

## **The complaint**

Mr K complains Hargreaves Lansdown Advisory Services Limited (HL) misadvised him to invest in the Woodford Income Focus Fund (WIFF). He says he made a substantial financial loss as a result of this advice and misleading information. And he'd like compensation.

Mr K's wife, Mrs K, has made a similar complaint. Mrs K's complaint is dealt with in a separate decision.

## **What happened**

### The WIFF

The WIFF was launched in April 2017. It was managed by Neil Woodford, who left Invesco Perpetual in 2013 to set up Woodford Investment Management (WIM).

HL accepted that from 2018 onwards the performance of the WIFF was disappointing. In October 2019 WIM resigned as investment manager of the WIFF, and the Authorised Corporate Director of the fund took the decision to suspend dealings in the fund until February 2020. At that point dealings in the fund were permitted again, and the fund was being managed by a new investment manager.

At the time of Mr K's investment WIM was also the investment manager for Woodford Equity Income Fund (WEIF). The WEIF was launched in May 2014. Until the second half of 2017 the WEIF broadly tracked the benchmarks (albeit whilst providing a greater return and experiencing some more volatility). 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 the Authorised Corporate Director of the fund removed WIM as the investment manager. The WEIF didn't trade again. Later in 2019 the Authorised Corporate Director decided to liquidate it.

### Mr K's dealings in the WIFF

In June 2018 HL gave Mr K one-off advice.

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

- Mr K was retired, with income that met his essential day-to-day needs. He had an existing investment portfolio made up 79% equities and 21% fixed interest assets, and he had a cash buffer.
- Mr K rated his risk tolerance as 5 out of 7.

- Mr K's objective was to produce a specified amount of additional income to pay for travel, without eroding his capital.
- Mr K had sufficient capacity to risk making a loss because he had guaranteed income that covered his essential expenditure and a substantial cash buffer which he could use if markets became extremely volatile.
- Mr K was comfortable accepting volatility because he had held equities during the 2008 market crash and he was now more experienced so he '*wouldn't panic*' if it happened again. And he felt that additional diversification and input from fund managers would give him peace of mind.
- Mr K's ideal asset allocation was 80-90% managed equities and 10-20% fixed interest assets.
- HL recommended investing for at least five years, and Mr K planned to invest for 5-10 years.

The portfolio HL recommended included investing 12% of the portfolio in the WIFF. The portfolio overall contained 11 investments which were a mix of UK equities, international equities and fixed interest assets. The equities recommended were primarily income-focused.

In July 2018 Mr K made the recommended investment.

#### Mr K's complaint to HL

Mr K complained to HL. He said, in short, that it was unfair HL had recommended he invest in the WIFF and that at the time of the advice HL ought to have known the WIFF was a poor recommendation. Mr K said the WIFF shouldn't have been on HL's best buy list. He said if the WIFF hadn't been on HL's best buy list then it wouldn't have been recommended to him. And if it hadn't been recommended to him he wouldn't have invested in it. He wanted HL to compensate him for the reduction in the value of his investment in the WIFF.

In his complaint Mr K set out detailed reasons why he thought HL should've known not to recommend the WIFF by the time it advised him. The reasons included that the WIFF was a new fund when it was added to the best buy list, it hadn't paid the income at the promised rate at the time of the advice, its performance was intrinsically linked to the performance of the WEIF, and Woodford had a poor record and was taking too much risk. Mr K cited a number of sources to show various parties had concerns with Woodford funds by the time of the advice. And he said HL appeared to have recommended the WIFF because of its close relationship with Woodford. He also said HL had concealed relevant information when it advised him, despite the fact that, at the time of the advice, he'd questioned HL's recommendation to invest in the WIFF.

Mr K noted that HL continued supporting the WIFF after the time of the advice – he said the relevance of this was that it consolidated the view that HL acted recklessly in relation to Woodford funds – and that supported his complaint that he was mis-sold the WIFF. Mr K went on to detail reasons he thought HL should've stopped recommending Woodford funds after the time of the advice. And he noted that HL directors sold holdings in Woodford funds while HL continued recommending the funds.

HL looked into Mr K's complaint but didn't agree it had done anything wrong. In summary, it said its advice wasn't unsuitable, and the recommendations were in line with Mr K's objectives and tolerance to risk, and his capacity to deal with potential losses. And including

the WIFF in Mr K's portfolio was aligned with his desired asset allocation. Amongst other things HL also said many of the criticisms of the WEIF which Mr K had cited weren't applicable to the WIFF because the WIFF didn't invest in unlisted securities and so shouldn't have experienced liquidity issues. But the overlap between the two funds did mean that suspension of the WEIF caused volatility in the WIFF.

Mr K remained unhappy and referred his complaint to this service. He said HL shouldn't have advised him to invest in WIFF. In support of this he provided the detailed written submission that had made up his complaint to HL and further comments in response to HL's reply to his complaint.

One of our investigators looked into Mr K's complaint and concluded it shouldn't be upheld. In short, the investigator thought the portfolio HL recommended was in line with Mr K's attitude to risk and wasn't unsuitable for him. In summary, the investigator said the following:

- When recommending investments to Mr K HL had to comply with rules in the Conduct of Business Sourcebook (COBS) of the FCA's Handbook. In summary HL had to get information about Mr K's circumstances, objectives and experience in investments.
- Taking into account Mr K's circumstances, objectives and investing experience at the time, HL's recommendation was reasonable. It matched his objectives and needs. And Mr K had a large emergency fund which gave him the capacity to absorb losses if necessary. And the makeup of the portfolio was similar to the portfolio Mr K had previously been invested in.
- HL couldn't have known how the WIFF would perform in future. HL gave no guarantees about future performance. HL made clear the value of Mr K's investments could fluctuate. And Mr K understood that.
- The fact the WIFF didn't perform as expected didn't necessarily mean it was described incorrectly.
- From January 2017 onwards HL had issued many communications about the WIFF. They focused on the objective of the fund, where it would invest, and the track record of Neil Woodford. The information HL had published about the WIFF was clear, fair and not misleading.
- The overlap in investments between the WEIF and the WIFF, along with the suspension of the WEIF, had caused volatility in the prices of the underlying securities of the WIFF. HL had notified its customers of that in a manner that was clear, fair and not misleading.

HL agreed with the investigator's view. But Mr K didn't. Mr K made a very detailed submission. Amongst other things he said the following:

- To persuade Mr K to invest in the WIFF, HL withheld information that was material to his investment decision. Mr K had questioned the inclusion of the WIFF in the portfolio after investing in a different Woodford fund which had performed poorly.
- HL was aware Mr K wanted a low-risk option and was treating the investment as part of his pension. WIFF was a new fund so didn't match Mr K's low-risk appetite.
- HL should've taken into consideration the performance of WEIF and the fact that WIFF was influenced by WEIF.

- Mr K's attitude to risk is irrelevant in this case because what happened was a scandal, not ordinary market risk. Mr K's attitude to risk also wasn't relevant because he didn't employ HL to give advice based on his attitude to risk. He employed HL to give advice based on his criteria.
- In any case the attitude to risk Mr K discussed with HL was his general attitude to risk, not his attitude to risk in relation to the money he was investing with HL's help. He told HL he was treating the money as part of his pension and so didn't want to take undue risk with this tranche of money.
- In practical terms HL didn't need to obtain information about Mr K's circumstances and experience in investments. It simply had to listen to what he wanted – which was a relatively safe investment producing 4% income – and recommend something suitable for that. HL included a fund that didn't meet the brief but made out like it did.
- Mr K's experience and knowledge and broader financial circumstances weren't relevant.
- Mr K accepted there'd be risk involved in investing. But he'd made clear he wanted the risk to be minimal.
- Mr K minimized risk by investing in funds and taking advice.
- By saying Mr K had sufficient capacity for loss the investigator said Mr K's losses didn't matter.
- Mr K agreed that the overall advice was suitable. But that wasn't his complaint. His complaint was that, within the portfolio, HL mis-sold the WIFF.
- HL didn't need to know for certain how the WIFF would perform. But HL are experts and should take responsibility for making a mistake like this.
- HL couldn't have believed at the time of the advice that the WIFF would perform well.
- The problems that led to the suspension of the WEIF were more significant and widely known than the investigator suggested.

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.

In providing investment advice to Mr K in June 2018, HL needed to follow the rules set out in COBS 9.2 '*Assessing suitability*'. Although Mr K 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 K about his knowledge and experience, financial situation and investment objectives.
- Give advice which met Mr K'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 K, I do need to consider what HL knew about Mr K's circumstances and whether HL gave advice that was suitable to those circumstances.

My role in looking at Mr K'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 K, based on the information he provided at the time.

I'm not looking at the advice HL gave Mr K 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 K were suitable at the time he was given the advice.

Furthermore, it's clear Mr K 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 K, 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 K's objectives, resulting in a portfolio that was suitable overall.

Mr K objected to comments made about his capacity for loss. He said it was suggested that his losses didn't matter. I'd like to reassure Mr K that if a consumer has the capacity for loss that doesn't mean the losses don't matter. It means that, like Mr K, the consumer will still have the means to absorb and potentially recover any losses incurred. If Mr K 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 K 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 K's portfolio, it matched his appetite for risk and his objectives. The fact find HL carried out showed Mr K had sufficient income already to meet his day-to-day needs and he had a substantial cash buffer. Information Mr K gave HL at the time indicated he was comfortable being invested primarily in equities, and he had experience in that, but he wanted the peace of mind of being invested in managed funds, having a diversified portfolio, and having his investments chosen for him at the outset.

So I'm persuaded Mr K was comfortable with a portfolio that consisted mostly of income-focused equities which were higher-risk than cash, with a smaller proportion of fixed income investments which helped offset the risk of equities. And it was reasonable for HL to recommend that given Mr K's objective of producing a set amount of additional income while protecting his capital. So I'm not persuaded the recommendation for Mr K to invest part of his portfolio in the WIFF was unsuitable.

The WIFF was a UK equity fund, targeting a return of around 5%. In combination with the other funds in the portfolio HL recommended for Mr K, this was in line with the investment objective and within the assessed risk appetite. Exposure to WIFF was 12% of the overall portfolio. A higher risk fund can form part of an overall medium or even lower risk portfolio (and vice versa).

Having considered carefully all the available evidence, including the detailed submissions from Mr K, I've seen insufficient evidence there was an inherent reason which meant the WIFF was unsuitable for him.

Mr K has said the performance of the WEIF should've meant HL didn't recommend the WIFF. Whilst the WEIF contained some illiquid investments and a higher proportion of small cap companies than some of the other managed equities HL recommended, half of it was also still invested in large and mega cap UK companies – and it wasn't included in Mr K's portfolio in any case. Whilst it was underperforming at the time of the advice, I don't consider that alone a sufficient reason to conclude that other Woodford funds were inherently unsuitable for Mr K. HL was entitled to believe that the WIFF remained a good long-term investment and was suitable for Mrs K's portfolio.

The WIFF, which HL did recommend to Mr K, didn't have any unlisted companies and was predominantly invested in UK equities. I can't say the WIFF didn't have a place in Mr K's portfolio, as long as the amount invested in it wasn't disproportionate. I say this because it is 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 WIFF was inherently unsuitable or that it represented a higher risk than Mr K was willing to take at the time – but even if I did, I don't consider the amount HL recommended Mr K invest in the WIFF meant his portfolio was unsuitable as a result.

Mr K has provided information about the general conduct of HL and its employees in relation to Woodford. The general conduct of HL and its employees is outside the scope of this service's remit. For instance, Mr K said some employees had sold shares shortly before the WEIF was suspended. In response to this, HL has said all trades were disclosed in line with Stock Exchange requirements and were announced on their website at the time. Our service has no regulatory or disciplinary powers, and any wider concerns about the actions of individuals at HL would be a matter for the FCA.

Having said that, I understand Mr K makes the point that HL's conduct shows its advice was motivated by self-interest rather than the interests of Mr K, the customer. But – despite what Mr K's said about conflict of interest and whether or not HL should've continued to consider the WIFF a viable recommendation for its clients – 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 that the advice was unsuitable.

Similarly, Mr K has objected to HL's construction of advice around a best buy list. But how advisers select investments is a matter within their professional discretion subject to the broader COBS rules I've referred to above. The relevant point for his complaint is whether or not the recommendation HL gave him was suitable for him personally at the time – irrespective of HL's policy regarding its list. And, again, I haven't found the recommendation to include the WIFF in Mr K's portfolio was unsuitable in the circumstances.

Finally, I don't think that at the time of the advice HL unreasonably withheld any information from Mr K which would've caused him not to invest in the WIFF. HL's view was that the WIFF was a suitable investment. It was entitled to hold that view and to tell Mr K the reasons why it held that view. HL discussed investment risk with Mr K and so I think he was

sufficiently aware that it was possible his investments, including the WIFF, might not perform as he expected or hoped.

For all these reasons, I'm not persuaded HL treated Mr K unfairly in the particular circumstances of this case. I understand why Mr K was disappointed with the performance of the WIFF. And I do sympathise with him over the value he says his investment has lost. But I'm not persuaded the loss he suffered 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 K to accept or reject my decision before 28 October 2024.

Lucinda Puls  
**Ombudsman**