked the benchmarks (albeit whilst providing a greater return and experiencing some more volatility) until the second half of 2017. In the second half of 2017 there was a significant fall which the benchmarks didn't experience. The WEIF began to underperform benchmarks significantly from early 2018. And its performance followed a very different pattern to the benchmarks from early 2019 to the date it was suspended.

Alongside this, the WEIF began to see significant outflows from mid-2017. In two years it fell from around £10bn of assets under management to around £3bn of assets under management.

In June 2019 the extent of those outflows – and the portion of the WEIF's assets which were not liquid – led Link to decide to suspend trading in the WEIF. Around this time Link removed WIM as the investment manager.

The WEIF didn't trade again. Later in 2019 Link decided to liquidate it. Investors have since received payments as and when the WEIF's assets have been sold. A small amount remains invested in assets which are not liquid, meaning which cannot currently be sold. A scheme of arrangement between investors and Link has now been sanctioned by the court. The scheme of arrangement will conclude the wind up of the WEIF. Further distributions will be made to investors who held units in the WEIF at suspension.

Mr B's dealings in the WEIF

In 2015 Mr B made a number of investments, including in the WEIF. He said he chose the investments himself, but was guided by public statements by HL and others in the Sunday Times.

In March 2016 Mr B approached HL for advice.

In April 2016 HL advised Mr B to rebalance his portfolio including by selling all but four of the investments in his existing portfolio. As part of this HL advised him to retain the small investment he already had in the WEIF and invest a further amount in the WEIF.

The advice from HL followed a fact-find by HL which established, in summary and amongst other things, the following:

- Mr B was retired, with a pension income that met his day-to-day needs and an existing investment portfolio made up mostly of equities, and cash.

- Mr B's objective was to have some extra income in future for discretionary spending.

- He sought advice to help establish whether his existing portfolio was balanced appropriately.

- Mr B had sufficient capacity for loss because his current pension income covered his day-to-day requirements and he'd soon be receiving state pension too. And he was retaining about £100,000 in cash reserves.

- Mr B was comfortable accepting volatility because he had '*ridden through the storms*' in the past and was aware his portfolio would move up and down.

- Mr B's ideal asset allocation was mostly managed equities but with an increased proportion of fixed interest assets, up from about 7% to 20-30%.

- The allocation suited Mr B because he wanted capital growth to outpace inflation but he also wanted some capital protection to temper volatility. Mr B felt this met his approach to investing which was '*medium risk*'.

- HL recommended investing over the longer term, and for a minimum of five years. And it said this was consistent with Mr B's aim to invest for the rest of his lifetime.

- Mr B was happy to manage the portfolio going forward and so agreed not to receive ongoing advice. He agreed he'd seek and pay for advice if he felt it necessary.

The rebalanced portfolio HL recommended included the following features:

- Additional investment into the portfolio from cash reserves

- An increase in the proportion of UK equities, from 34.4% to 57%

- A decrease in the proportion of international equities, from 24.1% to 13%

- An increase in the proportion of fixed income assets, from 5.8% to 30%

- An increase in the proportion of the WEIF, from about 7% in the existing portfolio to 13% in the recommended portfolio

HL's suitability report said the following about the WEIF:

> '*Neil Woodford is one of the most successful, experienced and well-known fund managers in the UK, having managed UK equities for over 25 years. The manager is primarily a stock picker, searching for companies he believes are undervalued, with the ability to generate large amounts of cash, and this is combined with his wider economic views. This fund invests in some of the UK's largest and most profitable companies. While the portfolio contains many well-established businesses which already have generous yields, Neil Woodford will also look for tomorrow's dividend winners amongst higher-risk smaller and medium-sized companies. He builds high*

conviction positions, which means the portfolio can have a significant exposure to individual stocks or sectors.'

Mr B questioned various parts of HL's advice, including the recommendation to increase his investment in the WEIF and sell other investments which had performed well but weren't included in Hargreaves Lansdown's Wealth Lists.

But Mr B made the investments recommended by HL.

And in 2017 Mr B invested further amounts in the WEIF on an execution-only basis.

In April 2017, following a phone call, Mr B emailed HL about his investments. He asked about the WEIF's exposure to particular companies with poor performance, and whether HL continued to recommend the WEIF. HL said it didn't know what exposure the WEIF had to those companies because a fund manager only had to declare the fund's top ten holdings. And it said it was still confident in Woodford and the WEIF. It gave Mr B a link to its research on the WEIF. HL also said:

> '*Although you have received advice from us in the past, it is certainly down to yourself to make any investment decisions and our research should only form a part of this thought process.*'

Mr B said he appreciated his investment decisions were up to him, but he expected HL to warn investors of poor performance by the WEIF. And he thought HL's research was incomplete, out-of-date and superficial because it considered only the top ten holdings in the fund.

In December 2017 Mr B wrote to HL saying he was disappointed the value of his investment in the WEIF was declining. He asked whether it was time to cut his losses. HL said it couldn't comment on the best course of action for Mr B's own investments because it provided an execution-only service. But it gave him a statement from its research team about the WEIF and its recent performance. The statement said Mr B had been invested in the WEIF for a short time only, and the investment was designed for at least five years, but it was true the recent performance of the WEIF had been disappointing. It gave various reasons why HL still regarded the WEIF as a good investment option. But it said there were many funds on the Wealth List and '*investors should seek the ones that best meet their objectives and risk profile*'.

In March 2018 Mr B wrote to HL asking whether a review of his investments '*was required*' before he transferred funds from his general investment account to his ISA. He also said he '*queried the advice'* HL had given him because his previous portfolio was now outperforming the portfolio HL had recommended to Mr B. HL said it thought a review would be needed only if Mr B's objectives or views on risk had changed. It said Mr B's investments continued to be held in high regard by HL's research team so it didn't think Mr B needed to take any action to switch from one fund to another. HL also said the portfolio it had recommended had 15% less equity exposure than Mr B's previous portfolio, and an increase of 25% in fixed income assets. HL said, '*Perhaps you could get back to me as to whether your objectives or views on risk have changed, as this will help us determine whether a review is worthwhile paying for*'.

In November 2018 Mr B wrote to HL about concerns he had over the WEIF and asking whether HL continued to support it. In reply HL provided a statement from its research team.

Mr B emailed HL several times in 2019 to express concern over the performance of the WEIF. HL responded by saying it still had confidence in the WEIF as an investment option, and referring him to an article by its research team. And it said Mr B could switch his investment into a different asset if he wanted to. In response to one of HL's replies Mr B said HL's message appeared to be a template and hadn't answered the points he'd raised. In response to one of HL's messages Mr B wrote:

> '*As a novice investor the receipt of advice … that "If you feel the funds does not meet your risk profile, you would be more than able to perform a fund switch … into another fund that would be more suited to your risk profile" was singularly unhelpful …*'

<u>Mr B's complaint to HL and its response</u>

In August 2019, shortly after the WEIF was suspended, Mr B complained to HL that it had given bad advice.

HL looked into Mr B's complaint but didn't think it had done anything wrong.

Mr B referred his complaint to this service. He provided extensive evidence which he said showed HL knew of concerns about the WEIF which he said meant it shouldn't have recommended the WEIF to him, and HL continued to endorse the WEIF to him when it shouldn't have. He also said HL shouldn't be giving advice based on its knowledge of his cash holdings or perceived ability to withstand a crash.

As part of his complaint Mr B made extensive comments and provided evidence about the promotion of the WEIF by Hargreaves Lansdown Asset Management (HLAM). Those comments have been dealt with under a separate complaint which is against Hargreaves Lansdown Asset Management Limited. In this decision I've focused solely on the actions of HL as the business that provided advice.

One of our investigators looked into Mr B's complaint about HL. She didn't think HL had done anything wrong. In summary, she said the following:

- A medium risk appetite was appropriate for Mr B considering his desire to outpace inflation and his circumstances, savings and income.

- The advice HL gave Mr B in 2016 was consistent with his attitude to risk and suitable to his needs.

- This service looks at the funds recommended as a portfolio and considers whether the overall portfolio was suitable, given the circumstances at the time and the consumer's attitude to risk. In this case WEIF was recommended as part of a diverse portfolio, including both higher and lower risk funds, which overall reflected a medium attitude to risk.

- When Mr B asked HL for guidance after seeing media coverage of WEIF, the comments made by HL didn't constitute advice. When HL advised him in 2016 Mr B acknowledged he understood HL wouldn't provide ongoing advice unless he specifically arranged it. He also agreed it was his responsibility to manage his investments on a non-advisory basis and if he was unsure how to proceed he'd request advice. Although Mr B asked HL whether or not, in the circumstances of the Woodford situation, he should consider reviewing his investments – and although he decided not to review his investments after receiving an email from HL – what HL said to him didn't constitute advice.

- If Mr B thought strongly enough that there was an issue with his investments, he should've sought financial advice, as he agreed in 2016 he would do.

Mr B didn't agree with the Investigator's view. In summary he said the following:

- Mr B asked HL whether a review of his portfolio was indicated and HL said no. Had it said yes he would've paid for the service. Mr B asked at least twice. So he disagrees that he didn't seek advice.
- HL should've taken the opportunity to review Mr B's portfolio because this would've given it the opportunity to advise him to sell.
- If senior HL management were selling their holdings in WEIF, HL shouldn't have told Mr B to hold his investment.
- HL had a vested interest in selling WEIF to its customers.
- Mr B's appetite to risk is, and was, low. So recommending a portfolio of high-risk investments didn't meet his brief. He was a novice investor.
- A mix of high- and low-risk investments doesn't average out at medium.
- The WEIF was very high risk because it was invested in unlisted companies. HL didn't explain that to Mr B.
- Mr B's circumstances, savings and income shouldn't have any bearing on the investigation of his complaint.
- As a pensioner without a public sector pension, Mr B couldn't afford to lose a large sum of money.

The investigator said the following, in summary:

- Comments from HL weren't advice. Mr B had previously accepted that should he consider a need for advice, he'd request it and would have to pay for it.
- The investigator hadn't seen any evidence Mr B's risk appetite was low. She'd seen he agreed with HL that it was medium. And in the circumstances that was appropriate.
- When considering financial advice provided to customers this service must consider the customer's individual circumstances, savings and annual income to determine whether or not the advice was appropriate. We also look at a portfolio as a bigger picture and whether or not we consider the overall portfolio's risk to be in line with the client's attitude to risk.

Mr B made further representations which I've summarised below:

- In 2016 Mr B had challenged HL's advice because it suggested he hadn't declared his full circumstances, it recommended selling funds that were performing well, and it included WEIF in its recommendations.
- HL sold funds it was recommending. HL had a vested interest in selling the WEIF to Mr B.
- In December 2017, after Mr B expressed concern, HL said Mr B's investments

should typically be held for five years. HL justified the inclusion of WEIF in Mr B's portfolio even though it knew of liquidity issues as early as November 2017. HL continued to include WEIF in the Wealth Lists and to endorse it in personal correspondence to Mr B.

- In 2018 HL said unless Mr B's goals had changed or he wanted to take benefits then a review wasn't necessary. This was effectively an endorsement of the portfolio HL had recommended.

- HL said it remained '*comfortable in recommending clients continue to invest in WEIF*'.

- In November 2018 HL provided a statement that was personal to Mr B which, although not advice, continued to endorse WEIF.

Because no agreement could be reached, the complaint was passed to me to review afresh and make a 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.

Having done so, I'm not upholding the complaint. I'll explain why.

The purpose of this decision is to set out my findings on what's fair and reasonable, and explain my reasons for reaching those findings, not to offer a point-by-point response to every submission made by the parties to the complaint. And so, while I've considered all the submissions by both parties, I've focussed here on the points I believe to be key to my decision on what's fair and reasonable in the circumstances.

I should make clear that this decision only considers the actions of HL as the business that advised Mr B. HL didn't maintain or put together the wealth lists. So Mr B's complaint about the WEIF's continued inclusion on those lists isn't something HL is responsible for.

In providing investment advice to Mr B in April 2016, HL needed to follow the rules set out in COBS 9.2 '*Assessing suitability*'. Although Mr B has said his circumstances, savings and income shouldn't have any bearing on the investigation of his complaint, the rules in COBS said HL needed to do the following:

- Obtain information from Mr B about his knowledge and experience, financial situation and investment objectives.

- Give advice which met Mr B's investment objectives, and ensure he was able to financially bear any related investment risks consistent with those objectives and had the necessary experience and knowledge to understand the risks involved in the transaction.

And so when considering the advice HL gave Mr B, I do need to consider what HL knew about Mr B's circumstances and whether HL gave advice that was suitable to those circumstances.

My role in looking at Mr B's complaint isn't to substitute my opinion on what investment advice was suitable for him at the time – it's to decide whether it was fair and reasonable for

HL to have concluded that the investments it recommended were suitable for Mr B, based on the information he provided at the time.

I'm not looking at the advice HL gave Mr B with the benefit of hindsight. The fact an investment has performed badly doesn't mean it was unsuitable; in relation to the advice HL provided, the key point I'm considering is whether HL's recommendations to Mr B were suitable at the time he was given the advice.

Furthermore, it's clear Mr B wasn't recommended to buy just one investment – HL recommended an investment portfolio. And it wouldn't be fair for me to consider one of those investments in isolation. Because HL didn't recommend one investment in isolation. In advising Mr B, HL had to look at his portfolio overall and decide a suitable mix of investments – which may have included, to varying degrees, investments which complemented each other in terms of risk and in terms of Mr B's objectives, resulting in a portfolio that was suitable overall.

Mr B objected to comments made about his capacity for loss. He said it was suggested his losses didn't matter. I'd like to reassure Mr B that if a consumer has the capacity for loss that doesn't mean the losses don't matter. It means that, like Mr B, the consumer will still have the means to absorb and potentially recover any loss. If Mr B had incurred a loss that was caused by an error on the part of a business, I'd look to have that business compensate Mr B for the loss – even if he had the capacity to withstand that loss.

Moving on to the specific recommendations HL made in this case I'm satisfied that when looking at Mr B's portfolio, the recommendations matched his appetite for risk and his objectives. The fact find HL carried out showed Mr B had sufficient income already to meet his day-to-day needs and he had a substantial cash buffer. HL wrote in its suitability report that Mr B had agreed his attitude to risk was medium. And Mr B didn't dispute that at the time.

So I'm persuaded Mr B was comfortable with a portfolio that consisted mostly of equities which were higher-risk than cash, with a sizeable proportion of fixed income investments which helped offset the risk of equities. And what he was after was in fact a rebalancing exercise which HL carried out in a way that was consistent with Mr B's objectives. In this context, I'm not persuaded that recommending Mr B retain and increase his investment in the WEIF was unsuitable.

Apart from the WEIF, Mr B had another 44% in UK equities (including a mix of large cap, mid-cap and micro-cap UK companies) which made his portfolio primarily UK equity based with significant but lesser amounts of international equities, and 30% in fixed income assets. Based on everything HL knew about Mr B, I'm satisfied these investments were consistent with what he was looking to invest in and aligned with his objectives as well as his attitude to investment risk. So I can't say the portfolio as a whole was unsuitable to his needs.

In terms of the recommendation to retain and increase investment in the WEIF, I'm satisfied it wasn't unreasonable in the context of Mr B's circumstances and objectives and the other investments that formed part of HL's recommendations. Much of the WEIF was invested in FTSE 100. And even if exposure to medium and small companies had begun to increase, I don't consider that made it unsuitable as part of the medium-risk portfolio HL was recommending.

I can't say the WEIF didn't have a place in Mr B's portfolio, as long as the amount invested in it wasn't disproportionate. I say this because it's entirely acceptable for a portfolio of investments to have a mix of investments which represent a higher or lower risk than a consumer is willing to take, as long as the overall portfolio remains suitable for that consumer. In this case, I don't consider the WEIF was inherently unsuitable or that it represented a higher risk than Mr B was willing to take at the time – but even if I did, I don't consider the amount HL recommended Mr B invest in the WEIF meant his portfolio was unsuitable as a result.

Mr B said HL had a vested interest in selling the WEIF to him. He said by selling shares it recommended he buy, HL showed its advice was motivated by self-interest rather than the interests of Mr B, the customer. But I can only uphold his complaint about the advice HL gave him if I think the advice was unsuitable. And, having considered everything, I can't conclude the advice was unsuitable.

In terms of ongoing advice, in its communications from 2017 onwards, HL told Mr B several times, when he emailed about the poor performance of the WEIF, that it couldn't advise him because he was now an execution-only customer. That was after having paid for and received one-off advice. When HL told Mr B it hadn't lost its confidence in Woodford, I don't accept that that was advice, particularly because HL had told Mr B multiple times that it couldn't advise him, and because the advice process involves considering the consumer's circumstances, experience and attitude – and HL made clear it wasn't doing that. Although HL at times passed on research pieces to Mr B, they weren't personalised and didn't make recommendations to him. Whether the research pieces and endorsements generally were fair and reasonable had been dealt with under a separate complaint.

For all these reasons, I'm not persuaded HL treated Mr B unfairly in the particular circumstances of this case. I accept that a large part of Mr B's dissatisfaction has been caused by the poor performance of the WEIF in subsequent years. And he now faces a loss from his investment in that particular section of his portfolio. I sympathise with Mr B over that loss. But I'm not persuaded it was caused by any failings on the part of HL.

My final decision

For the reasons I've set out above, my final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 25 October 2024.

Lucinda Puls
Ombudsman