

The complaint

Mr K complains about Link Fund Solutions Limited's role as Authorised Corporate Director (ACD) of the Woodford Income Focus Fund (WIFF). He complains that it did not properly discharge its role, and if it had done, he would not have suffered the financial losses he is facing.

What happened

In July 2018 Mr K invested around £17,500 in the WIFF via a broker I'll refer to as HL. Link (Capita Financial Managers Limited at the time, later acquired by Link and hereafter referred to as Link) was the nominated ACD of the WIFF, and consequently responsible for overseeing how the fund was managed by the appointed investment manager – Woodford Investment Management (WIM).

At the time of the launch of the WIFF both WIM and Link were responsible for managing another equity fund, called the Woodford Equity Income Fund (WEIF). This had been launched in 2014. There was a degree of overlap between the WIFF and the WEIF in terms of underlying assets, but there were also some important distinctions – chief among these was the WIFF's purpose to deliver a higher yield than average, with no appreciable exposure to unlisted securities.

The performance of both WIFF and WEIF was disappointing from 2018 onwards, and in June 2019 Link took the decision to suspend dealings in the WEIF due to concerns about the liquidity of the fund and its ability to meet ever rising redemptions.

In October 2019, after Link's decision to close the WEIF and begin its liquidation, WIM resigned as investment manager of the WIFF – so Link took the decision to briefly suspend dealings in the WIFF between October 2019 and February 2020, and the fund was reopened with a new investment manager.

In August 2021 Mr K complained to Link. Link looked into his complaint and provided a final response in October 2021. In summary, it didn't think it had done anything wrong and said that it had always acted in the best interests of investors in the WIFF.

Mr K remained unhappy and referred his complaint to this service. One of our investigators looked into his complaint, but didn't think it should be upheld. In summary she said:

- Link's actions were consistent with the relevant rules, and importantly, she found insufficient evidence that WIM did not invest in assets which were not in line with the KIID or the fund's mandate.
- She was satisfied that it was fair and reasonable for Link to have suspended the fund as and when it did.
- She didn't think the degree of overlap between the WIFF and the WEIF was inappropriate, nor in breach of any relevant rules.

- She found that the appointment of another investment manager, who was regulated by the FCA and had the required permissions was fair and reasonable and found insufficient evidence that it was inappropriate.
- She didn't think the performance of the WIFF was a relevant consideration, primarily because it wasn't guaranteed and could not be predicted.
- She thought there was sufficient information provided to Mr K about the WIFF directly from Link either on its website or via Mr K's broker.

Mr K didn't agree with the investigator, and provided detailed comments in response. Link also provided detailed comments in response. I've set out summaries below.

Summary of Mr K's comments

- He said that he had researched WIM and Mr Woodford over a number of years, and had immersed himself in the literature. The common consensus was that *'the failure of WIM's funds was a scandal, the biggest financial scandal in Europe for the past ten years'*. He said that the investigator's opinion that the losses in the fund were caused by movements in the market showed that she had not done her research.
- The failures of WIM's funds *'had little to do with the market'* but were in fact *'driven by bad investments'*. He acknowledged there were also negative market movements, but these did not *'generally cause funds to go bust and be suspended'*.
- Link needed to run the fund with the best interests of investors, and in order to do this it needed to be *'physically and practically engaged'*. He said the vast amount of evidence showed that it wasn't.
- It wasn't accurate to conclude that the WEIF had nothing to do with the WIFF, and Mr K said that *'failure was evidentially building from the very start of WIM in 2014, and more definitely from mid-2017 when the run on the WEIF, which eventually increased to cause its failure, and spilled over to severely negatively impact on the WIFF'*.
- Some of the investments in the WIFF were *'unwise, sometimes gambling and worse'* and Link failed, if it ever tried, to manage Mr Woodford properly. Link's failure was that it was not involved enough or proactive enough, and *'the whole market knew this'*. He said that Link suspended both WEIF and WIFF far too late and *'only because they were forced on Link'*.
- He said there was evidence at an early stage that WIM wasn't being run properly, and Link ought to have been aware of this. He queried what mechanism there was for an *'out of control fund manager'* and queried what specific actions Link was engaged in to ensure the funds were being run in the best interests of investors.
- Mr K reiterated that the WEIF failed, *'WIM and Mr Woodford became toxic and that inevitably fed into at least part of the reason for the failure of the two smaller funds'*. He said that if Link carried any responsibility for the failure of the WEIF, then it was *'by default, also guilty in part of the failure of the other two funds'*.
- Mr K provided resources which outlined the role of an ACD and emphasised

that although Link was entitled to delegate responsibility for making the actual investments, the ultimate responsibility it had could not be abdicated.

- Mr K said that if Link had been monitoring WIFF and its investments in line with what he had set out were its obligations, then it could not have been happy with the performance of Mr Woodford in relation to the investments made.
- Mr K complained about the valuation process for the fund's assets and claimed that Link was *'far too hands off, when they should have been hands on'*. He said that as fund managers, Link retained responsibility and it failed to control WIM.
- He claimed the high income the fund was targeting reassured him that he was investing in a *'relatively safe fund'* because only *'solid, successful companies'* could yield that level of income. But the fund was clearly not what it was advertised as, and never hit the target income it had. He also said it did in fact invest in illiquid companies, or small companies that it should never have invested in – and Link knew or should've known this at the time.
- Mr K said that the absence of rules around the overlap of assets between different funds didn't mean it was right for it to happen and Link's overall obligation to *'manage the fund(s) and ensure they were managed in the best interests of the investors'* meant that Link needed to *'engage in anything and everything to do with the fund and which could impact on the performance of the funds'*, and this included *'the management within WIM, the problems with due diligence and the faulty/fraudulent valuation process'*.
- Mr K said that the crux of his complaint was that Link didn't engage as it should have, and if it had done so, it would've *'sorted Woodford out, perhaps sacked him, suspended all three funds way earlier than they were'* and *'investors losses would have been much less and possibly even the whole scandal could have been avoided'*. He said that looking at the values of the three funds month on month showed they were *'failing'*. He said that it was a *'no-brainer that the WEIF should have been suspended much earlier, very probably before the end of 2018, given that it had been falling in value from mid-2017, and that the two smaller funds should have been suspended at the same time'*. He said that Link failed to do this because it wasn't proactive enough and wasn't hands on.
- Mr K said that when WIM was replaced as WIFF investment manager, it repositioned it *'almost immediately, selling holdings at a loss to the investors in most circumstances and buying back what they would have invested in had they launched a fund from scratch'*.
- Mr K said that the fund was performing badly in its class, and this didn't reflect well on Link's role in ensuring it was *'operating in the best interests of investors'*. He made several comments about Link missing opportunities, from day 1, to take action but failed to do so.
- He said that Link's role as ACD involved reviewing the investments made, even if not at *'root level'*, and because it was ultimately responsible for the investments WIM made, it was also responsible for the fact that Woodford *'invested in so many losers'*. He said Link ought to have been aware that WIFF had over 30% invested in housebuilders, and claimed this showed poor diversification and Link should have prevented this from happening.
- He said WIFF's new investment manager had said that the fund had consisted

of a number of illiquid companies which had proved difficult *'to get rid of'*, and this shouldn't have been the case with the WIFF. He said Link should've stopped these investments because they weren't consistent with the WIFF's aim. He said that this was clearly one of the reasons the WIFF didn't hit its income target.

- He queried why the fund was considered higher risk and above average volatility in the KIID, and claimed that *'in fact, the WIFF was amongst the lowest risk of equity funds that you can get'*. He said that *'whilst equities can always go backwards, such a fund, whilst it can always go backwards, should not perform nearly as badly as the WIFF did, has and is, and certainly shouldn't end up needing to be suspended'*. He said the WIFF failed because of WIM's consistently bad investment decisions, and Link did nothing to stop it from happening.
- Mr K also claimed that it was clear that *'poor performance was fundamental to the suspension'* and that to say otherwise *'is just wrong, and that's not an argument but another evidential fact'*. He reiterated his belief that what was happening with the WEIF had negatively affected Woodford's other funds, and therefore Link's role ought to be considered in all of them together.
- He listed a series of actions that Link ought to have taken which included *'engaging more robustly'*, prevented WIM from investing in more illiquid companies, liaised more with the FCA, sacked or disciplined Woodford, and suspended the WEIF, WIFF and WPCT at the same time and much earlier than June 2019.
- Mr K said there were 29 common holdings between the WEIF and WIFF in March 2019. He also queried how the WIFF, if it indeed had 198 investments at one point in time, failed – he said this *'could only be, as already pointed out, the impact of the WEIF's collapse and toxicity of the Woodford name, combined with poor performance'*.
- Mr K claimed that WIM and its failings had nothing to do with market performance, other than the market initiating a run on the funds. And he said the investigator ought to have taken the performance of the fund into account, because whilst the performance of a fund was usually down to market forces, it wasn't in this case. He said the failure of WIM's funds *'was caused by bad investing over a long period of time'*.

Summary of Link's comments

Link agreed with the investigator but provided detailed comments for my consideration. In summary, it said:

- Link has always acted in the best interests of WIFF investors and complied at all times with applicable regulations. It was not responsible for the decrease in value of the WIFF.
- It reiterated its view that its management of the WEIF was not within the scope of this complaint and Mr K could not *'fortify'* his complaint about its actions in relation to the WIFF by referring to its management of the WEIF.
- In principle it wouldn't be fair to award compensation to Mr K as a result of events or proceedings relating to the WEIF because:

- Mr K was not an investor in the WEIF;
- Link considered it acted all times in accordance with the relevant regulatory requirements in relation to the WEIF and consequently disputed any liability in relation to its role as ACD of the WEIF;
- Mr K was inaccurate in certain descriptions of the WIFF when he referred to it as having *'failed'* and said that the WIFF had traded continuously since April 2017, except for a brief period between October 2019 and February 2020. It was therefore incorrect to say the WIFF had failed.
- It wasn't relevant to talk about events relating to WIM prior to WIFF's launch in 2017.
- Mr K made a number of comments about Link's valuation of WIFF assets, but it said that Link did not use any specific valuation process because WIFF's assets *'were listed and, therefore, were valued at their quoted price on the market'*.
- Mr K made several allegations that related to the WEIF, and not the WIFF – and the literature he quoted was also about the WEIF and not the WIFF.
- It didn't agree with Mr K that it didn't manage the WIFF in the best interests of investors. It says that it delegated investment decisions to WIM, and it made investment decisions *'on the basis of Mr Woodford's well-established and well-publicised contrarian investment approach'*. It said that many investors *'would have chosen to invest in the WIFF based on Mr Woodford's contrarian approach, in the hope that this approach would cause the Fund to perform well in the long term'*.

It said that provided *'the fund was managed in accordance with regulatory requirements (to which see below) it would not have been appropriate – or in the best interests of investors – for [Link] to intervene in those investment decisions'*. It said this was true regardless of the fund's performance.

- It also didn't agree with Mr K that the KIID was worthless. It said that this was an important document that set out key information about the WIFF, including its risk profile. And it said that Mr K made claims about the WIFF's 5% income yield, but it was not Link's responsibility to guarantee the performance of the WIFF.
- It said that it wasn't accurate to say Link didn't undertake robust monitoring of the WIFF.
 - It said that it closely monitored WIFF's parameters on a daily basis, including daily monitoring of the liquidity profile of the WIFF and;
 - Daily stress-testing using a scenario where there was a deterioration in market conditions and decreased trading volumes in the WIFF.
- It confirmed that the fund did not invest in any unquoted or unlisted assets. It said that *'all the WIFF's assets [were] listed'* and *'the majority of these assets were highly liquid'*. It said that whilst some assets were less liquid, they were all eligible assets in which the WIFF was permitted to invest under the terms of its Prospectus and held in accordance with regulatory requirements. It said that Link

wasn't responsible for WIM's decision to invest in certain listed assets which later became illiquid or, in some very limited cases, delisted.

- It was to be expected that there would be some overlap between the WIFF and the WEIF given they had the same investment manager, who had strong convictions over which assets he wanted to invest in.

It also didn't agree with Mr K's claims about why the WIFF fell in value.

- It liaised appropriately with the FCA in relation to its role as ACD of the WIFF.
- It reiterated that the reason for suspending the WIFF was not because it was being forced to sell assets at unfavourable values, but instead it was suspended *'due to the risk of potential liquidity issues arising from unprecedented redemptions following WIM's resignation, which could have forced the WIFF to sell assets at an undervalue'*.
- It didn't agree with Mr K that the WIFF should've been suspended earlier than it was. It said that suspending the WIFF in June 2019 would not have been in the best interests of investors because there was no particular reason to suspend the WIFF at that time – there were no liquidity issues or other reasons to take this action.
- Further it didn't agree that Link had a responsibility to suspend the WIFF purely on the basis of underperformance. It said that investors assume the risk of their investment, on the basis that it could go up or down in value. There was no guaranteed level of income or performance, and Link's responsibility was only to ensure that the fund was managed in accordance with its documentation and applicable regulatory requirements. Mr K was criticising Link's actions with the benefit of hindsight.
- It didn't agree that it acted in any way inappropriately by appointing a new investment manager when it did. It explained that no *'assets were sold as part of the repositioning process at a material undervalue and no losses were suffered'*. Instead it said that WIFF's share price was higher after the repositioning process than it was at the time of suspension.
- It concluded that Mr K's investment in the WIFF declined because of the performance of the WIFF, and that Mr K took the risk of this happening when he chose to invest in the WIFF. He could've sold at any point, except for the brief period when it was suspended, but chose not to.

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'd like to thank both parties for their detailed submissions, which I've carefully considered in their entirety before reaching my decision. I hope neither party takes it as a discourtesy that I've only summarised their submissions above, and that I don't intend to respond or acknowledge each individual point that has been made. That's not because I've not given each point due consideration, I have, it simply reflects the informal nature of this service. My role is to focus on the key issues in this complaint and provide my reasons.

It's clear that Mr K strongly believes that Link's alleged failures in overseeing the WEIF were material to the WIFF's underperformance, and therefore the loss in the value of his stake in the WIFF. I should be clear that what follows will not attempt to determine or comment on Link's role in how the WEIF was managed. As the investigator has said, and I agree, that is not within the scope of this complaint. This decision is only about Link's actions in relation to the WIFF.

It follows therefore that in my view, it wouldn't be fair and reasonable to uphold the crux of Mr K's complaint, without a proper investigation of how Link discharged its obligations in relation to the WEIF. But even if Link's actions in relation to the WEIF did have a knock on effect on the WIFF (and to be clear, I'm not making this finding), I don't agree this means that Link would be required to pay Mr K compensation.

This is because in my view, the key question is how Link discharged its obligations in relation to the WIFF, and I'm satisfied that there's insufficient evidence to conclude that it didn't act fairly and reasonably, and with due regard to the relevant obligations.

Much of Mr K's comments are about the performance of the WIFF and his claims that Woodford's decision-making was wrong or cavalier. I've considered the detailed comments he makes, but in my view, the bulk of what Mr K complains about is down to one particular element – that the investments which WIM chose to invest in did not perform. Mr K's view is that WIM's model, and Woodford's attitude in particular, ought to have raised concerns about the possibility of underperformance of the WIFF – but I don't agree that this was something that Link was responsible for. It wasn't there to second guess the investment decisions of the manager it had appointed, nor was it there to foresee or anticipate how those decisions would play out in the market. What Mr K is criticising Link for is not stepping in and '*sacking*' Woodford, purely on the basis that he now knows Woodford's investment decisions did not turn out to be profitable.

In response to this I've considered Link's submissions to be persuasive. It has pointed out the fact that most investors would've chosen WIFF as their investment precisely because of Woodford's track record, his investment ethos and style. It has made reference to resources about Woodford's '*contrarian*' approach, and the fact that it might attract periods of under- performance. I'm not persuaded acting in the best interests of investors required Link to step in and change this approach, or second guess it at the first sign of underperformance. Had it done so, the criticism could easily have been that it had fundamentally altered or impinged on the very type of decision-making which investors had chosen to back by investing in the WIFF. Had it stepped in and caused additional underperformance, it could've been held liable for not allowing Woodford sufficient time to see his investment decisions come good.

What all this means is that Mr K's comments and really the crux of his complaint, are rooted in the benefit of hindsight he now has to be able to criticise the choice of assets that WIM ultimately decided to invest the WIFF in. But I'm not persuaded it would be fair and reasonable for me to now be critical of the way Link discharged its obligations as ACD with the benefit of hindsight.

In addition, much of what Mr K says went wrong with WIM and Woodford relates to the WEIF, and not the WIFF. As I've said above I make no comment about Link's role in the WEIF. But I must acknowledge that the two funds were separate, with two separate mandates, different objectives and largely different purposes – and launched at different times. The key issues which affected the WEIF and ultimately led to its suspension and liquidation were quite simply not present in the WIFF.

Mr K makes a number of submissions about the risk of the WIFF, and his belief that the WIFF should not have been high risk. But I'm not persuaded by his submissions. There isn't a general risk that a fund of this type ought to represent. Furthermore, the KIID itself specifies that the fund's risk or volatility rating was based on the benchmark index – demonstrating that funds of this nature *do* carry volatility and the risk of capital loss.

And furthermore, the question in my view is not what risk Mr K believes the fund ought to have represented, but the risk he was told it would represent – either in the KIID or by whoever sold him the investment.

In that context, I've seen insufficient evidence that the WIFF was ever described as anything other than a fund that focused on income producing equities, which carried the usual risks that a fund of this nature carries. It even highlighted the possibility of the fund featuring a '*concentrated portfolio of securities*' – and the KIID highlighted the possibility of the fund being invested in a '*concentrated number of stocks [increasing] the possibility of the fund being more volatile*'. So investors knew that the fund could, from time to time, have a high proportion of securities in one area if Woodford considered that likely to provide positive performance.

As Link says, and I agree, the very principle of investing required Mr K to take the risk that the investment may suffer a loss in exchange for the *possibility* of a profit. I'm not persuaded Link is responsible because Mr K's profit did not materialise, or because his investment is now, with reference to the original price of the WIFF when he invested, experiencing a loss.

Mr K makes a number of submissions around the degree to which the WEIF and the WIFF overlapped in terms of the securities they held. In my view the investigator has properly explained why the degree of overlap was not on its own inappropriate or demonstrative of Link not complying with its obligations. Although the two funds were separate, they were both equity funds focused, at the time, towards the UK market, and managed by the same fund manager. That he chose, for both funds, similar stocks isn't inconsistent with any relevant rule in COLL (the relevant rules set out in the FCA Handbook about Collective Investment Schemes). What is key is whether those stocks were consistent with the aims and objectives of the fund, and I'm satisfied it was fair and reasonable for Link to conclude that they were. As I say below, that those same stocks did not perform as expected or were not as successful as Woodford envisaged isn't something I can be critical of Link for. In my view, its role did not involve second guessing or otherwise guaranteeing the performance of the investment manager's stock selection.

Mr K makes several comments about how the WIFF was subsequently repositioned following the appointment of a new investment manager. But here too, much of his submissions hinge on a brief article – and in my view, serve to demonstrate that a different investment manager would've managed the WIFF differently. It is in my view self-evident that not all income funds will be managed the same, and that investors typically invest or back an investment manager precisely because of their stock selection, track record or otherwise publicised ethos – and they will take the risk that one manager will be more likely to return them a profit than another. Link's role in this context was not to second guess Woodford's stock selection, but to ensure that it was consistent with the aims of the fund and any regulatory obligations. I'm not persuaded there's sufficient evidence to show that the stocks which were selected fell outside of the mandate of the fund. I'm persuaded by Link's submissions that the WIFF did not invest in illiquid or unlisted assets.

Mr K also makes detailed submissions about Link's failure to suspend the fund earlier than

it did. I did not find Mr K's submissions on this aspect persuasive because here too, they were largely based on his assessment, now, of how the fund performed. But the circumstances in which a fund can be suspended are limited and ought to be exceptional – the rules are clear about this. Further, that suspension must only be allowed *'to continue for as long as it is justified having regard to the interest of the unitholders'* (COLL 7.2.1 as it was in 2019).

Guidance from the regulator suggests that suspension *'should be allowed only in exceptional cases where circumstances so require and suspension is justified [...]* *Difficulties in realising scheme assets or temporary shortfalls in liquidity may not on their own be sufficient for suspension'*. Furthermore, any suspension would need to be *'temporary, of minimal duration and [...]* *consistent with the provisions of the prospectus'* (COLL 7.2.2 as it was in 2019).

In my view this means that suspending a fund because of poor performance or because its target yield was not being met would be unlikely to satisfy this high bar – and I'm persuaded by Link's submissions in that regard. Before October 2019 there was simply no basis for it to suspend dealings in the WIFF. And I've seen insufficient evidence that the best interests of investors would've been better served by suspending the WIFF at an earlier date simply because of the WIFF's unsatisfactory performance.

I note, in this respect, that Mr K's holding in the WIFF is performing poorly because he invested in July 2018 – but investors coming to the fund at a later date will not have experienced the same under-performance.

And it is precisely for this reason that the performance of the fund itself, on its own, will usually not be enough to justify its suspension.

The crux of Mr K's submissions around what he thinks Link's obligations required it to do all stem from his knowledge that Woodford's stock selections did not turn out, in the main, to be as profitable as Mr K anticipated they would. Whilst I acknowledge some of the points he has made about WIM and Woodford himself, I'm not persuaded that Link's role in managing the fund in the best interests of investors required them to step in and attempt to alter the basic principle of risk and reward which underpins investments of this nature. I say attempt because I'm not persuaded, as I've said above, that the actions Mr K thinks Link ought to have taken would've necessarily improved WIFF's performance or limited his losses.

Taking everything into account, I'm satisfied Link acted fairly and reasonably as ACD of the WIFF in the circumstances. I say this because:

- Its decision to briefly suspend the WIFF in October 2019, at a time when the investment manager was changing, was not unreasonable and in my view within the range of reasonable actions it was entitled to take in order to safeguard the interests of investors in the WIFF.
- I'm not persuaded, for the reasons I've given, that there were other points in time when such a suspension could've been introduced and met the high bar set out in COLL.
- The evidence I've seen shows that it lifted that suspension as soon as it could, charged no fees for its services during that period, and the performance of the fund was largely unaffected. This was consistent with its obligations in COLL.
- I'm persuaded there's no evidence that it adopted a particular valuation process for the securities held by the WIFF, given that these were listed securities with a

market value.

- It appointed a new investment manager at the first opportunity after WIM's resignation. I've acknowledged that investment manager has made changes to the fund, but I don't consider that inherently means the fund was not managed in line with its prospectus or mandate to begin with.
- There's insufficient evidence to persuade me that Woodford was allowed, by Link, to invest in securities which were not consistent with the aims and objectives of the WIFF – there was no guarantee that those securities would perform in the ways investors or Woodford himself anticipated. I'm not persuaded poor performance of the fund automatically means it wasn't properly run, nor that Link didn't discharge its obligations.
- Mr K has conflated the inherent issues in the WEIF, to do with how liquidity was managed as well as some of the securities which it was invested in, with the WIFF. But whilst there was some overlap in securities between WEIF and WIFF, this was not inconsistent with any relevant rule or obligation.

Furthermore, the evidence shows Woodford did not buy any illiquid or unlisted stock for inclusion in the WIFF – though securities can become unlisted at future dates in ways which aren't predictable.

- I agree that the largest subsequent shock to the value of the fund was caused by the pandemic, and this was not something Link had any control over.

I acknowledge Mr K's profound disagreement with the investigator's outcome and, therefore, with this decision. But my role requires me to remain impartial and, importantly, to discount the benefit of hindsight as a consideration in my decision making. In that context, and taking into account everything I've said above, I'm satisfied Link acted fairly and reasonably in relation to its role as ACD of the WIFF – and I don't consider it is required to pay Mr K compensation.

My final decision

My final decision is that I don't uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 27 March 2024.

Alessandro Pulzone
Ombudsman