

## The complaint

1. Mr C's complaint is about the actions of Hargreaves Lansdown Asset Management Limited ("HL") in relation to the CF (later LF) Woodford Equity Income Fund ("WEIF").
2. Mr C invested in the WEIF through his HL account when it launched in 2014, and made further investments in 2015, 2016 and 2017. Mr C sold some of his units in the WEIF in October 2018 but held the remainder until the WEIF was suspended in June 2019.
3. In his initial complaint to HL Mr C said, in summary:
  - HL should give accurate and current information to enable its clients to make their own informed financial decisions.
  - HL promoted the WEIF since its inception and, based on the information provided by HL, he has invested a large share of his portfolio in the fund.
  - He received information over the years from HL's investment guides and publications, which quoted numerous positive comments from HL regarding the WEIF.
  - He relied on information provided by HL to make his investment decisions but HL was totally incompetent when providing information regarding the WEIF. At no point did HL give any indication that the WEIF was in trouble or at risk. It instead kept promoting the fund right up until its suspension. It was still on the Wealth 50 top funds until the day its suspension was announced.
  - His spring 2019 investment report was sent to him in May 2019 and did not highlight any concerns about the WEIF, which was suspended on 3 June 2019 – only days later.
  - HL was responsible for the research, analysis and monitoring of the WEIF. It continued to promote the WEIF even though it was quite evident that the fund was at risk. Investors were not being provided with accurate and current information.
  - He is retired and has invested his life savings using HL's financial analysis, information and recommendations. He would have reduced his stake in the WEIF if he had received or read any negative reports from HL.
  - When referring his complaint to us, Mr C added that he feels HL should have highlighted concerns to him sooner so he could have acted. He said he only properly knew of the issues with the WEIF when the fund was suspended. He got concerned beforehand due to the falling price, but he had been assured by HL it was all okay.
4. And in reply to HL's response to his complaint Mr C made the following further points:

- HL's financial experts who audited this fund would have identified that WEIF had an unacceptable level of hard to sell illiquid assets in its portfolio. This would have made this fund a high risk investment. However, Hargreaves Lansdown promoted the WEIF as a low to medium risk investment. Either its fund researchers are incompetent or they identified the issue and did not inform its clients.
- He took up HL's offer of a financial review with a financial advisor in March 2019. She reviewed his portfolio and give him no indication that the WEIF was at risk and confirmed to him that his investments were sound.
- He checked his portfolio regularly on the HL website and platform. He would have reduced his stake in the WEIF within his portfolio if he had received, or read, any negative reports from HL.

## **What happened**

### **The WEIF**

5. 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 (I will refer to "Link" throughout).
  6. Our investigator, when setting out the background in his view on this complaint, provided a summary of the performance of the WEIF. I have considered a graph from Morningstar which shows the performance of the WEIF against benchmarks, from launch. This shows:
    - The WEIF broadly tracked the benchmarks (albeit whilst providing a greater return and experiencing some more volatility) until the second half of 2017, when there was a significant fall which was not experienced by the benchmarks.
    - It began to significantly underperform benchmarks from early 2018 and that the performance followed a very different pattern to the benchmarks from early 2019 to the date of suspension
  7. Alongside this, the fund began to see significant outflows from mid 2017, falling from around £10bn of assets under management to around £3bn in around two years.
  8. 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 fund. Link removed WIM as the investment manager around this time.
  9. The fund did not trade again. Later in 2019, Link decided to liquidate the fund. Investors have since received payments as and when the fund's assets have been sold. A small amount remains invested in assets which are not liquid i.e. cannot currently be sold.
- ### **HL's communications relating to the WEIF**
10. HL's relationship with WIM and the WEIF began prior to the fund's launch. HL met

with WIM in early 2014 and decided to promote the WEIF to its customers and visitors to its website ahead of the fund's launch. The WEIF was the subject of, or featured in, many communications from HL over the period from the fund's launch to its suspension. HL's communications relating to the WEIF can be categorised broadly as follows:

- Promotion of the WEIF at its launch by letter and through website articles and emails.
  - Ongoing promotion of the WEIF through website articles (and, in some instances, emails alerting the recipient to the article).
  - Updates on the WEIF through website articles (and emails alerting the recipient to the article).
  - The inclusion of the WEIF in "best buy" lists – called the Wealth 150 (which had a subset of discounted funds called the Wealth 150+) and, later, the Wealth 50 – both of which were shared on its website, through emails and via Wealth Reports, which were included in the Investment Times sent to its clients by post.
11. HL has provided us with a log of all the emails it sent to Mr C specifically, and details of the communications Mr C received at the launch of the WEIF.

#### **The Wealth list**

12. HL published a list of what it considered, in its view, to be the "best" or "favourite" funds. This was initially called the Wealth 150 (and a subset of this, featuring discounted management charges for HL clients, the Wealth 150+) then later the Wealth 50 – I'll refer to these generally as the Wealth List. The WEIF featured on the Wealth List from its launch until its suspension.
13. I understand the list was available on HL's website to any visitor and also sent to all customers on its general mailing list who had elected to receive communications, including Mr C, alongside the bi-annual Wealth Reports published by HL. HL says the list was updated from time-to-time with funds being added or removed as a result of the ongoing cycle of review, monitoring and analysis of funds by its investment team. From the launch of the WEIF until the June 2018 Wealth Report publication, the introduction in the Wealth Report was as follows:

##### *"The Wealth 150*

*The Wealth 150 represents what we believe are the best funds across the major investment sectors.*

*It is the product of rigorous mathematical analysis, thousands of hours asking searching questions of fund managers, and detailed assessments of their investment strategies. It is easy to look at past performance and identify funds which have performed well in the past. We dig deeper to identify the funds we believe are most likely to perform well in future. We feel the performance of the Wealth 150 has been outstanding; see right for details [which referred to past performance data].*

##### *The Wealth 150+*

*We have used our position as the UK's largest broker to negotiate even lower fund*

*charges for our clients on what we believe are some of the best funds available. The Wealth 150+ is the result, and these funds represent what we feel is the ultimate combination of first-class management and low charges.*

*The Wealth 150+ is a unique benefit to Hargreaves Lansdown clients - no other broker offers the same range of funds with the same low fund charges."*

14. In June 2018 this introduction was changed, and covered both the Wealth 150 and the 150+ subset, as follows:

*"To help you find the funds with the most potential, there's the Wealth 150. It's a list of what we think are the best funds across the major sectors. Anyone can look at past performance and find funds which have performed well. But we dig deeper to find the funds we think can perform well in future. We spend thousands of hours crunching the numbers, and thousands more meeting fund managers.*

*In many cases we've also been able to negotiate reduced management charges for our clients. The Wealth 150+ is a list of the funds we think have both superb performance potential and the lowest possible fees."*

15. In January 2019 the Wealth 150 was replaced by the Wealth 50. This was, essentially, a shortened version of the Wealth 150. The introduction in the Wealth Report was as follows:

*"Over the years though, we've refined our process and become better at picking winners. Our mathematical models have evolved to become more sophisticated, and we're increasingly picky when we choose funds. As a result the Wealth 150 has progressively shrunk in size.*

*At the same time our clients have told us the current list is still too hard to choose from.*

#### **INTRODUCING THE WEALTH 50**

*We've made a tighter, more focused list and renamed it the Wealth 50. We took this opportunity to renegotiate with the fund managers who made our shortlist, and as a result lots of the funds are now available with even bigger discounts on their annual fund charges. We use your collective buying power to benefit you.*

*We won't get it right all the time. Not every fund on the list will go on to outperform, and a tighter list means some good funds will inevitably be excluded.*

*But we're patient investors, and if we still have conviction in a manager, we're likely to stick with them when they go through a poor period.*

*The HL investment team spent hours agonising over which funds to include. We do put our heart and soul into the job!*

*I hope you find the new Wealth 50 list helpful in choosing funds to meet your needs and hopefully grow your wealth."*

HL made similar introductions to the Wealth List online. I have quoted from some examples below

The June 2014 introduction:

*“The Wealth 150 is a list of our favourite funds for new investment in the main sectors. It is the product of rigorous mathematical analysis, combined with thousands of hours of interviews with leading fund managers, to ensure we only bring the very best funds to our clients’ attention”*

*“The Wealth 150 is designed for people who would like to choose their own funds. It doesn’t constitute a personal recommendation”*

The July 2017 introduction:

*“Quality, value, simplicity*

*The Wealth 150+ is a section of our favourite funds available to UK investors. We believe Wealth 150+ funds offer the ultimate combination of first-class long-term performance potential and low management charges. It is designed for people who would like to choose their own funds and doesn’t constitute a personal recommendation.”*

The January 2019 introduction:

*“A shortlist by experts*

*Looking to invest in a fund? With more than 3,000 funds available, the choice can be bewildering.*

*The Wealth 50 can help – it’s a shortlist of our experts’ favourite funds.*

*We’ve spent decades and thousands of hours crunching the numbers, and meeting fund manager, to uncover funds we believe have the most potential in each sector. To date, we’ve had an enviable track record.”*

16. The fund was removed from the Wealth List on 4 June 2019 (after it had been suspended).
17. I have seen the commentary on the WEIF HL included on its entry on the list from time to time, and the bi-annual Wealth Reports which were sent to HL’s customers, including Mr C.

#### **HL’s communications with WIM**

18. As part of its ongoing research HL met with WIM to discuss the WEIF on a number of occasions. These meetings became more frequent in 2017. The investigator considered the notes relating to the meetings on the following dates to be key, and referred to these in his view:
  - 2015 – 7 October
  - 2016 – 14 June, 5 July and 12 September
  - 2017 – 21 February, 2 May, 20 July, 29 August, 6 November and 27 November
  - 2018 – 8 March, 24 April and 8 October
  - 2019 – 19 March, 15 April and 17 April
19. The investigator also considered an email dated 24 November 2017 sent by HL to WIM.
20. At this point I should also say I acknowledge HL’s view that the investigator quoted

selectively from these documents. In my provisional decision I set out in considerable detail many of the key sections from these documents (and those HL later provided to us, mentioned below). As I explain below, I have not included that detail again here – but want to assure the parties I have once again considered everything i.e. all the evidence provided, not just that focused on by the investigator, in its entirety.

### **Mr C's dealings with HL and the WEIF**

21. At the launch of the WEIF, Mr C was an existing customer of HL. Mr C made the following investments in the WEIF through his HL account:
  - June 2014 launch – 30,000 units purchased at a cost of £30,000
  - 7 July 2014 – 3,099.851 units purchased at a cost of £3,120
  - 20 October 2014 – 32,573.29 units purchased at a cost of £32,000
  - 29 May 2015 – 12,804.574 units purchased at a cost of £15,240
  - 15 February 2016 – 36,523.009 units purchased at a cost of £40,000
  - 7 March 2017 – 12,417.502 units purchased at a cost of £15,240
  - 5 December 2017 – 17,681.903 units purchased at a cost of £20,000
22. In total Mr C invested £155,600. Mr C sold 18,887.525 units on 3 October 2018, raising £20,000. He held the remainder at the time of the suspension of the WEIF. By June 2020, Mr C had received payments of £40,384.88 (on 30 January 2020) and £2,722.16 (on 25 March 2020) following the liquidation of the fund. He may have received further payments since this, as I understand some further distributions were made.
23. Mr C may also receive further payments from a redress scheme funded by Link and its parent company, subject to approval by the courts of a scheme of arrangement.

### **HL's response to Mr C's complaint**

24. HL did not uphold Mr C's complaint. It said, in summary:
  - Before the WEIF was included in the Wealth list, its investment research team undertook extensive research across a large number of funds, focused (in part) on fund managers who had added value in the long-term through reputable skill rather than market movements or thematic biases. Its investment team chose WEIF for inclusion in the Wealth list partly on the basis of Neil Woodford's track record as a talented stock picker.
  - Clearly the WEIF experienced a difficult period of performance through 2018 and 2019 and, while that was disappointing, its conviction in its long-term prospects remained. During his career, Neil Woodford had a track record of underperforming for periods but then recovering strongly.
  - Based on its research it believed that, in the long term and once Brexit was resolved, the WEIF had the potential to outperform its benchmark.
  - The decision of Link to suspend the fund following Kent County Council's attempt to withdraw a large sum was disappointing and unexpected.
  - Its opinions on the WEIF have always been properly held and based on the extensive research and due diligence it has carried out. It has always made it clear that there are risks with the fund and there cannot be any guarantees when it comes to investing. It is also the case that, with any execution only service, the

decision to

invest and to remain invested in a particular fund rested with Mr C.

25. In its submissions to us HL essentially repeated the above and made the following additional points, in summary:

- This investment was made of Mr C's own volition – the instruction was accepted on the basis of its Key Features, Terms & Conditions and the Fund's Key Investor Information Document. Mr C's decision to invest in WEIF was not the result of a personal recommendation made by HL.
- The Wealth List (and the inclusion of a fund on it) is not personal advice or a recommendation. This was clearly disclosed through its website and in other communications regarding the Wealth List.
- During 2017, and as part of the ongoing monitoring, it identified that there was an increase in the proportion of holdings in unquoted investments. It continued to monitor the position during 2018 and 2019, and engaged with WIM regarding the steps being taken to reduce the level of exposure to unquoted securities. It updated its clients regularly about these matters.
- In its communications, it also noted the importance of investors diversifying their investments across funds with different styles, approaches and areas of focus.
- It is satisfied that these communications were clear, fair and not misleading. Based on the information known to it at the time, it is of the view it was appropriate for it to retain the WEIF on the Wealth List until it was suspended.
- For the avoidance of doubt, whilst it is now known that WEIF had in 2018 twice breached the UCITS rule that prohibits a regulated UCITS fund such as WEIF from holding more than 10% of its portfolio in unquoted assets, it only discovered this after the suspension of the WEIF, in a letter sent by the FCA to the Treasury Select Committee in June 2019. WIM and Link did not inform it about these breaches at the time they occurred. Further, as each breach was temporary – in that compliance was restored by the relevant month end – it was not identifiable in the regular monthly reports on the WEIF's holdings. It was therefore impossible for it to identify the breach of UCITS limits, or to communicate this to clients.

### **Mr C's submissions to us**

26. In an email to us dated 3 June 2021 Mr C said:

*"I received a redundancy payment of around £90K about 12 years ago which I invested in a fixed rate bonds but as the interest rates came down over the years I transferred monies over to investments and the fund that Hargreaves Lansdown was promoting the most was the Woodford Funds. It was also top of their wealth 50 funds, I also wanted income from my investments.*

*Also in 2014 I looked at my pensions options with a financial advisor and took my pension early and put it into an annuity, part of this annuity included a £100K lump sum which I invested for income and the best one again and the fund that H&L were promoting was the Woodford income!*

*After 2017 I stopped investing in Woodford as it was not performing and I thought I spread my portfolio to other funds.*

*I was continuously getting information from H&L promoting Woodford funds both through their investment times magazines and website. .... I have still got a few emails which still support Woodford even though he was not performing above benchmark but state they think long term he will succeed which I took as its worth holding on to these investments...*

*When I have looked at investing I have always taking (sic) H&L wealth 50 funds to be sound by the high criteria that has to be passed by H&L*

...

*I always assumed the Woodford Income and equity fund was for mainly income and if he changed his strategy it would be minor and still provide good income potential and I did not receive any information regarding the targeted income would reduce significantly favour (sic) of growth.”*

27. Our investigator asked Mr C why he did not invest in the WEIF after December 2017, what specific communications from HL he could recall receiving and if he could remember any particular details of them. In response Mr C said, in summary:
- After 2017 he stopped investing in the WEIF as it was not performing and he thought he should spread his portfolio to other funds.
  - He was continuously getting information from HL promoting Woodford funds both through the investment times magazines and website.
  - When he has looked at investing he has always taken HL Wealth List funds to be sound, by the high criteria that has to be passed.
28. We also asked Mr C if he could set out some further recollections. Specifically, we asked:
- Hargreaves Lansdown has confirmed you sold 18,887.525 units in the Woodford Equity Income Fund from your Fund & Share Account on 3 October 2018, raising £20,000 which was then invested in a different fund. Can you please explain why you sold these units at this time, and invested in a different fund?
  - When you referred your complaint to us you told us Hargreaves Lansdown promoted the Woodford Equity Income Fund as a low to medium risk investment. Can you let us know what specifically you can recall seeing which gave you the understanding the investment was medium to low risk, and when you saw this?
  - When you referred your complaint to us you also told us you were concerned before the fund was suspended, due to the falling price, but you had been assured by Hargreaves Lansdown that all was okay. Can you let us know what specifically you can recall seeing which reassured you, and when you saw this?
29. In response to these questions Mr C said, in summary:
- He sold units in the WIIEF and reinvested in another fund, as he transferred funds across to his ISA following a “bed and ISA” process each year, when he had ISA



allowance available. In this case he sold WEIF but purchased a different fund inside the ISA because he saw the WEIF wasn't doing well and he was getting concerned about its performance, so he invested in a better performing fund.

- When the WEIF was launched HL had sent him a fund factsheet which rated the fund as low to medium risk. This was the original fund factsheet and he doesn't know if it changed over the years.
- The reassurance was given in early 2019 when he met with one of HL's advisors and was told he was managing his investments well, and no concerns about the WEIF were highlighted.

### **The investigator's view**

30. Our investigator concluded Mr C's complaint should be upheld. He said, in summary:

- There is insufficient evidence to say HL's initial communications to Mr C did not meet its regulatory obligations. However, the enthusiastic way in which HL initially recommended the fund as a typical equity income fund suitable for nearly all investors should have been at the forefront of its mind when considering how it made future communications on the fund.
- He was satisfied from the views HL expressed in the notes of the meetings it held with WIM and in email exchanges between it and WIM that, over time, HL developed significant concerns about how the fund was being managed and lost some of its confidence in WIM.
- By 27 November 2017, at the latest, the gap between the views HL was expressing in its communications to Mr C and those it expressed internally became sufficiently wide that HL's communications at this time did not meet its regulatory obligations to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; pay due regard to the interests of its clients and treat them fairly; and to act honestly, fairly and professionally in accordance with the best interests of Mr C.
- Although HL did take some steps in reaction to its concerns, these did not go far enough, particularly given the way in which HL had initially recommended the fund. HL's concerns and its loss of confidence in WIM ought, fairly and reasonably, to have led it, by 27 November 2017 at the latest, to stop advising consumers to consider investment in the WEIF (i.e. to have removed the fund from the Wealth List) and to explain why it had done so.
- Had HL acted fairly and reasonably (and met its regulatory obligations), Mr C would have surrendered his investments in the WEIF, once HL removed the WEIF from the Wealth List and explained why it had done so.
- It is therefore fair for Mr C be paid compensation to put him in the position he would have been in if he had surrendered his investment around this time.

### **Mr C's response to the view**

31. Mr C accepted the view, and made some further comments. He said, in summary:

- He had a large investment in an Invesco Perpetual fund which at the time was run

by Neil Woodford and when he left to set up his own company HL promoted Neil Woodford to the extent that he felt he should transfer his holdings over to the new Woodford funds in 2014.

- When the WEIF was suspended he put a complaint into HL because it was still on its Wealth List funds which had to pass its strict criteria, one of which was that they had to be audited regularly. He asked HL to see the reports from the two years leading up to the fund closing but it refused. It is interesting to now see what HL knew but did not pass on to its customers.

### **HL's response to the view**

32. The below is a summary of what I consider to be the key points made by HL in its response to the view. It is not exhaustive, but I have considered the response in full.
33. On the nature of the service HL provided:
  - HL provided Mr C with an execution-only service. It was not required to advise Mr C on the suitability of the investments he purchased through his account or held within it. Mr C had responsibility for making his own investment decisions and ensuring his investments remained suitable for his needs.
  - The Wealth Lists (and associated communications) were marketing communications to existing and potential investors, rather than the provision of a contractual service to clients. They were a tool for investors to use when making their own investment decisions.
  - It was made clear the inclusion of a fund on the Wealth List did not constitute a personal recommendation that consumers should obtain financial advice if they had doubts about the suitability of an investment. Risk warnings were given. Mr C was also referred to the Key Investor Information Document (KIID) and was required to confirm he had read this when investing.
  - Whilst the Wealth List and associated marketing communications amounted to generic (non-personalised) advice, they did not constitute personal recommendations as to the suitability of an investment for a particular investor.
34. On whether there was a gap between the views HL expressed internally and externally:
  - The communications to clients fairly and reasonably reflected HL's views regarding the fund. It is correct that HL's confidence in the fund's ability to deliver outperformance over the long term was tested at points, but the factors that gave rise to this were clearly and fairly highlighted to customers at the time.
  - Its ultimate conclusion, at all times, was that it retained confidence in the ability of the investment manager to deliver long-term performance. That is the reason the fund remained on the Wealth list until dealings in the fund were suspended in June 2019.
  - It is not appropriate for us to substitute our own judgement, made with the benefit of hindsight, about whether a fund should continue to be included on the Wealth List, for the opinion of investment professionals reached on the basis of their assessment of the information and evidence available to them at the time.

- The mere fact that HL's opinion about a fund was not universally shared by other market participants (for example, other platforms or research professionals) or proved ultimately to be incorrect (i.e. a fund performed poorly) does not mean that HL breached any obligations it owed towards its customers.
  - The central finding that, by November 2017, there was a material divergence between the concerns HL was expressing internally and the views it was expressing to clients externally is flawed as a factual matter. The investigator has selectively quoted evidence, misunderstood or mischaracterised some of the statements made, and ignored other relevant evidence, in reaching this view.

35. On HL's responsibilities:

- Responsibility for poor performance and any non-compliance with applicable legal and regulatory requirements in relation to the management of the WEIF, rests with Link, rather than HL. We have taken no account of this.
- The suggestion that the content and emphasis of HL's later marketing communications should have changed because of the content of HL's earlier launch-related communications represents a fundamental error of law. The content of HL's marketing communications did not vary depending on which specific communications had previously been viewed by or sent to investors, including clients or potential clients.
- The investigator's findings effectively convert an execution-only relationship where HL's platform clients might receive marketing communications amounting to generic (non-personalised) investment advice into a relationship where HL has ongoing obligations towards investors, including an obligation to communicate generic non- personalised advice to investors.
- Execution-only platform investors had no entitlement to receive generic advice.
- It would be unfair to conclude that HL owed positive obligations to investors and potential clients to update the content of previous marketing communications when that content fairly and accurately reflected HL's views at the time it was issued.

36. On the general approach:

- The view represents a significant (and unexplained) departure from applicable legal and regulatory requirements, and the application of those requirements by the ombudsman in previous decisions, which is not justified by the application of any fair and reasonable jurisdiction.

37. On reliance/causation:

- The view contains no detail explaining the specific communications Mr C reviewed or read and how he relied on these communications when deciding to remain invested in the WEIF. Whilst it accepts there is evidence of Mr C making some investments in the WEIF around the time he received marketing communications from HL in relation to the WEIF, there are equally instances where Mr C made investment decisions independently of HL's marketing communications.

- The communications contained detailed information about the changing composition of the WEIF, the period of poorer performance, the risks associated with smaller cap or unquoted securities and the appropriateness or otherwise of the WEIF for those seeking a regular yield of the type that would be produced by a typical equity income fund. Its records show that Mr C accessed its website regularly over the period of his investment and engaged with numerous articles and factsheets published there relating to the WEIF until its gating. It was for Mr C to assess for himself whether he wished to remain invested in the WEIF.
- In the absence of any clear or reliable evidence of Mr C's reliance on the WEIF's inclusion on the Wealth List, it is not reasonable to determine that he would have sold his investment in the WEIF if HL had removed the fund from the Wealth List.
- Exclusive reliance by Mr C on HL's views as set out in the Wealth List would not have been reasonable, given the generic nature of HL's opinions via the Wealth List, the other fund information (such as research updates) made available to investors on its website and given that HL was not, through those communications, recommending an investment in any Wealth List fund as suitable for a particular investor.

38. On compensation:

- The implication of the investigator's reasoning is that all or a substantial portion of HL's platform clients would have sought to sell their investments in the WEIF shortly after a removal by HL of the fund from the Wealth List. It is possible that would simply have led to an earlier suspension of dealings in the WEIF
- There is insufficient evidence to support the £500 award for trouble and upset.
- Mr C would likely have reinvested, had he sold – and compensation should take account of this.
- Again, no account appears to have been taken of the primary responsibility of the investment manager and Link for the losses incurred by investors in the WEIF.

**Further information provided by HL**

39. Following my initial consideration of Mr C's file, I asked HL to provide the following:

- Copies of the KIID (Key Investor Information Document) in place at the time of the investments Mr C made in the WEIF, and evidence he confirmed he had seen/read at the time of each investment.
- The detail of the records it holds relating to Mr C's access to HL's website and his engagement with communications relating to the WEIF.
- And (at a later date) copies of evidence relating to discussions about, and consideration of, the WEIF and its continued inclusion on the Wealth list.

40. The latter consisted of a large number of meeting notes, emails, calls etc detailing internal discussions at HL about the WEIF and discussions with WIM (and occasionally Link). My request was for those documents which we had not seen – of which there was a large number.

41. In my provisional decision I mentioned HL had only partly answered the request relating to the KIID. In its response to me HL highlighted the responses it had made to my request, and I confirm we did in fact receive a full response from it. To confirm, I have now seen copies of the KIID in place around the time of each investment by Mr C.
42. HL also answered the other two requests in full. It has provided details of when Mr C accessed its website and of what he saw.

## My provisional findings

43. I issued a provisional decision in November 2023. In my provisional decision I explained that, having carefully considered all the available evidence, I was not persuaded HL failed to act fairly and reasonably in its dealings with Mr C and that it was therefore fair and reasonable to uphold Mr C's complaint.
44. The key points of my provisional findings were:
  - HL was free to reach a reasonably held view on whether the fund should feature in its Wealth List, and I had not seen sufficient evidence to show its view was not at any point reasonably held.
  - HL took a consistent approach when reviewing whether the WEIF should remain on the Wealth List.
  - I was satisfied that, overall, when communicating its reasonably held view, HL acted in a way which was broadly consistent with its regulatory obligations.
  - It had to be kept in mind that HL was only expressing an opinion about whether it thought the fund represented a good investment opportunity for customers making their own decisions about whether the fund potential, characteristics and risks were right for them.
  - Whilst, in hindsight, it is clear HL's view was wrong, it does not follow, in the circumstances, that it would be fair and reasonable to ask HL to compensate Mr C for the losses he has suffered.

## HL's response to my provisional findings

45. HL accepted my decision overall, but made some points about the detail I had included in the background and findings. For example, it corrected the dates of one of the meetings between it and WIM I had referred to, and explained the distinction between its Wealth Report and its Wealth List.
46. HL also made some submissions about the extent to which I had quoted from its internal meeting notes, emails etc, and questioned the appropriateness of including that in a final decision which was to be published (referring, amongst other things, to confidentiality and commercial sensitivity).
47. HL also made the following points:
  - Paragraph 39 of the provisional decision says it said, in its response to the investigator's view, that "*The suspension of the fund would have occurred earlier if it had pulled it from the Wealth list*". This is not an accurate characterisation of its submissions. It challenged the assumption that a majority of clients would redeem investments upon the removal of a fund from the Wealth List, and noted that, had this happened "*it is possible ... that it would simply have led to an earlier suspension of dealings in the WEIF.*" (I have addressed this point above, at paragraph 38, where my summary now more precisely reflects HL's submission).
  - It did not think it was reasonable for me to suggest, in my provisional findings, that the information it had provided to me was information it should have provided previously, or that the availability of that information was what had led to me taking a different

view to that of the investigator.

- Paragraph 145 of the provisional decision refers to the HL internal meeting on 1 December 2017 and notes that "...there is a part which, in isolation, suggests HL decided to withhold information (*"it is not helpful to tell people about the issues and discussions we are having"*)". It considers this statement is misleading and inaccurate – the quote does not include the remainder of the sentence *"because in sharing we could cause the problem we are seeking to avoid"*. Ultimately its decision was that *"on balance [had] confidence in [the] long term ability of the manager – we should communicate with clients about the issues, but in a positive way"*.
- Paragraph 185 of the provisional decision finds, *"HL could perhaps reasonably be criticised for not bringing to light more that it was uncomfortable that the Guernsey stock exchange listings weren't sticking to the "spirit" of the rules"*. It does not consider that this is an accurate or justified statement. At the time of the relevant events Mr Woodford publicly committed to reducing the WEIF's exposure to unquoted and less liquid companies. It drew this to the attention of investors in our communication of 3 May 2019, which specifically referenced less liquid companies as including those found *"on stock exchanges without much active trading"*.

### **Mr C's response to my provisional findings**

48. Mr C did not accept my decision. He said, in summary:

- HL's relationship with Neil Woodford was not healthy in a business sense as they were too close. HL constantly championed and promoted him as he was on their Wealth Lists right up to when his funds were suspended. If HL had removed him from their Wealth Lists he would have immediately sold his investments in the WEIF.
- Although the fund underperformed HL continued to support it and did not raise any concerns. In his 6 monthly investment report, produced just a few weeks before the fund was suspended, it commented *"Although Woodford had underperformed they were confident he would bounce back"*.
- He took up HL's offer of a financial review with one of their financial advisors, again just prior to suspension, and in the review she looked at his portfolio and said it was sound and did not raise any concerns regarding his large investment in the WEIF.
- HL had meetings regarding the removal of Woodford from its Wealth List but decided not to share this. If he had been told of such meetings he would have sold his investments.
- The Head of Research for HL sold shares in HL weeks prior to the suspension of the WEIF. This is evidence HL knew something untoward was going to happen and did not pass the information to its clients.
- HL had a conflict of interest regarding the WEIF. Its multi-manager managed income fund had a large percentage (around 30%) was made up of the WEIF. If HL had informed its clients to sell there would have been share price drop which would have affected the HL multi managed fund.
- He cannot understand why HL kept supporting Neil Woodford and his funds and did not remove them from its Wealth List, while other underperforming funds were

removed swiftly and were not as troubled.

- It is evident that HL was in turmoil regarding the WEIF. If he had any inclination of this he would have sold his investments. Yet HL communicated the issues to a minimum, to keep them within financial and legal requirements, rather being straight with its clients.
- Neil Woodford's breaching of the 10% limit on unquoted funds was communicated by HL in a low key way as being just a matter of reducing his unquoted stock as a standard practice. This information should have been communicated in a more robust manner and the severity of the situation explained to HL's clients without them being fed a positive pitch.
- As the WEIF fund was still on the Wealth List there was still nothing to get really worried about. This reassured him that he did not need to sell his funds at this time.

49. Having done so, I have not been persuaded to depart from my provisional decision. So, where appropriate, I have repeated my provisional findings below and, at the relevant points, addressed the replies I received to my provisional decision from Mr C and HL.
50. I have also included only a summary of HL's internal and external meeting notes, emails etc in my findings, as I do not think it is necessary to include the detail of their contents in this final decision. Mr C has seen the detail, and been given the opportunity to comment on it. And so I think it is appropriate to include only a summary of what I consider the contents show.
51. In considering what is fair and reasonable in all the circumstances of this complaint, I am required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and where appropriate, what I consider to have been good industry practice at the relevant time.
52. In my provisional decision I said the evidence available to me included a significant amount of further evidence provided by HL after the investigator's view was issued. I also said my reaching a different view to the investigator was, in part, due to further evidence now being available (but also due to me having taken a different view on some aspects of the evidence the investigator did consider). HL says, in its response to the provisional decision, that this is not a fair or accurate statement to make, as it provided the information promptly when it was asked for it and the majority of what I had relied on was available to the investigator when he issued his view.
53. I have considered what HL has to say about this, but remain of the view it is reasonable to say there was a significant amount of further evidence available to me and that some of this was material to me reaching a different view to that of the investigator. As HL notes in its response to my provisional decision, I quoted from five internal meeting notes in that decision which had not been available to the investigator. And, overall, the additional evidence available to me amounted to a large number of documents.
54. I have again set out in detail below my reasons for reaching my decision. As mentioned at paragraph 49, this repeats my provisional decision, where appropriate.

#### **What acts by HL is the complaint about?**



55. Mr C's complaint is, in part, about the communications HL made in relation to the WEIF. Those communications took the form of:
- The entries for the WEIF on the Wealth list (which were sent to Mr C bi-annually with HL's Wealth report, and otherwise available to him on HL's website);
  - associated articles which provided updates on the fund detailing analysis, opinion etc, which were sent by email to Mr C and/or otherwise available to him on HL's website; and
  - general promotion of the WEIF through most popular fund lists and spotlight type articles, which were available to Mr C on HL's website.
56. Pausing there, I note HL accepts the Wealth list entry and associated communications about the WEIF were generic/non personal advice. At 1.2.4 of its 13 May 2022 response to the investigator's view HL says:
- Whilst the Wealth Lists and associated marketing communications amounted to generic (non-personalised) investment advice, they did not constitute personalised recommendations as to the suitability of an investment for a particular investor.*
57. I agree with this position and, given this point is not in dispute, I do not think it necessary to go into it in further detail here.
58. In his original complaint and submissions to us Mr C suggests he was given a personal recommendation (i.e. advice on the suitability of the investment in the WEIF for him personally). Mr C has repeated this point in his response to my provisional decision.
59. Mr C says he took up HL's offer of a financial review with a financial advisor in March 2019. He says he had a face to face meeting with HL's advisor, who reviewed his portfolio and confirmed to him that his investments were sound.
60. When he provided more detail to us about this Mr C said he was offered a free meeting with a HL financial adviser, and at that meeting he explained he just wanted someone to watch over the investment decisions he was making. He says HL told him it couldn't give him that sort of advice and said he should go to its website and look at the income portfolio for his attitude to risk to compare his holdings to that. He also says HL said his portfolio looked sound and he should keep doing what he was doing, and that none of the advice was documented as he didn't proceed with it, as it would have cost him 4%.
61. Having reconsidered the position carefully, my view on this remains unchanged. I am not persuaded Mr C was given a personal recommendation (i.e. advice on the suitability of investments for him personally) during what he describes as the review. There is insufficient evidence to show such advice was given. There is no evidence the usual process associated with such advice was followed (or even begun). There are none of the written records I'd expect to see if a personal recommendation had been given. And overall, I am not persuaded it is more likely than not that HL provided advice on the suitability of investments.
62. I think instead it is more likely than not that Mr C had a general discussion with HL where it discussed in general terms how an execution only client might assess whether a portfolio is consistent with their attitude to risk and what service it could offer if it were to provide personal recommendations. And Mr C chose not to receive personal recommendations, as he did not wish to incur the cost associated with that.

63. So, I am again proceeding on the basis Mr C's complaint is only about the general communications HL made in relation to the WEIF, and Mr C was therefore only given generic/non personal advice; and was an execution only client of HL. I have considered what the relevant regulatory obligations are with that in mind.

#### **What are the relevant regulatory obligations?**

64. I think the following regulatory requirements are of particular relevance to my assessment of whether HL acted fairly and reasonably in its dealings with Mr C.

65. The Principles for Businesses, which are set out in the FCA's handbook "are a general statement of the fundamental obligations of firms under the regulatory system" (PRIN 1.1.2G). I consider that Principles 6 and 7 are of particular relevance to this complaint. They say:

- Principle 6 – Customers' interests – A firm must pay due regard to the interests of its customers and treat them fairly.
- Principle 7 - Communications with clients – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

66. I have also taken into account the FCA rules for firms carrying on investment related business set out in the Conduct of Business Sourcebook (COBS). In particular, COBS 4.2.1R, which sets out the requirements on authorised firms, like HL, when communicating with clients. COBS 4.2.1R(1) says:

"A firm must ensure that a communication or a financial promotion is fair, clear and not misleading."

67. COBS 2.1.1R (1) (the client's best interests rule) is also relevant to this complaint. It says:

"A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule)."

#### **What do I need to consider to decide what is fair and reasonable in the circumstances?**

68. Based on the available evidence, in my view, the following issues (in summary) arose with the WEIF, which may have caused or contributed to the period of poor performance (when compared to relevant benchmarks), followed by the suspension of the fund:

- An increase in the level of unquoted shares held by the fund to a level close to the 10% limit on such holdings set out in the relevant rules (those contained in the FCA's Collective Investment Schemes Sourcebook - COLL).
- The fund's increasing exposure to smaller (i.e. micro and small) and mid cap companies (and linked reducing exposure to large cap companies).
- A low income yield.
- A negative perception of the WEIF, due to continued poor performance against the relevant benchmarks.
- A high level of outflows i.e. number of investors leaving the fund.
- Negative commentary about the fund in the financial and general press.

69. These are interlinked, to a degree at least. The first three arose in 2016 but became

more pronounced from 2017 onwards. The remainder arose in 2017. All continued to a degree until the fund's eventual suspension.

70. Having identified the key things that "went wrong" with WEIF (i.e. the issues listed at paragraph 68) what I'm now going to turn to do is look at what HL's responsibilities and duties were towards Mr C given the nature of its relationship with him as investment platform provider, and whether it complied with those duties. And, when doing so, I am going to consider the regulatory obligations I have summarised in the previous section.
71. As I shall go on explain, the available evidence shows HL became aware of and considered the issues I have identified. And there is a significant amount of evidence to show that it was concerned about them (in particular the increase in the level of unquoted shares).
72. Mr C essentially says HL did not do enough to highlight the issues with the WEIF, and its concerns about them (and his response to my provisional decision largely repeats the points he has previously made). HL says it did, and it was reasonable for it to maintain its support of the WEIF (i.e. to continue to include it on the Wealth list) as it gave careful consideration to the issues and retained confidence in the ability of the investment manager to deliver long-term performance i.e. it was of the view the WEIF would come good over the longer term, notwithstanding the issues and its concerns about them.
73. When deciding what is fair and reasonable in all the circumstances of this complaint, the question I therefore need to consider is whether the actions HL took in reaction to its awareness of the issues and its concerns about them were fair and reasonable. And a key consideration for me to take into account is whether in communicating to Mr C about the WEIF in the way it did knowing what it did at the relevant time, HL paid due regard to the information needs of Mr C, communicated information in a way which was clear, fair and not misleading, and whether HL acted fairly, honestly, fairly and professionally in accordance with Mr C's best interests.
74. It would not be fair and reasonable for HL to think one thing, but communicate another or to know something important about the WEIF that could impact the investment decisions of consumers using its service, but not tell them.
75. When considering this I am mindful HL was expressing an opinion about whether it thought the fund represented a good investment opportunity for customers making their own decisions about whether the fund potential, characteristics and risks were right for them. And that such opinions won't always be right and sometimes – as they were here - could be wrong.
76. I have again first set out a summary of my findings. Following that, I have again set out my findings in more detail.

### **Summary of my findings**

77. My findings remain as summarised in my provisional decision. To confirm, those findings are:
  - Mr C was an execution only customer of HL and there was no ongoing obligation on HL to provide him with generic/non personal advice. My focus is therefore on the communications HL *did* issue.
  - There is insufficient evidence to say HL's communications about the WEIF from

launch to 2016 – a period over which HL did not have any significant concerns about the fund - did not meet its regulatory obligations. And taking that into account, I am not persuaded HL failed to act fairly and reasonably when communicating with Mr C during that period.

- It is clear from the available evidence that from 2017 onwards HL developed concerns – which were at times significant - about the WEIF, based on its awareness of the issues summarised above (and, in some instances, the increasing extent of those issues). However, it is also clear that HL reasonably held a genuine view that WEIF was likely to come good in the longer term, despite these issues and its concerns about them.
- I am satisfied that, viewing HL’s communications from 2017 onwards as a whole, HL was communicating the essence of the issues it had been identifying with the WEIF, and its concerns about them (including the linked increasing risks associated with the fund) in a way which was consistent with its regulatory obligations.
- HL therefore gave Mr C sufficient information. And it was a matter for him whether he read it, and to decide whether we wanted to invest in the WEIF and/or retain existing investments in the WEIF. If Mr C did not read all the communications I can’t say that meant HL acted unfairly, when it made sufficient information available to him.
- Similarly, I can’t say HL acted unfairly if Mr C reached a different view or understanding of the WEIF to that which HL set out in its communications.
- It would therefore not, in my view, be fair and reasonable to uphold Mr C’s complaint.

78. I will now set these findings out in more detail.

## **HL’s communications about the WEIF 2014-2016**

### **2014 – the initial promotion of the fund and the first months**

79. HL has told us that its customers at the launch of the WEIF, including Mr C, were put into three categories (which were based on a customer’s history of investing in Neil Woodford managed funds), and one of three packs was then sent to them, depending on which category they fell into.
80. HL has told us Mr C was sent “pack 3”. As HL sent Mr C this pack and he invested at launch I think it likely he received it. Pack 3 included a covering letter, signed by HL’s Chief Executive, which began by informing Mr C of an “*exclusive*” low annual management charge available to HL customers. It then went on to say:

#### ***“The CF Woodford Equity Income Fund***

*Neil Woodford is probably the most highly regarded fund manager in the UK, and it’s easy to see why - his track record is nothing short of exceptional.*

*We were long-term supporters of his former funds, and he is now launching the CF Woodford Equity Income Fund. We explain in the enclosed report why we believe investors should consider his new venture. Investors at launch will benefit from:*

- *An estimated yield of 4.0% (variable & not guaranteed) with the potential for rising income*
- *A clean slate to cherry pick the best opportunities of the moment*
- *£1 fixed offer price if you apply by 5pm on 18 June*
  
- *An exclusive 0.6% annual charge through Hargreaves Lansdown*

*At Invesco Perpetual he turned £10,000 into over £232,000 (with income reinvested) in 25 years. Details on his investment approach and performance are enclosed.*

*However, please remember this is a different venture, past performance is not a guide to the future, and both the value of your investment and the yield will rise and fall, and you could get back less than you invest.*

### ***Invest tax-efficiently in an ISA or SIPP***

*This fund could make a superb choice for this year's ISA or SIPP (where any future gains are tax-free). Please remember tax rules can change, and benefits depend on your circumstances. Those who have already used their tax shelters can invest in our Fund & Share Account.*

### ***Act by 5pm on 18 June to invest at launch and receive the £1 fixed offer price***

*I will be investing at launch. If you have capital to invest, I urge you to consider this opportunity. Everything you need to apply is enclosed and if you have any questions please call us on [phone number]"*

81. In the factsheet attached to the covering letter, HL's Head of Research said:  
  
*"I have no hesitation in adding the fund to our Wealth 150+ list of favoured funds, and will be investing at launch in my SIPP, and my wife will be investing in her ISA."*
82. The factsheet also included an article titled *"Why almost every investor should consider equity income funds"*.
83. Also enclosed with the letter, alongside the factsheet, were dealing forms which had been pre-populated with the name of the fund.
84. Around the same time HL's website was updated to include a page which was dedicated to the launch of the WEIF, in which HL's Head of Research again said he was investing and *"I urge you to consider this opportunity"*.
85. HL also sent a number of general emails to its customers around this time, inviting the recipients to ask for a free research report on the fund, and highlighting the *"exclusive low annual charge"* and the *"last chance to apply"*. The contact log HL has provided us shows Mr C was the recipient of a number of these emails.
86. On 21 July 2014 HL published a *"research update"* on the WEIF on its website, and sent this to Mr C by email. This included the following:

*"Our view on this fund*

*As we expected the portfolio has a similar look and feel to the previous funds Neil Woodford managed at Invesco Perpetual, with a number of bold stock and sector*

*positions. Historically, this high conviction approach had been a key factor behind his success and he has tended to get the big calls right more often than not. Please remember, however, that this approach increases risk and there is no guarantee he will be able to repeat his previous successes.*

*We believe the prospect of Neil Woodford starting with a clean sheet of paper presents a rare and exciting opportunity for investors. His track record is exemplary and he has every incentive to perform. The fund remains on the Wealth 150 list of our favoured funds across the major sectors.”*

87. In August 2014 HL published a “summer special” edition of its newsletter, The Investment Times. This included several references to the WEIF. The fund was included in a section called “investment ideas”, and featured in an article by a HL analyst called “another bite of the cherry”, which included the following:

*Investing in companies with the potential to pay a rising dividend sounds simple, but executing it well is a different matter. Many investors will prefer to leave the decisions to a professional manager. I would highlight the CF Woodford Equity Income Fund, managed by Neil Woodford, who has an excellent record of providing a sustainable and rising dividend over the long term.*

88. The newsletter also featured a section where Neil Woodford talked about his favourite stocks.

89. On 17 October 2014 HL published an article on its website titled “CF Woodford Equity Income – Fund in Focus”. It was sent to Mr C by email on 20 October 2014 and included the following:

*“Our verdict*

*Following our last few meetings, it is clear Neil Woodford is confident in the exciting, young companies in which he has invested. Given time, capital, and patience, these businesses could grow into global players of the future. In my view, this is an extremely attractive proposition when combined with a number of old favourites and larger businesses, which offer a sustainable, or growing, income. I consider this to be a core UK equity income fund for investors who can truly think long term. The fund is on our Wealth 150+ list of our favourite funds at the lowest annual charge.”*

90. On 10 December 2014 HL published a further “research update” on its website, and sent this to Mr C by email, which included the following:

*“Our view on this fund*

*Investors in the CF Woodford Equity Income Fund need to be prepared to mirror Neil Woodford’s attitude and take a long-term view. We believe he is one of the finest fund managers in the UK, but his concentrated, high-conviction approach will be out of favour at times and investors need the patience to take the rough with the smooth.*

*The fund’s estimated yield is currently 4% and over the long term we are confident the fund can deliver an attractive income and capital growth. We are encouraged by the progress made since this fund was launched and while it is still early days we are happy for it to remain on the Wealth 150+ list of our favourite funds at the most attractive prices.”*

91. These communications show HL was clearly enthusiastic about the WEIF at, and following, its launch and went to some lengths to encourage customers to consider investing. They also show the WEIF was presented as something which might be used as a core investment holding, which was suitable for most investors and would invest in larger companies which paid a sustainable or rising income (although not exclusively so). Given what was known about Neil Woodford and the WEIF at this time, I do not think this was unreasonable. If HL wished to promote the fund heavily that was a decision it was free to make. And, given what was known about the WEIF and Neil Woodford at this time, I do not think it would be fair and reasonable to say the communications HL made at this time were inconsistent with its regulatory obligations. So, I do not think it would be fair and reasonable to say HL had done anything wrong at this time.
92. As an aside, I note Mr C's recollection is that when the WEIF was launched HL had sent him a fund factsheet which rated the fund as low to medium risk. As set out above, Mr C's recollection is accurate – insofar as HL did send a factsheet to him. However, the factsheet does not risk rate the WEIF – it does not describe the fund as having any particular level of risk associated with it. And I do not think a “low to medium” risk rating is something Mr C could reasonably have inferred from the contents of “Pack 3”.

## 2015

93. During 2015 HL continued to frequently promote the fund to its customers and visitors to its website, through commentary in its “*most popular fund*” lists and by including it in spotlight type articles on its website – some of which were specifically about the fund (for example, “*Neil Woodford: investing in an abnormal world*”, which featured an interview with Neil Woodford) and some which also featured other funds (for example, “*Building a dream team for your portfolio*”). The tone of these articles is similar to those published in 2014.
94. HL also continued to provide updates on the WEIF over this period. For example, on 23 June 2015, it published a “*12 month report*”.
95. The 23 June 2015 update was accompanied by a video interview with Neil Woodford. It also included the following:
- “We are encouraged by the fund’s progress since launch, although it remains early days. While Neil Woodford’s record on this fund is still relatively short, his pedigree as a fund manager rests on his achievements in the last three decades, not only the last 12 months.*
- Neil Woodford adopts a concentrated, high-conviction approach to investing – this means, like all active fund managers, the fund should be expected to go through period of underperformance. That said, those who have stuck with him for the long term have been handsomely rewarded. We are confident the fund can deliver an attractive income and capital growth over the long term – it therefore remains on the Wealth 150+ list of our favourite funds at the most attractive prices.”*
96. In short, HL continued to heavily promote the WEIF during this period. Again, I think doing this was a decision HL was free to make, and I have not seen sufficient evidence to conclude the communications it sent were inconsistent with its regulatory obligations. There is nothing to suggest HL had any concerns about the fund at this time, and HL remained of the view – which it was entitled to come to – that the fund represented a good investment. Its communications reflected that view. So I do not think it would be fair and reasonable to say HL had done anything wrong at this time.

## 2016

97. HL continued to frequently promote the fund to its customers and visitors to its website during 2016, again through commentary in its “*most popular fund*” lists and including it in spotlight type articles on its website (for example, “*Neil Woodford: Brexit revisited*”, which featured an interview with Neil Woodford).
98. In the second half of the year some of HL’s communications began to include comments on how the WEIF was changing.
99. The Autumn 2016 Client Investment Report included a “one-liner” on the WEIF which said:

*“At launch in June 2014, 58% of the fund was invested in FTSE 100 stocks. This has reduced to 47% at the end of August 2016. Exposure to FTSE 250, Aim-listed and unquoted companies has increased.”*

100. The November 2016 Wealth Report commentary was as follows:

*When the fund launched in June 2014, almost 60% of the portfolio was invested in FTSE 100 stocks. Over time, this exposure has reduced to stand at close to 45%. Meanwhile, the fund’s exposure to FTSE 250 stocks, AIM-listed companies and unquoted opportunities has slowly increased. In other words, more has gradually been invested in medium-sized and smaller companies as attractive opportunities have emerged.*

*The fund has evolved in the relatively short period since its launch, but continues to reflect the cautious view Neil Woodford has of the global economic outlook. He has not invested in areas that look most vulnerable to economic headwinds and has focused the fund towards companies he thinks can deliver sustainable growth in spite of them. We continue to hold the manager in the highest regard.*

101. A 13 December 2016 update followed a meeting between HL and Neil Woodford. It included the following:

### **Special report: CF Woodford Equity Income**

*[HL staff member] looks under the bonnet of Neil Woodford’s flagship equity income fund following a recent meeting with the manager.*

*Getting under the bonnet of a fund to work out what drives its performance is one of the things we do best at Hargreaves Lansdown. Four members of the research team recently met Neil Woodford and his team for an update on the CF Woodford Equity Income Fund. A summary of our findings from the day along with detailed analytics of performance are given in this report.*

### **What does the fund do?**

*Neil Woodford aims to generate a high single-digit annual total return (both Capital and income) for long-term investors.*

*In simple terms this means he aims to ensure investors enjoy an increase in the value of their investment alongside an income payment, which they can choose to spend or reinvest. When the fund launched, he committed to paying a 4p per unit dividend in its*



first year, which equated to a 4% yield on the £1 launch price. He achieved this and now aims to grow the income over time, although please remember yields are variable and not a reliable indicator of future income.

....

### **Income**

We would generally expect equity income funds to deliver a large portion of their total returns in the form of income. While the CF Equity Income Fund has paid decent dividends to investors, strong capital growth has accounted for the majority on returns since launch.

To form part of the Investment Management Association's UK Equity Income sector, a

fund needs to meet certain criteria – the most important one being to deliver an average yield of at least 110% of the FTSE All Share's yield over three years. The fund's sizeable exposure to small, lower-yielding companies caused the fund's yield to fall short in its first financial year, and given that Neil Woodford does not intend on changing his approach we expect the fund will ultimately fall out of the sector. We don't view this as a problem and indeed other high profile equity income funds have done so in recent years.

### **Performance**

Although Neil Woodford's style of investing has been out of favour in the past year, the CF Woodford Equity Income Fund has performed strongly since its launch in June 2014. The fund has delivered a total return of 25.4% with dividends reinvested, compared with 10% for the FTSE All Share Index, although this is over a shorter time period.

.....

### **How is the fund invested?**

Neil Woodford looks to invest in companies he feels have been undervalued by other investors. Our research shows his long track record of success can be attributed to his high conviction approach.

At times this can lead to a heavy bias to certain areas of the stockmarket. For example he currently favours the healthcare, tobacco and alternative financials sectors and has increased the fund's exposure to higher risk small and unquoted companies. The smaller company exposure is predominately focused on the healthcare and financial technology sectors. The manager favours these areas as it is where he is currently finding the best value.

We view how a fund is invested in two ways: the size of company the manager favours and the sectors his selected companies operate in.

.....

### **Company size positioning**

While most equity income funds are invested predominately in large high-yielding companies, only around 50% of the CF Woodford Equity Income Fund is invested in this area. The remainder of the fund is invested in small and medium sized companies, or those not listed on the stock market.

...

*The proportion of smaller and unquoted companies has therefore grown over the past two years at the expense of their larger listed counterparts. The portion of the fund invested in unquoted companies is not permitted to exceed 10% but the breadth of opportunities the manager has identified among smaller companies are in excess of what we anticipated before the fund's launch. This will make it more difficult for him to generate a growing income in the short terms as these businesses often yield very little in their early stages.*

.....

**How have these size biases affected performance?**

*The fund has a significant bias to smaller companies relative to the FTSE All Share Index*

*which adds risk, and also has more invested in medium sized companies than the index. A large portion of his smaller company investments are unquoted. Large companies account for 80% of the FTSE All Share Index but only 50% of the Woodford fund.*

.....

*"The CF Woodford Equity Income Fund is not a typical equity income fund. Its 'barbell' strategy of including both higher-yielding larger companies and lower-yielding smaller companies in the portfolio means the fund is likely to perform differently from many of its peers. The prevalence of smaller and unquoted companies in the portfolio also limits the fund's yield, which may mean it doesn't meet the requirements of investors seeking to maximise their income.*

*Neil Woodford is one of the most successful, experienced and well-known fund managers in the UK. His long-term track record with other funds has been exceptional, having significantly outperformed the UK stock market while producing impressive income growth along the way. His willingness to follow his convictions rather than herd instinct has seen him generate exceptional returns for his investors, although this is not a guide to the future.*

*We believe Neil Woodford has the ability to add significant value for investors able to withstand the additional risk and volatility that comes from investing in smaller and unquoted companies. The fund remains on the Wealth 150+ list of our favourite funds across the major sectors."*

102. On 22 December 2016 a "12 month review" was communicated by HL. That included the following:

*A bias to small and medium companies remains*

*The manager continues to favour financial and healthcare companies*

*While long term performance remains outstanding, the fund has underperformed over the past year*

**Our view**

*Neil Woodford is a high conviction, long term investor. All managers undergo periods where their style is out of favour and they will underperform their peers or benchmark. We have faith in the manager to spot opportunities other investors have missed and trust him to add value for investors over the long term.*

.....

*Neil Woodford remains confident he can uncover value among higher risk smaller companies and those in the healthcare and alternative financials space. We retain our faith in his ability to find value for investors over the long term and the fund remains on the Wealth 150 list of our favourite funds across the major sectors.*

103. I am satisfied that the comments in these communications on how the WEIF was changing were broadly consistent with what the available evidence suggests was HL's internal view of the WEIF at the time.

### **HL's view at the time**

104. HL met with WIM on a number of occasions during 2016. I have seen its notes of each meeting.

105. I have considered the notes in their entirety. In summary, they show the issues of which HL was aware and its concerns at this stage appear to have been:

- The WEIF could no longer be considered a typical equity income fund.
- There had been a shift towards small cap/growth stocks which HL had not expected.
- That Neil Woodford was relatively inexperienced at managing small cap stock holdings.
- Significant outflows may cause problems, as they would lead to an increase in unquoted stocks and impact WIM's ability to follow-on fund (i.e. invest further money as the companies it had invested in looked to develop).
- HL's customers might not be aware of how the fund had changed/its current nature and it should take steps to address this.

106. However, it is clear from the notes that HL's view, ultimately, was still positive, despite the issues and its concerns about them. The evidence shows HL had identified issues and raised some concerns about them and then had those concerns either addressed or allayed - or took the view they were outweighed by the positives.

107. The overall consensus view of HL's investment team was clearly that it should continue to include the WEIF on the Wealth List. And I'm satisfied the fact that issues/concerns were identified and recorded in the meeting notes does not mean that it was unreasonable for HL to ultimately to conclude that it continued to retain confidence in the ability of a fund manager to deliver outperformance over the long term, when it had a basis for drawing that conclusion (and it clearly did) and its concerns were largely addressed or allayed.

108. Pausing there, I think this is an appropriate point at which to consider the points Mr C has made in his response to my provisional decision about HL not having told him when it had considered whether to continue to include the WEIF on the Wealth List, and not having shared the full detail of the issues it had identified.

109. I do not think it would be fair and reasonable to say HL should have specifically told Mr C it had considered whether to keep the WEIF on the list, after it had undertaken such

consideration. I am satisfied HL made it clear the Wealth List was something which was kept under review and it follows from that Mr C was made aware HL would from time to time consider whether to retain a fund on its list. I think it is reasonable to say HL should have been free to do this and to communicate the outcome of its consideration i.e. whether or not the fund was to remain on this list, rather than the fact of the consideration.

110. In a similar vein (and this is a point I return to later) I do not think it would be fair and reasonable to say HL should have shared the full detail of its deliberations and interactions with WIM. Rather I think it was fair and reasonable – and consistent with HL’s regulatory obligations – for it to communicate the overall outcome of its deliberations and communicate any key information in a balanced way.

111. The communications HL made in relation to the WEIF at the end of the year in my view do largely reflect its views. In particular, the 13 December 2016 update highlights that the WEIF is “*not a typical equity income fund*” and makes the following points:

*“While most equity income funds are invested predominately in large high-yielding companies, only around 50% of the CF Woodford Equity Income Fund is invested in this area. The remainder of the fund is invested in small and medium sized companies, or*

*those not listed on the stock market”*

*“The fund has a significant bias to smaller companies relative to the FTSE All Share Index which adds risk, and also has more invested in medium sized companies than the index. A large portion of his smaller company investments are unquoted. Large companies account for 80% of the FTSE All Share Index but only 50% of the Woodford fund.”*

*“The proportion of smaller and unquoted companies has therefore grown over the past two years at the expense of their larger listed counterparts.....the breadth of opportunities the manager has identified among smaller companies are in excess of what we anticipated before the fund’s launch.”*

*“The fund has a significant bias to smaller companies relative to the FTSE All Share Index which adds risk, and also has more invested in medium sized companies than the index.”*

*“We believe Neil Woodford has the ability to add significant value for investors able to withstand the additional risk and volatility that comes from investing in smaller and unquoted companies.”*

112. I think the overall nature of HL’s communications at this time – in particular the 13 December 2016 update – communicate the essence of the concerns HL had developed, to a reasonable extent. The communications:

- Highlight a “sizeable” exposure to smaller caps.
- Give a clear statement about the market cap of the assets held by the funds – explaining around 50% of the WEIF was invested in small and medium sized companies, or those not listed on the stock market, describing this as a “significant bias” which brought “additional risk”.
- Acknowledge WIM is not investing as expected.

- Highlight the WEIF's variance from its benchmark.
  - Explain the fund is not a typical equity income fund - and was instead only suitable for those able to "withstand the additional risk and volatility that comes from investing in smaller and unquoted companies".
113. The communications do not refer to the concerns expressed in one of the notes about Neil Woodford's relative inexperience with small cap stocks. But I think a later meeting note shows this concern was addressed to an extent that it would not be fair to say HL should have highlighted it in communications. The notes of the later meeting record HL had concluded WIM's "capability in this area is vast when the specialist 'trusted partners' are taken into account". So, HL seems to have reasonably reached the view it was "more comfortable", following that meeting. In my view it is not reasonable to say HL had to communicate each challenge it had made to WIM and each response it received – rather to relay key information to investors' decision making, following discussions with WIM which appropriately challenged WIM on issues and consideration of the responses WIM gave.
114. The communications do not refer to HL's concerns about outflows either. But I am not persuaded it would be fair to say that meant the communications were inconsistent with HL's regulatory obligations. The consequence of outflows was what was key (i.e. the impact this had on the make-up of the fund) and that was communicated, as set out above. At this time there were not significant outflows, in any event – so the point was more something for HL to be mindful of as it continued to monitor the fund, rather than a critical point it had to include in its communications, to act in a way consistent with its regulatory obligations.
115. Overall, the meeting notes show a number of HL's concerns had been addressed or allayed. HL had challenged WIM and received reasonable assurances. I think, in these circumstances, it was reasonable for HL to continue to include the WEIF on the Wealth List, having made the communications it did.
116. I appreciate, given what Mr C says in his complaint – and his response to my provisional decision - it may be that he did not read everything in full (in particular, the 13 December 2016 update), or perhaps now recalls it differently. But I think HL's communications were clear, fair, and not misleading at this time, and not otherwise inconsistent with its regulatory obligations.

## 2017

117. HL continued to frequently promote the fund to its customers and visitors to its website during most of 2017, again through commentary in its "*most popular fund*" lists and including it in spotlight type articles on its website. The communications continued to include comments on how the WEIF had changed or was changing. I have set out below a selection of the comments made on the WEIF in the relevant (to Mr C) communications.
118. 30 March 2017 – *Most popular ISA and SIPP funds*. In the section titled "*Equity income: still a firm favourite*" the following is said about the WEIF:

*Aside from the new launch, three further equity income funds made it into the top ten. One was Neil Woodford's existing CF Woodford Equity Income Fund which aims to provide a combination of income and capital growth. To boost growth, part of the portfolio is invested in early-stage companies which pay little (or nothing) in the way of dividends.*

*This means the income is likely to be lower than his new fund, but the capital growth potential is greater – though the addition of these fledgling companies also brings extra risk.*

119. 5 May 2017 - Most popular ISA funds bought last month:

*As highlighted above, Neil Woodford continues to be regarded as one of the UK's best investors. His CF Woodford Equity Income Fund has less of a pure income focus than his new fund, aiming for a combination of income and growth from investing across the entire market. He invests in the giants of the FTSE100, to higher-risk smaller firms offering exciting growth opportunities.*

120. The June 2017 Wealth Report commentary was as follows:

*Neil Woodford believes the potential negative impact of the UK's exit from the European Union has been overestimated by other investors. He has a more upbeat outlook for the UK economy and has added a number of new investments to the fund to reflect this view, including Lloyds Banking Group, Barratt Developments and Taylor Wimpey. These purchases have largely been funded by the sale of GlaxoSmithKline as the manager has lost faith in this company's longer-term growth prospects. The portfolio is now positioned less defensively than it has been for many years, with significantly more exposure to economically sensitive companies*

121. The November 2017 Wealth Report commentary was as follows:

*Neil Woodford believes a debt crisis in China could derail global growth. However, he's*

*positive in his outlook for the UK, where he thinks the economy looks far more robust than many suggest. He's reduced the fund's holdings in global businesses, selling British American Tobacco. Instead, he favours companies that could benefit from a stronger UK economy, such as housebuilders Barratt Developments and Taylor Wimpey.*

*Performance over the past year has been disappointing relative to the FTSE All Share Index, as investors have favoured areas Neil Woodford has avoided. The fund also suffered a number of stock specific issues, with investments in Provident Financial and Capita hurting performance. Neil Woodford has a superb long-term track record, however, and we haven't lost faith in his abilities to deliver for investors.*

## **Other communications**

122. On 22 June 2017 HL published a further update – “CF Woodford Equity Income – three years on”. The update included the following:

### **Not a typical equity income fund**

*CF Woodford Equity Income is not a typical equity income fund.*

*Like most other equity income funds it has plenty of exposure to large companies which pay attractive dividends, but Neil Woodford's skill lies in spotting opportunities other investors have overlooked. For example, to boost the fund's growth potential, he has also invested a significant portion of the portfolio in higher risk smaller companies – some of which are not yet quoted on a stock exchange.*

*Neil Woodford has good form investing in these types of business, and this element of*

*the portfolio could have a significant effect on returns, but please remember smaller companies are higher risk than their larger counterparts.*

*Given these smaller companies often pay little or nothing in the way of dividends, the fund's yield is slightly lower than that many other equity income funds, though at 3.0% it remains attractive. Those who wish to invest with Neil Woodford, but who want their investments to be managed purely with a focus on income, could consider his CF Woodford Income Focus Fund. All yields are variable, and not a reliable indicator of future income.*

.....

### ***Our view***

*Woodford's long term track record is exceptional, having significantly outperformed the UK stock market while producing impressive income growth along the way. He has a long history of making big stock or sector bets, and while these decisions have at times taken time to come to fruition, they have added significant value for investors over the long term. Remember past performance is not a reliable indicator of future returns.*

*We believe this fund remains an excellent choice for investors seeking a core UK holding for their portfolio."*

123. A further article was published by HL on 7 September 2017 – “Neil Woodford video – our view”. At the same time a video of an interview with Neil Woodford was released by HL. Mr C was informed about the article by email, which included the following:

*“Our view*

*We feel judging a fund manager over a time period of a few months is folly, especially one with such a long and distinguished track record.*

*Neil Woodford has experienced a period of poor performance in the past. He famously shunned technology stock in the late 1990s, leading many to question his strategy. In the event he was proved spectacularly correct. However, past performance is not a guide to the future and this fund will perform differently from his previous ventures.*

*A diversified portfolio of shares will always include some companies that are performing well as well as some laggards. This is the nature of investing and no fund manager can make the right calls every time.*

*Of course its quite right to question any fund manager on their performance, especially during difficult times, and we have spoken with Neil Woodford at length recently. We're encouraged he is sticking to his long-held approach and he maintains his investment discipline. He continues to seek undervalued and out-of-favour companies – a strategy that has seen his investors well-rewarded over the long term. Remember, the value of all investments will fall as well as rise, so investors could make a loss.*

*We retain our faith in Neil Woodford to add value for investors over the long term and we are happy for the CF Woodford Equity Income Fund to remain on the Wealth 150+ list of our favourite funds. “*

124. On 19 December 2017 an update was issued, alongside another interview with Neil Woodford – “Neil Woodford – exclusive video and our latest view”. The update

included the following:

*“Our view*

*The CF Woodford Equity Income Fund isn't a typical equity income fund.*

*It combines higher-yielding larger companies with higher-risk smaller companies, some of which are unquoted, meaning they aren't listed on a stock exchange. The higher-yielding companies are expected to contribute the majority of the fund's dividend income, while the smaller firms are expected to boost growth.*

*This is sometimes referred to as a 'barbell' approach.*

*It means the fund will perform quite differently from others in the sector and the broader UK stock market. The inclusions of smaller and unquoted companies limits the fund's yield, so its unlikely to meet the requirements of investors who seek to maximise income.*

*The fund currently yields 3.65%, which is variable and not a reliable indicator of future income.*

*As for the unquoted companies, Neil Woodford sees an excellent long-term opportunity in this area of the market.*

*This is why 9.5% of the fund is currently invested here. He's not currently adding to these investments in an effort to ensure they don't make up more than 10% of the fund, which is the maximum allowed.*

*Indeed, over the next 12-18 months he expects the proportion of the fund invested in unquoted companies to reduce, as some of his biggest investments in this area seek to list*

*their shares on the stock market. This is known as an Initial Public Offering, or 'IPO'.*

*Investors should remember that while they can offer significant growth opportunities, small and unquoted businesses are typically considered higher-risk because their shares are difficult to sell. Smaller businesses are also more prone to failure than larger, more established companies.*

*Overall, we're encouraged that Neil Woodford is sticking to his tried-and-tested approach. He combines economic views and individual company analysis to identify undervalued and out-of-favour sectors and companies. At present this manifests itself in significant exposure to UK domestic businesses and, to a lesser extent, small and innovative healthcare businesses.*

*The willingness to follow his convictions rather than the herd has seen him generate exceptional returns for investors in the past, but by its very nature this approach will result in periods of poor performance while other investors disagree with his views.*

*We believe it's premature to write Neil Woodford off. His long-term track record has been exceptional and we continue to believe he'll add value for investors over the long run.*

*As ever, please remember past performance is not a guide to the future. We always suggest investors diversify across funds with different styles, approaches and areas of focus. In common with most equity income funds, charges are taken from capital. This*



*increases the yield but reduces the potential for capital growth.*

*The LF Woodford Equity Income Fund remains on the Wealth 150+ list along with all our other favourite funds across the major sectors.”*

125. In my view these communications are broadly consistent with the available evidence on HL’s view of the WEIF (and Neil Woodford as a fund manager) and the available information about the WEIF generally at the time. HL’s view, ultimately, was that it should continue to support the fund as it was of the view that it would come good over the longer term – a view it was free to reasonably take. And I am satisfied that it explained the basis for that view in a clear and fair way to Mr C at the time.

### **HL’s view at the time**

126. HL met with WIM again on a number of occasions during 2017. I have seen its notes of each meeting. I have also considered email correspondence between HL and WIM, and notes of internal meetings at HL where the WEIF was discussed.

127. I have considered the notes and correspondence in their entirety. In summary, the issues of which HL was aware and its concerns at this stage appear to have been:

- The level of unquoted stocks, in terms of:
  - General liquidity of the portfolio
  - The potential of breaching the 10% limit
  - Whether WIM had adequate resources to deal with these sorts of investments
- WIM not listening to/attaching insufficient weight to HL’s concerns.
- The extent of HL’s exposure to the WEIF and the consequences of HL taking action which might significantly reduce that exposure.
- A continued drift away from being a traditional equity income fund through exposure to smaller companies.
- Poor performance.

- Outflow levels.

128. But, again, HL did not only have concerns. The notes and correspondence show its view, ultimately, was still positive, overall – it maintained confidence in WIM and the WEIF. The content of the notes I refer to above show it was HL’s genuinely held view, after careful consideration, that it maintained confidence in WIM and the WEIF, despite the issues and its concerns about them.

129. The notes and correspondence also show HL challenged WIM about the issues and its concerns and, that whilst HL’s concerns at points were considerable, it reasonably concluded, ultimately, that the concerns would be addressed, or had been addressed. Or its concerns were allayed by WIM’s responses to them.

130. I do not think it is fair and reasonable to consider the points at which HL’s concerns were at their highest in isolation. They need to be viewed in the wider context – in particular, the challenges made to WIM and the responses received to those challenges.

131. The meeting notes show HL had some negative views, which it set out during a meeting with WIM in August 2017; but that it did ultimately conclude then that it should stick with the WEIF, whilst making sure there was enough challenge, and regular contact and monitoring. So, whilst HL had concerns, the overall view was it remained committed to the fund; and it recognised the need to continue to communicate the nature of the fund to clients and to

monitor the situation.

132. The evidence now available (i.e. further notes and emails) shows HL did then follow through on this – its subsequent actions were consistent with the actions it had identified it should take following the August 2017 meeting.
133. Following the investigator's view, which identified an email sent by HL to WIM on 24 November 2017 as a turning point, and found that HL should have dropped the WEIF from the Wealth List then – largely on the basis of concerns about the level of unquoted stocks - HL provided further evidence which gives context and more detail about the action taken by it.
134. This further evidence shows HL did challenge WIM about the level of unquoted stocks, discussions took place, and reassurances and undertakings were given by WIM. Following this it seems HL was satisfied the level of unquoted stocks would be carefully managed and reduced over time, and WIM had agreed further actions on this.
135. The evidence also shows that one of the scenarios which HL said would lead to it continuing to include the WEIF in the Wealth List is what happened; WIM accepted the seriousness of the situation and it demonstrated to HL it was taking action. I think that shows HL had a reasonable basis to keep the WEIF in the Wealth List at this time. It had challenged WIM and received responses which addressed its concerns.
136. So, I do not think there is sufficient evidence for it to be fair and reasonable to find, as the investigator did, that HL should have dropped the WEIF from the Wealth List at this time. In my view HL was entitled to exercise its judgement and decide to continue to support the WEIF if, after reasonable consideration, and appropriate challenges to WIM on the issues it had identified, it concluded there was a basis for doing so i.e. that, overall, it remained of the view the WEIF was likely to perform well in future – the criterion for keeping it on the Wealth List.
137. I note there is reference to HL reducing – or at least not increasing – its exposure to the WEIF in some MM (multi manager) funds. But I do not think that means it could not reasonably continue to retain the WEIF on the Wealth List. The changing nature of the WEIF may have meant it was no longer suitable for a particular fund, or only suitable at a lower level that it had previously been held. But that doesn't mean HL could not continue to hold out a reasonably held view the WEIF should remain on the Wealth List, in the context of providing an opinion about whether it thought the fund represented a good investment opportunity for customers making their own decisions about whether the fund potential, characteristics and risks were right for them.
138. I also note HL said it did "*not want to scare investors out of the Woodford fund after one of his worst periods of performance*". In my view this was a legitimate point for HL to consider (particularly having acknowledged in its communications that it considered WIM's approach could produce periods of under-performance) and to therefore factor into its conclusions and communications – as long as those communications were ultimately consistent with its regulatory obligations.
139. Pausing here, I should say I have considered the points Mr C made in its response about HL having a conflict of interest. But I have not seen sufficient evidence to show HL's decision to continue to include the WEIF on the Wealth List was as a result of conflicts arising from holdings in its multi-manager funds, or concerns about reputational damage. I cannot of course say with certainty that HL did not have these things in mind to some degree when making its deliberations. But it is clear from the notes HL

considered the key factor to be what was best for its clients, and took the decision to continue to include the WEIF on the Wealth List having challenged WIM and received reassurances, and on the basis of a genuinely held view the WEIF was likely to recover and perform well.

140. Overall, HL's communications at this time were in my view consistent with its regulatory obligations, when considered alongside the available evidence about its views and the overall circumstances (in particular the communications HL had already issued in 2016, highlighting changes to the WEIF). HL's communications highlighted:

- That the fund was not a typical equity income fund.
- The significant exposure to smaller companies, and the risk this brings.
- The lower income yield.
- The exposure to unquoted stocks, the risks associated with this, and the limit on such stocks.
- The importance of diversifying across different funds.

141. I have considered some of the aspects of HL's communications in further detail below.

142. The 22 June 2017 update. I think the following parts of this communication are key:

*"CF Woodford Equity Income is not a typical equity income fund."*

*".....he has also invested a significant portion of the portfolio in higher risk smaller companies – some of which are not yet quoted on a stock exchange."*

*".. please remember smaller companies are higher risk than their larger counterparts."*

*"Given these smaller companies often pay little or nothing in the way of dividends, the fund's yield is slightly lower than that many other equity income funds, though at 3.0% it remains attractive."*

In my view this adequately highlights the exposure to smaller companies and unquoted stocks. It also offers a further reminder of the lower income yield and of the WEIF not, in HL's view, being a typical equity income fund.

143. The 19 December 2017 update. I think the following parts of this communication are key:

*"The CF Woodford Equity Income Fund isn't a typical equity income fund."*

*"It combines higher-yielding larger companies with higher-risk smaller companies, some of which are unquoted, meaning they aren't listed on a stock exchange. The higher-yielding companies are expected to contribute the majority of the fund's dividend income, while the smaller firms are expected to boost growth."*

*"As for the unquoted companies, Neil Woodford sees an excellent long-term opportunity in this area of the market."*

*"This is why 9.5% of the fund is currently invested here. He's not currently adding to these investments in an effort to ensure they don't make up more than 10% of the fund, which is the maximum allowed."*

*"Investors should remember that while they can offer significant growth opportunities, small and unquoted businesses are typically considered higher-risk because their shares*

*are difficult to sell. Smaller businesses are also more prone to failure than larger, more established companies.”*

*“As ever, please remember past performance is not a guide to the future. We always suggest investors diversify across funds with different styles, approaches and areas of focus. In common with most equity income funds, charges are taken from capital. This increases the yield but reduces the potential for capital growth.”*

144. In my view this again adequately highlights the exposure to smaller companies and unquoted stocks. It also prompts investors to consider the higher risk resulting from this and suggests diversification across funds of different styles. And, again, a further reminder the WEIF is not a typical equity income fund is given. I note HL is positive when referring to the investments in unquoted companies. But that, in my view, fairly reflects its view that it had no significant concerns about these holdings from an investment perspective – it was positive about them, in terms of the potential they added to the fund’s portfolio. And I think HL fairly explained the associated risk, and put its client on notice they should not put all their eggs in one basket.
145. In my provisional findings I referred to a part of a meeting note which, in isolation, suggests HL decided to withhold information (*“it is not helpful to tell people about the issues and discussions we are having”*). HL, in its response to my provisional decision, says this finding is misleading and inaccurate. I remain of the view this, if viewed in isolation, does suggest HL had considered not telling its clients about issues with the WEIF. And I think it is reasonable to make that point. But its also clear this is not what actually happened. As HL notes in its response, it did ultimately conclude *“we should communicate with clients about the issues, but in a positive way”*. I think that is consistent with HL’s conclusion that it retained confidence in the WEIF to deliver long-term performance but anticipated periods of under-performance.
146. In my view, HL’s communications by the end of the year, viewed as a whole, clearly, fairly and not misleadingly conveyed the essence of the issues it had identified about the WEIF (the points I list at paragraph 127).
147. I therefore think, given the overall nature of HL’s communications at this time and keeping in mind what had been said in the 2016 communications, HL had clearly, fairly and not misleadingly conveyed the message that the fund was higher risk. Its communications conveyed that a *“significant portion”* of the WEIF was invested in *“higher risk smaller companies”* and that the WEIF was not a typical equity income fund. And that it had 9.5% of its assets – close to the limit – invested in unquoted companies, which were higher risk.

## **2018**

148. The WEIF was promoted less frequently by HL during this year, and was subject to less communication from HL generally.
149. The June 2018 Wealth Report commentary was as follows:

*The fund has evolved markedly over the past 18 months. Neil Woodford is positive on the UK economy and has invested to benefit from this view. He’s bought shares in housebuilders, including Taylor Wimpey and Barratt Developments, and financial services companies, such as Legal & General and Lloyds. He thinks they’re undervalued*

*and expectations of future growth are far too modest. The portfolio also contains a diverse and exciting collection of much earlier-stage, science-based businesses.*

150. There was only one “most popular” list entry for this year (that I am aware of) – the “most popular ISA funds October” - which was published on 13 November 2018.

151. This included commentary on the WEIF as follows:

*Neil Woodford became well known for beating the market over several decades. He’s been in the headlines for some recent disappointing performance though. This isn’t the first time Woodford’s come under scrutiny, but he’s subsequently gone on to beat the market. That’s not to say he’ll do it again. But it’s a reminder that managers who go through rough patches can come good in the end.*

*We prefer to focus on a manager’s long-term track record which in the case of Woodford has been excellent, albeit recently poor. He invests very differently from many other managers. His investments include smaller companies and those not listed on the stock market. Both of these add risk.*

*By being different from the market, it gives him the best chance of beating it over the longer term. But it also means there will be times when he falls behind. As ever, a long-term approach is best to ride out those times.*

152. The November 2018 Wealth Report commentary was as follows:

*Neil Woodford combines companies that pay high levels of income with smaller companies that offer more growth potential. Many investors have a gloomy forecast for the UK economy, but he’s optimistic. He’s invested in unloved domestic UK companies, including house builders and real estate companies. He thinks they offer a lot of value. He isn’t so upbeat on the world economy, so he’s avoided companies more reliant on overseas trade, such as commodity-related companies. Woodford has found recent times some of the most challenging he’s faced. He largely puts that down to his style of investing being unpopular with many investors at the moment. He’s confident the tide will turn in his favour though, as it has previously in his long career.*

## **Other communications**

153. A further article was published on 9 January 2018 – “A follow up with Neil Woodford”. This featured a further interview with Neil Woodford and a repeat of the “Our view” section from the 19 December 2017 update, which I quote from above.

154. A further update was issued by HL on 22 March 2018 – “LF Woodford Equity Income change of sector”. The update included the following:

*It’s not the first time Neil Woodford’s funds will have changed sector because they failed to deliver a high enough income, and LF Woodford Equity Income is far from the only fund to be moved out of the sector. The Investment Association regularly looks at the yields delivered by each fund and removes or readmits them accordingly. It doesn’t mean there has been a change to the way the fund is managed. The main purpose of the sector classifications is to help investors differentiate funds and compare those with similar objectives.*

**Why has the yield been low?**

*Rather than focus on a strict income target Neil Woodford seeks to produce a good total return, combining a rising income and capital growth. This means he will sacrifice some income upfront for the prospect of better growth in the capital and income over the long term.*

*Neil currently sees more opportunities in naturally lower-yielding companies than he has historically. This includes investments in innovative (but higher risk) smaller and mid-sized businesses that lead, or have the potential to lead, their market. They include healthcare companies working on ground-breaking therapies and treatments, as well as consumer and financial businesses using technology to pioneer new services.*

*Almost 40% of the fund is invested in small and mid-sized lower-yielding companies, according to our analysis, with almost an additional 10% invested in companies not yet listed on the stock market (unquoted, or private, companies), and a small amount in larger low-yielding companies. This means just under half the fund is currently invested in companies we class as having a high yield, across small, medium-sized and larger businesses.*

### **Is this still a good income fund?**

*Neil continues his career-long focus on identifying good businesses that he can invest in at low prices, when their prospects are not being appreciated by others.*

*We think the fund can work well alongside other equity income funds as part of a diversified income portfolio, or be considered by those who seek to maximise total returns over the long run.*

*It is less suited to those who prioritise a high income now. These investors should at least consider blending this fund with other equity income funds that aim to deliver an above market yield, or concentrate on funds that prioritise a high income.*

*We backed this fund to benefit from Neil's expertise in identifying attractively-valued companies and we accept this won't always result in a high yield. That said, we would have preferred him to deliver a market-beating income and there has been little growth in the income to date.*

### **What is our view?**

*We maintain our support for Neil based on the strength of his track record and believe he has the ability to deliver excellent long-term returns. We don't see the change of sector as a concern.*

*We think his approach – to invest in undervalued companies for the long term – is temporarily out of favour and his long-term record should not be ignored. He's delivered a return of almost 27 times an original investment over his career, compared with around 12 times for the UK stock market. There are no guarantees this will be repeated and it should not be viewed as a guide to the future.*

*Neil has invested in smaller and unquoted businesses for many years. It was always his intention to include them in the LF Woodford Equity Income Fund. Not many other fund managers have the experience or resources to do this and it gives the fund an edge that will potentially boost performance. We often say to achieve great results you must invest differently to the mainstream, but that it will lead to tough periods of performance and*

*deviations from peers and the wider stock market at times.*

*We are comfortable with the inclusion of unquoted companies, but we don't want to see them increase as a proportion of the fund from here.*

*The fund remains on the Wealth 150+, but as ever investors should ensure they are comfortable with the investment approach and risks."*

155. In my view, these communications are broadly consistent with the available evidence on HL's view of the WEIF (and Neil Woodford as a fund manager) and the available information about the WEIF generally at the time. HL's view remained, ultimately, that it should support the fund as it was of the view that it would come good over the longer term. In fact it seems HL was, by this time, more focused on the future of the fund and its prospects of recovery – its view overall seems to be more positive than in was in the latter part of 2017. And I think it was not unreasonable for HL to be more positive by this point, given no further basis for concerns had emerged, and what I have already noted about its concerns being addressed or allayed by WIM. The evidence shows HL was also still keeping things under review – so, whilst maintaining a positive view, it was keeping matters under review.

#### **HL's view at the time**

156. HL met with WIM again on a number of occasions during 2018. I have seen its notes of each meeting.
157. I have considered the notes in their entirety. I think they show HL was aware the issues which were impacting the WEIF remained present – at least to some extent; but, overall, its concerns were reduced. The consensus view seems to be more positive than in the latter part of 2017. It is clear HL's view was that it should continue to support the WEIF and that it had a reasonable basis for drawing this conclusion.
158. The notes also show that HL acknowledged steps should be taken to make customers aware of the nature of the fund – its risks, the investment strategy being followed – and of the need to diversify. And I think the communications HL issued broadly achieved this. HL's communications at this time appear to be broadly consistent with its internally expressed views.
159. I have considered some of the aspects of HL's communications in further detail below.
160. The 9 January 2018 update. This repeats the 19 December 2017 update and so the findings I made above in relation to this update apply equally here. I think, like the 19 December 2017 update, this contains some important points about the exposure to smaller companies and unquoted stocks, prompts investors to consider the higher risk resulting from this and suggests diversification across funds of different styles.
161. The March 2018 update. I think the following parts of this communication are key:

*"It's not the first time Neil Woodford's funds will have changed sector because they failed to deliver a high enough income, and LF Woodford Equity Income is far from the only fund to be moved out of the sector. .... It doesn't mean there has been a change to the way the fund is managed."*

*"Almost 40% of the fund is invested in small and mid-sized lower-yielding companies.....with almost an additional 10% invested in companies not yet listed on the*

*stock market... and a small amount in larger low-yielding companies. This means just under half the fund is currently invested in companies we class as having a high yield, across small, medium-sized and larger businesses.”*

*“investors should ensure they are comfortable with the investment approach and risks”*

162. In my view this adequately sets out how the WEIF is invested at this time, and makes clear the WEIF’s significant exposure to smaller companies and unquoted stocks. It also encourages investors to ensure they are comfortable with the risks associated with the WEIF, and to consider diversification into other funds, if they are seeking income.
163. I note the June 2018 Wealth list commentary also says *“The fund has evolved markedly over the past 18 months”*, and therefore takes a further step to identify how the fund has changed.
164. In relation to the unquoted stocks – picking up on the concerns and exchanges with WIM towards the end of 2017 - HL was consistently saying internally that it would remove the WEIF from the Wealth list it breached the limit (and it knew it had breached the limit). So, to that extent, HL was acting consistently with what it was internally saying it was going to do. The evidence shows HL was monitoring the situation and was prepared to take action should the fund exceed 10%; but the risk did not ultimately come to fruition.
165. I note there are further references to HL reducing – or at least not increasing – its exposure to the WEIF in some of its multi manager funds. I think the findings I set out in paragraphs 137 and 139 on this point apply equally here.
166. The meeting notes show HL also again identified the need to communicate key points to its clients – and its communications seem consistent with this.
167. I think, given the overall nature of HL’s communications at this time – and keeping in mind what had been said in the 2016 and 2017 communications – HL was sufficiently communicating that the fund was higher risk by identifying that 40% of the WEIF was invested in *“small and mid-sized... companies”* with almost 10% invested in unquoted stocks, over and above this, and that the WEIF was not a typical equity income fund.

## **2019**

168. There was limited promotion of the WEIF by HL in 2019. It featured in the February 2019 – *“Most popular ISA funds of 2018”*, which repeats the commentary from *“most popular ISA funds October”* published on 13 November 2018, quoted above.
169. The WEIF also appears on the *“Most popular funds in March”* published on 5 April 2019, but with no commentary.
170. HL’s January 2019 Investment Times introduced the Wealth 50 – a shorter version of its Wealth list. On this list the WEIF was categorised as a “UK growth” not “UK equity income”. This includes the following reference to Neil Woodford and the WEIF:

### **THE EXCEPTIONS THAT PROVE THE RULE**

*There are a few fund managers who can successfully add value through their style, changing the areas they invest in as market conditions change. ....It’s a similar story with*



*Neil Woodford, who currently manages the LF Woodford Equity Income and LF Woodford Income*

*Focus Funds. He's managed to rotate his style, investing in areas that have come back into fashion. He's also shown great stock picking ability in the past, but he's underperformed on this front over the last two years of his career.*

## **Other communications**

171. Although there was limited promotion of the WEIF HL did issue communications which set out some of the challenges the fund was facing.

172. HL issued an update on 7 January 2019 – “*Woodford Equity Income – Waiting with Woodford*”. Mr C was informed about the update the following day by email, which included the following (the emphasis is HL's):

*“There are two parts to our fund analysis. We crunch numbers, lots of them. But they're only half the story. We also think it's important to meet fund managers face to face. It helps us to understand how their funds have been built and might perform in different conditions.*

*We recently met with Neil Woodford and his team to discuss performance of his funds and the investments he's made for the future. So it's a good time to update you on how the funds have evolved and what we think about them.*

*It's no secret that we've been long-term supporters of Woodford. But his funds have recently performed poorly, as shown below. **It's been an uncomfortable time to hold the fund and our own conviction has been tested.***

*With this in mind you might be wondering why we have not removed the fund from the Wealth 50. It comes down to our belief there is a greater probability he'll deliver attractive returns in the years to come than there is he'll continue to perform poorly.*

*Investing against the herd*

*Woodford often invests against the herd. His funds can look very different from the wider stock market and the funds of his peers.*

*He identifies what he thinks are a company's opportunities in years to come. By its very nature a value opportunity is one that is not currently recognised by the market, so as investors we have to be mentally prepared for periods where performance is weak.*

*You can see from the chart how aggressive Woodford's been in shifting the sector allocation of his funds to fit his views.*

[sector allocation chart]

*This chart shows how Neil Woodford has changed the sectors he's invested in. It shows Invesco Perpetual High Income between October 2001 and October 2013. From October 2014 the chart shows investments made in the Woodford Equity Income fund.*

*As a result we expect his funds to go through extended periods of underperformance as well as outperformance. There will be times where his views are out of kilter with the market, and people question his judgment, as they do today. That's part and parcel of being a contrarian investor.*

*We're currently seeing one of these periods of underperformance. Let's delve a little deeper into why.*

*The UK market is unloved by investors and fund managers alike. And concerns over the impact of Brexit have meant that sectors which rely on the UK economy have been particularly unpopular.*

*Woodford takes a different view. He thinks the prospects for the UK economy are far better than most believe. He told us he's never seen such a big difference in value between stocks he considers cheap and the ones he thinks are expensive. He's a contrarian investor so is naturally drawn to these businesses that are out of favour. As such he's taken big sector positions to benefit from this view, with large investments in financial and industrial companies. He's also invested heavily in the UK housebuilding sector and the shares of associated building suppliers.*

*So far these investments haven't paid off. The uncertainty around Brexit has kept these sectors out of favour and their performance has been poor. Investments in companies such as Provident Financial, Capita and The AA have also been weak. This is why Woodford's fund performed poorly over the past two years.*

***The fund's future performance is likely to be heavily tied to the strength of the UK economy and how Brexit plays out. There are no guarantees but we think a soft Brexit or no Brexit at all will see his funds perform well. Just getting a solid conclusion to our future relationship with the EU could see an upturn in fortunes. But in the event of a hard Brexit, and while the outcome continues to be uncertain, we think the fund will underperform.***

***This highlights the importance of having a diversified portfolio, spreading your investments amongst managers that invest differently. That way your portfolio's not relying on the outcome of one or two factors that are hard to predict.***

*We're in it for the long run*

*Woodford's been included on the Wealth 50 list of our favourite funds since we created it in 2003.*

*Since then Woodford's delivered a return of 234% while the FTSE All-Share Index has returned 183% (both with dividends re-invested). Over his whole career he's delivered a return significantly higher than the stock market, as shown below. Of course, these figures are calculated based on the past and the future is likely to be different.*

[performance chart]

*The LF Woodford Equity Income Fund launched in June 2014. The period before reflects his performance as manager of the Invesco Perpetual High Income fund.*

*Since we don't know how the fund will perform in future we have to rely on the fund information we've gathered. We believe Woodford's demonstrated the ability to get the majority of big economic calls right. And he's proven to have the analytical skills to invest in the right sectors and companies to profit from these views.*

*He's managed money through multiple market cycles, investor fads and unexpected events. He came close to losing his job in the late 1990s when he shunned internet*

*stocks just before the big dotcom bust. Heading into the financial crisis, he stayed clear of banks. When he's made big calls, he's usually come out on top.*

*Of course, in future he might fail to get these big calls correct, or pick the right stocks, but we feel it's simply too early to give up.*

### **Where else is the fund invested?**

*Woodford has also increased his holdings of small and medium sized companies, both of which are higher risk than larger firms. In fact some of the companies he's invested in are so small they're not yet listed on the stock exchange.*

*These companies are highly innovative and are shaking up traditional industries – with this comes opportunities to take market share.....He sees a number of these businesses making good progress as they try and grow into successful companies. Time will tell.*

*What next?*

*It's understandable that some investors are getting impatient with Woodford. We've been disappointed with recent performance ourselves. No manager outperforms every year though, so as investors we will have our conviction challenged. We back proven managers for the long-term, and for longer than most. There's lots of great managers to choose from but as part of a diversified portfolio, we still think Woodford has a place.*

***We could be wrong. If we are we'll put our hands up. It might be tempting to change our opinion now to be rid of the current discomfort, but we don't think it would be the right thing to do. We still think long-term investors will be rewarded.***

173. HL issued further updates, leading up to the suspension of the WEIF, as follows:

1 March 2019 – “Woodford Equity Income – Transfer of unlisted investments”

18 April 2019 – “Woodford Patient Capital Trust – playing the long game”

3 May 2019 – “Woodford Equity Income – a step in the right direction”

3 June 2019 – “Woodford Equity Income: all dealing suspended following redemption concerns”

174. “Woodford Equity Income – a step in the right direction” included the following:

*On 1 March Neil Woodford announced a change to the way he invests in unquoted companies.*

*Today he committed to reducing the fund's direct investments in unquoted and less liquid companies, such as those found on stock exchanges without much active trading, by the end of 2019.*

...

*Our view*

*We've been talking to Neil Woodford for some time about the proportion of unquoted companies in the Woodford Equity Income Fund, and have urged him to*

*address the weighting of these stocks in his portfolio.*

*While the unquoted companies have been successful investments overall since the launch of the fund in June 2014, and positively contributed to fund performance, as these investments grew in number they added risk to the portfolio.*

*Woodford's investment in these types of higher-risk stocks are part of his appeal, and an integral part of this past success – but we believe unquoted investments in a fund of this nature should be a cherry on the top, not a piece of the pie.*

*With this change in strategy, early-stage businesses can still contribute meaningfully to performance, but they should not derail the fund if they don't do well.*

### **Woodford's recent performance**

*Neil Woodford is in the midst of his worst spell of performance in a career spanning more than three decades. But he has built his career by investing against the herd, and doing so with conviction. This is one of the reasons we've backed him – he's shown an ability to make the big calls right, and when he does, investors profit.*

*This is not the first time in his career that Woodford has underperformed the market – but we have stuck with him through difficult times in the past and investors have been rewarded for their patience.*

*Woodford's proven ability to perform through the market cycle means we retain our conviction in him to deliver excellent long-term performance and the fund remains on the Wealth 50. Like all investments it can fall as well as rise in value so you could get back less than you put in.*

### **Not your typical income fund**

*Woodford has invested in a collection of businesses he thinks are undervalued. Some pay dividends, some don't. He aims to pay some income, grow that income over long term, and grow the value of your investment too.*

*Overall he's got less invested in large companies than at virtually any point in his career as he sees less opportunity for growth in this part of the market. This means the fund is likely to be more volatile than a typical equity income fund.*

175. I consider this evidence shows HL's view remained, ultimately, that it should support the fund. It seems its confidence at this time was lower than it had been previously – perhaps because of the continued poor performance. But I think that was largely reflected in its communications – as I set out below.

### **HL's view at the time**

176. HL met with WIM again on a number of occasions during 2019. I have seen its notes of each meeting. I have also considered internal HL email correspondence, and notes of internal meetings at HL where the WEIF was discussed.
177. I have considered the notes and emails in their entirety. I think they show HL, by this point, did have significant concerns about the WEIF but, on balance, retained faith in WIM to recover from the period of poor performance and took the view there was likely to be enough long term investors (including it) to ensure liquidity would not be an issue.

178. It seems HL did recognise by this point that there may not be a good outcome and it considered removing the WEIF from the Wealth List. But it also considered the possible consequences of removing the WEIF from the Wealth List and balanced this against its view that the fund was likely to ultimately recover.
179. It is clear the suspension of three stocks held by the WEIF on the Guernsey exchange was a significant cause for concern. But the suspension was ultimately lifted.
180. Again, in relation to the unquoted stocks, HL was consistently saying internally that it would remove the WEIF from the Wealth list if it breached the limit (and it knew it had breached the limit). And, to that extent, HL was again acting consistently with what it was internally saying it was going to do. The evidence shows HL was monitoring the situation and was prepared to take action should the fund exceed 10%. I note Mr C, in his response to my provisional decision, mentions his not having been told about a breach of the 10% limit. But I remain of the view there is no evidence to show HL knew the 10% limit had actually been breached at any point; so, from its perspective, the risk did not ultimately come to fruition.
181. In my provisional decision I said HL could perhaps be reasonably criticised for not bringing to light more what was recorded about it being uncomfortable that the Guernsey stock exchange listings weren't sticking to the "spirit" of the rules. I note HL says, in its response to my provisional decision, that it does not consider this is an accurate or justified statement. It refers to its communication of 3 May 2019, which, as noted above at paragraph 174, referenced less liquid companies as including those found "on stock exchanges without much active trading".
182. I remain of the view my finding on this point is reasonable. The 3 May 2019 update does refer to the exchanges on which the shares had been listed as "without much active trading", and to WIM looking to reduce such holdings by the end of the 2019, but I do not think that sufficiently reflects HL's recorded concern that the steps which had been taken by that point in time did little to improve liquidity and were not therefore within the spirit of the rules.
183. But I also remain satisfied this was not reason, overall, in the circumstances, to remove the WEIF from the Wealth List. WIM had undertaken to reduce these holdings by the end of 2019 and so this reasonably formed part of the internal narrative which ultimately led to the conclusion HL should still support the fund.
184. Overall, whilst it is clear HL did have some significant concerns at this time, I think the communications do largely reflect the position as HL saw it. In my view HL was reasonably attempting, at this point, to strike a fine balance between communicating risks and not strongly recommending further investment, whilst not taking action which might put the fund in peril - and at the same time reflecting its genuinely held view the WEIF would recover in the longer term.
185. The communications from HL do make repeated references to the poor performance of the WEIF, and I acknowledge that some investors had lost patience with the fund. They also make it clear HL could be wrong and that the fund is, by this point, essentially a binary bet – and that it was therefore important to consider holding the fund as part of a diversified portfolio that encompassed different styles/exposures.
186. I have considered some of the aspects of HL's communications in further detail below.
187. 7 January 2019 update. This update includes the following (emphasis is HL's):

*“It’s no secret that we’ve been long-term supporters of Woodford. But his funds have recently performed poorly, as shown below. **It’s been an uncomfortable time to hold the fund and our own conviction has been tested.***

*With this in mind you might be wondering why we have not removed the fund from the Wealth 50. It comes down to our belief there is a greater probability he’ll deliver attractive returns in the years to come than there is he’ll continue to perform poorly. “*

*“Woodford has also increased his holdings of small and medium sized companies, both of which are higher risk than larger firms. In fact some of the companies he’s invested in are so small they’re not yet listed on the stock exchange.”*

*“... There’s lots of great managers to choose from but as part of a diversified portfolio, we still think Woodford has a place.”*

***“We could be wrong. If we are we’ll put our hands up. It might be tempting to change our opinion now to be rid of the current discomfort, but we don’t think it would be the right thing to do. We still think long-term investors will be rewarded.”***

188. In my view this is a reasonable appraisal of the situation – it is a measured summary of the position with the WEIF and the possible outcomes. The update also makes it clear that things could go either way – “*we could be wrong*”. In my view – particularly when considered alongside the previous communications HL made - this clearly, fairly, not misleadingly presented the essence of HL’s concerns in a balanced way.

189. 3 May 2019 update. This update includes the following:

*“We’ve been talking to Neil Woodford for some time about the proportion of unquoted companies in the Woodford Equity Income Fund, and have urged him to address the weighting of these stocks in his portfolio.*

*While the unquoted companies have been successful investments overall since the launch of the fund in June 2014, and positively contributed to fund performance, as these investments grew in number they added risk to the portfolio.”*

*“Overall he’s got less invested in large companies than at virtually any point in his career as he sees less opportunity for growth in this part of the market. This means the fund is likely to be more volatile than a typical equity income fund.”*

190. This is, in my view, a further reasonable appraisal of the position with the WEIF at this time. It explains the number of unquoted stocks had grown and, as they had done so, had added risk. It also explains Neil Woodford had less invested in large companies that he had before, and highlights the increased volatility that comes with this.

191. So I think HL sufficiently identified that the exposure to smaller companies remained high,

that HL’s conviction had been tested, and that it recognised the outcome might not be a good one. It also continued to identify the greater risk and volatility than might be expected from a typical equity fund, and of the need to diversify.

### **In summary**

192. Given my findings above, I do not think it would be fair and reasonable to uphold Mr

C's complaint:

- The fund changed significantly over the years following its launch, and at times HL had significant concerns about it. However, HL was free to reach a reasonably held view on whether the fund should feature in its Wealth List, and I have not seen sufficient evidence to show its view was not at any point reasonably held or that its view was anything other than the fund should remain on the Wealth List.
- HL took the view that a breach of the 10% limit on unquoted stocks required by the relevant rules was a “red line”, which would result in it removing the fund from the Wealth List. HL consistently applied this approach, and kept the position under regular review - and there is no evidence HL ever became aware of such a breach.
- I am satisfied that, overall, when communicating its reasonably held view, HL acted in a way which was broadly consistent with its regulatory obligations – namely to:
  - pay due regard to the interests of its customers and treat them fairly (Principle 6);
  - pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading (Principle 7);
  - ensure that a communication or a financial promotion is fair, clear and not misleading (COBS 4.2.1R(1));
  - act honestly, fairly and professionally in accordance with the best interests of its client (COBS 2.1.1R (1)).
- In my view HL's communications changed as the fund did; and did enough to make Mr C aware of the increasing exposure to smaller companies and the consequent increase in risk. There was also a clear shift in the tone of the communications as the poor performance of the fund continued and some of the issues impacting it prevailed.
- HL did not share all the concerns it had, nor the full detail of all the concerns it did share. But, overall, it did in my view share enough and it is not reasonable to say it had to share the full detail of its exchanges with WIM or every concern it had raised – only the overall conclusions it reached.
- It needs to be kept in mind that HL was only expressing an opinion about whether it thought the fund represented a good investment opportunity for customers making their own decisions about whether the fund potential, characteristics and risks were right for them. It did not hold the WEIF out as being a suitable investment for any particular client – rather it held it out as worth consideration by those making their own investment decisions. HL's communications need to be considered in this context.
- In hindsight, it is clear HL's view was wrong. But the fact HL's reasonably held view the WEIF would recover from its period of underperformance transpired to be wrong does not mean it would be fair for it to compensate Mr C for investment losses. As noted above, opinions won't always be right and sometimes – as they were here - could be wrong. I am satisfied HL made it clear it was simply offering its opinion, and it was for Mr C to make his own investment decisions. And HL made it clear, in its later communications, that its opinion might turn out to be

wrong.

- I note Mr C says, in his response to the provisional decision, that he did not consider there to be anything to worry about as long as the WEIF was still on the Wealth List. But, as I have set out above, HL's actions amounted more than simply keeping the WEIF on tis Wealth List. It also provided information about the fund, which communicated the key conclusions it had reached - and this was relevant to Mr C's decision whether to remain invested.
- Whilst I appreciate, given what Mr C says in his complaint, it is likely he did not read all of the information and so may have had a partial view of the fund, the information was made available to him and I must take into account the entirety of the information HL put out, not just the more limited aspects Mr C actually engaged with.
- I remain of the view HL gave Mr C sufficient information about the WEIF. It was a matter for him whether he read it, and to make decisions on whether he wanted to invest in the WEIF and/or retain existing investments in the WEIF

193. Overall, having considered all the evidence and arguments I am not persuaded HL failed to act fairly and reasonably in its dealings with Mr C.

#### **My final decision**

194. For the reasons given, I do not uphold the complaint.

195. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 February 2024..

John Pattinson  
**Ombudsman**