DRN-4306183

The complaint

Mrs B complains that Hargreaves Lansdown Advisory Services Limited (HLAS) gave her unsuitable investment advice. She says that by December 2017 almost 11.5% of her portfolio was invested in the Woodford Equity Income Fund (WEIF) and this was too much.

What happened

Mrs B approached HLAS for advice in April 2017. As part of its fact finding, HLAS established that:

- Mrs B had 'fairly limited' investment knowledge and mostly been guided by her husband historically. However, she had been investing since mid-1990 and therefore had 'plenty of experience of the potential volatility of the stock market having invested through stock market downturns in 2001 and 2008/9'. HLAS noted that during these downturns Mrs B didn't 'panic sell'.

- Overall Mrs B had capacity to deal with potential losses, and even if the portfolio were to suffer a drop in value of around 50% it wouldn't impact on their current or future standard of living given hers and her husband's strong financial position.

- Mrs B's combined income with her husband exceeded their household's monthly outgoings, and as such she didn't require a large cash fund.

- Mrs B was considering retiring after the age of 60 (from 2023 onwards), but Mrs B was also considering working some hours after that age. Regardless, Mrs B and her husband were happy with the projected income from their various pension schemes, and so this portfolio didn't form part of their objectives for their retirement.

- Her ideal asset mix involved investing primarily in equities because the primary consideration with the money was to achieve long term growth. In addition, Mrs B had no short term objectives with the money, and 'had a good understanding of risk and reward'.

- Mrs B was happy to manage the portfolio going forward, but was looking for advice from HLAS to help her rebalance her investments. She confirmed she wasn't looking for an ongoing review service or advice.

- Overall, Mrs B and her husband were 'happy with their current situation' but were asking for advice 'regarding rebalancing the current portfolio'. Neither Mrs B nor her husband had any 'short term needs' for these funds, and 'no firm plans on when [they] may eventually access' them. Therefore 'any movements in value both wouldn't affect [their] current standard of living or any future plans'.

As a result of this review, HLAS recommended that Mrs B invest her £135,000 (split between her ISA and her SIPP) between 12 different equity funds. These were focused primarily in the UK, with some exposure to the US, Japan and Europe.

Of relevance to Mrs B's complaint, HLAS recommended Mrs B have 11.5% of her portfolio invested in the WEIF. At the time, the WEIF was an all equity fund, predominantly invested in the UK. A factsheet from October 2016 shows that over 64% of the WEIF was invested in medium, large and mega capped companies, with a focus on healthcare, financials, consumer goods and industrials. The factsheet explained that the fund aimed to provide a reasonable level of income together with capital growth.

And it said that it would invest primarily in shares of companies listed in the United Kingdom, although it could also invest in unlisted companies, overseas entities, and derivatives.

Mrs B in fact had already invested in the WEIF of her own accord – and by March 2017 had just over £20,400 invested in the WEIF between her SIPP and her ISA. This meant that the net effect of acting HLAS's recommendations was to rebalance, and in fact reduce, her exposure to the WEIF.

Mrs B accepted the recommendations, and the investments were made over the course of the following 6 months.

Following the suspension and subsequent liquidation of the WEIF, Mrs B complained. HLAS looked into her complaint, but didn't think it had done anything wrong. It explained the reasons why the WEIF had been included on Hargreaves Lansdown's Wealth lists and explained the recommendations she had been given in 2017.

It said that it considered the recommendation to invest a portion of her funds in the WEIF was suitable for her and aligned to her desired asset allocation. However it said that there couldn't be any guarantees in relation to performance – and, after the advice was provided, the decision to remain invested in the WEIF was Mrs B's.

Mrs B remained unhappy and referred her complaint to this service. She said that the advice she had been given wasn't appropriate 'given the concerns that the fund was already breaching its investment limits at this time'. She said that HLAS continued to keep the WEIF on its Wealth lists right up until suspension, and didn't indicate there were any issues with the fund until the fund's suspension. She asked that she be compensated for her investment in the WEIF.

One of our investigators looked into Mrs B's complaint, but didn't agree it should be upheld. In short, she considered that the advice Mrs B had received had been suitable for her – and the WEIF was sold alongside a basket of other investments, so it wouldn't be fair to look at that in isolation. She considered that the overall portfolio Mrs B had been advised to invest matched her attitude to risk and her objectives – but there were no guarantees about the performance of the individual funds she was recommended to invest in.

Mrs B didn't agree with the investigator and asked for an ombudsman to decide the matter. She said that her complaint was primarily due to the fund 'breaching its limits' and HLAS still recommending it to her at the time, as well as the fact that it continued to keep the fund on its wealth lists until suspension. She said that her losses amounted to around 42% of her investment in the WEIF, and this was not in line with 'the UK Equity Stock market performance' of the same period.

She also made reference to an article published by Hargreaves Lansdown and further communications in 2019 during which it said that it had been 'speaking to Woodford for some time about the number of unquoted and hard-to-trade companies in his portfolio' – she asked whether these conversations were happening when HLAS recommended the WEIF to her.

She said the comments above clearly showed that HLAS had concerns and failed to communicate them to its clients, and in fact 'pedalled a contra view'. She said that if the WEIF had at least been removed from the Wealth lists, then clients like her who had been recommended an investment in it would've sold at a time when that was still possible. She concluded by saying that it wasn't 'reasonable for HLAS to hide behind the comments made in the suitability letter'.

As agreement couldn't be reached, the case was passed 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.

I've considered Mrs B's comments in detail, and I hope that she doesn't take it as a discourtesy that I haven't replied to every comment she has made. The purpose of my decision is to focus on the key issues in the complaint and provide my reasons for deciding what's fair and reasonable in the circumstances.

I should make clear that this complaint only considers the investment advice she received from HLAS – it did not maintain or put together the Wealth lists, and therefore Mrs B's complaint about the WEIF's continued inclusion on those lists isn't something HLAS is responsible for.

In providing investment advice to Mrs B in April 2017, HLAS needed to follow the rules set out in COBS 9.2 'Assessing suitability'. These rules explained that HLAS needed to:

- Obtain information from Mrs B about her knowledge and experience, her financial situation and her investment objectives.

- Provide advice which met her investment objectives, ensure she was able to financially bear any related investment risks consistent with those objectives and had the necessary experience and knowledge in order to understand the risks involved in the transaction.

My role in looking at Mrs B's complaint isn't to substitute my opinion on what suitable investment advice was for her at the time – it's to decide whether it was fair and reasonable for HLAS to have concluded that the investments it recommended were suitable, based on the information she provided at the time.

As part of this assessment, I'm satisfied that whilst past performance considerations may play a part in the decision to recommend one investment over another, performance isn't something HLAS had the power to predict for the future – and it didn't offer any guarantees about the investments it recommended. This means that the poor performance of an investment is not an indication that it wasn't a suitable recommendation and isn't something that I can take into account when looking at whether HLAS treated Mrs B fairly.

Furthermore, it's clear that Mrs B wasn't sold just one investment – HLAS made a number of recommendations, and it wouldn't be fair for me to consider one of those investments in isolation, because that's not what the adviser was doing. In advising Mrs B, he was looking at her portfolio overall, and deciding 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 Mrs B's objectives, resulting in a portfolio that was suitable overall.

I'm satisfied that when looking at Mrs B's portfolio, it matched her appetite for risk as well as her objectives. As I've noted in the background above, the fact find which HLAS carried out showed that Mrs B had no immediate need for the money she was investing, and was looking for capital growth above all else.

I'm therefore persuaded she was clearly comfortable with an all equity portfolio, and what she was after was in fact a rebalancing exercise which HLAS carried out. This exercise involved reviewing investments she had bought alongside her husband and recommending any changes. Within this context, I'm not persuaded recommending she retain, but reduce, her investment in the WEIF was unsuitable.

I can see that apart from the WEIF, Mrs B had another almost 37% in other UK equity funds (broadly split between large cap, mid-cap and micro-cap UK companies) which made her portfolio primarily UK equity based. The remainder of the portfolio was split between collective investments focused in the US (a fund tracking the performance of the FTSE USA Index), Japan (primarily large and mega cap companies), the far east and Europe. In looking at each of the collectives that Mrs B was recommended she retain or invest in, I can see that they all contributed to the overall suitability of the portfolio by balancing large and stable companies, with funds specialising in opportunities for growth. Based on everything that HLAS knew about Mrs B, I'm satisfied these investments were consistent with what she was looking to invest in and aligned with both her long-term objectives as well as her attitude to investment risk.

In terms of the recommendation to retain some investment in the WEIF, I'm not clear what breaches Mrs B is referring to (in terms of technical breaches, there were no reportable liquidity breaches by the WEIF in 2017 that I'm aware of) – but I'm satisfied it was clearly in line with the other investments that formed part of HLAS's recommendations. In April 2017 the WEIF was very much an all equity UK fund, with some exposure to unquoted stock and smaller companies. It was in line with the types of investments she was looking for, her exposure to it was limited to around 11.5% (less in reality), and the performance of the investment to that point had been encouraging.

In other words, I'm not persuaded there was anything inherently unsuitable with the WEIF or inconsistent with what Mrs B had told HLAS she was looking to invest in. As I've noted above, Mrs B was after equity investments for the long-term and she had already invested over £20,000 in the WEIF herself. I'm therefore persuaded it was fair and reasonable for HLAS to consider it a suitable investment for her, based on what it knew about her, and recommend she retain her holding in it.

For all these reasons, I'm not persuaded HLAS treated Mrs B unfairly in the particular circumstances of this case.

I accept that a large part of Mrs B's dissatisfaction has been caused by the poor performance of the WEIF in subsequent years, and she now faces a significant loss from her investment in it. However, I’m not persuaded this is something which HLAS could’ve foreseen or known about in advance, and instead I’m satisfied this was an unfortunate consequence of investing in an equity fund.

My final decision

My final decision is that I don’t uphold Mrs B’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs B to accept or reject my decision before 18 January 2024.

Alessandro Pulzone
Ombudsman