

## **The complaint**

Mr N complains that Hargreaves Asset Management Limited (HLAM) continued to promote the Woodford Equity Income Fund (WEIF) and include it in its Wealth 50/150 list (the Wealth List) after it became aware of liquidity issues with the fund and its exposure to higher risk sectors.

## **What happened**

Mr N opened a HLAM Individual Savings Account (ISA) in 2010. The relationship between HLAM and Mr N was execution only, so HLAM didn't advise him about investments he chose to make in his account. Mr N purchased units in the WEIF following its launch in June 2014 for a total cost of £10,031.81 and bought a few further units for a further £200 in December 2014. He sold all of his units on 24 May 2019 for a total of £10,382.76, shortly before the fund was suspended by Link, the Authorised Corporate Director, on 3 June 2019.

As Mr N's complaint relates only to his investment in the WEIF it is appropriate to set out the background to the fund and HLAM's relationship with it.

## **The WEIF**

This was managed by Neil Woodford who set up Woodford Investment Management (WIM) in 2013 following him leaving Invesco Perpetual. The WEIF was launched in May 2014 with a £1 per unit fixed price until 18 June 2014. The Authorised Corporate Director – the firm responsible for the running of the fund and for ensuring it is well managed – was Capita Financial Managers, later known as Link Fund Solutions.

The WEIF broadly tracked the benchmarks until the second half of 2017 when there was a significant fall which wasn't reflective of what happened with the benchmarks. Thereafter the WEIF began to significantly underperform the benchmarks from early 2018, with a very different performance pattern to the benchmarks as from early 2019 until the fund was suspended in June 2019.

At the same time as the WEIF stopped tracking the benchmarks in 2017 it started to see significant outflows, with assets under management falling from £10bn to just £3bn over the next couple of years.

It was due to the extent of the outflows and the proportion of the WEIF assets that weren't liquid that Link decided to suspend trading in the fund in June 2019 and removed WIM as the investment manager, before then seeking to liquidate the fund later in 2019. Link subsequently agreed to provide a significant redress payment to investors and the scheme of arrangement it proposed was approved by the court in February 2024.

## **HLAM's communications relating to the WEIF**

HLAM's met with WIM in early 2014 following which it decided to promote the WEIF to its customers and to visitor's to its website prior to launch of the fund. The WEIF was the subject of, or was referred to, in various communications from HLAM between the fund's

launch in 2014 and its suspension in June 2019. Those communications consisted broadly of; promotion of the WEIF at launch by letter, website, and emails; ongoing promotion of the WEIF through website articles and on occasion an email pointing the recipient to the article; updates on the WEIF through website articles with again email alerts about the articles; the inclusion of the WEIF in HLAM's "best buy" lists.

### **The "best buy" list**

HLAM published a list of what it considered to be the best or its favourite funds, initially called the Wealth 150 – with a subset with discounted charges for its clients called the Wealth 150+ - which later became the Wealth 50 and which I will refer to collectively as the Wealth List. The WEIF featured on the Wealth List from launch until suspension.

I am aware that the Wealth List was available on HLAM's website to anyone who visited the site and was also sent to all of its clients on its general mailing list who had elected to receive communications. It also formed part of HLAM's bi-annual Wealth Reports. HLAM says the list was updated from time to time with funds added or removed based on an ongoing cycle of review, monitoring and analysis of funds by its investment team which in respect of the WEIF included meetings with WIM to discuss the WEIF a number of times.

### **Mr N's complaint to HLAM**

Following the sale of his units in the WEIF Mr N complained to HLAM about its promotion of the fund and its inclusion on the Wealth List. It provided its final response to the complaint on 27 November 2019, in short making the following points:

- It provided an execution only service to Mr N and didn't provide personalised advice or management services.
- It does provide information compiled by its investment research team as part of its service to help clients decide where to invest and such information has to be clear, fair, and not misleading.
- Its opinions on the WEIF have always been properly held and based on extensive research and due diligence.
- It has always made clear that there are risks with the fund and that there can be no guarantee in investing.
- Its research team chose the WEIF to be included on 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 whilst disappointing, HLAM's conviction in its long term prospects remained.
- Neil Woodford had a track record of underperforming for periods but then recovering strongly and based on its research it believed that long-term, and once Brexit was resolved, the WEIF had the potential to outperform its benchmark.
- The decision by Link to suspend the fund in June 2019 was disappointing and unexpected.

Mr N didn't agree with HLAM and referred his complaint to our service. It was considered by one of our investigators who didn't think it should be upheld. He made the following key

points:

- It's clear the WEIF changed significantly in the years following its launch and that at times HLAM had significant concerns about it but taking into account its regulatory obligations it was free to reach a view that the fund should feature in its Wealth List.
- HLAM took the view that a breach of the 10% limit on unquoted stocks as required by the relevant rules was a red line which would result in it removing the fund from the Wealth List but there is no evidence it was ever aware that this limit had been breached.
- Overall when communicating its reasonably held view (in relation to the WEIF) HLAM acted in a way consistent with its regulatory obligations.
- HLAM's communications changed as the fund did and it did enough to make Mr N aware of the increasing exposure to smaller companies and the consequent increase in risk.
- There was also a consequent shift in the tone of its communications as the poor performance continued.
- HLAM didn't share all its concerns with customers or provide the full detail of its concerns as shared with WIM but overall it shared enough and it isn't reasonable to say it had to share the full details of all its exchanges with WIM or every concern it had raised.
- HLAM wasn't providing its customers with personal recommendations to invest, only expressing its opinion as to whether it thought the fund provided a good investment opportunity for those customers who thought the fund potential, risks, and characteristics were right for them.
- HLAM didn't hold out the WEIF as being suitable for any particular client, only that it was worthy of consideration for those making their own investment decisions and its communications need to be considered in that context.
- The inclusion of the WEIF in the Wealth List needs to be viewed in light of the communications it was providing at the same time which highlighted various features of the fund which it thought investors should pay particular attention to.
- In hindsight HLAM's view of the WEIF was wrong but it didn't know the fund was going to be suspended and didn't provide any guarantees as to performance
- Mr N likely didn't read all the information provided by HLAM and may have only had a partial view of it but the information was made available to him and it is the entirety of information provided that has to be considered, not the more limited aspects he actually engaged with.
- HLAM provided enough information to Mr N and it was matter for him whether he read it and it was for him to decide whether he wanted to invest in the WEIF or remain invested in it.

Mr N didn't agree with the investigator. He said that he could have cashed in his investment with HLAM much earlier than he did but that it commented on many occasions to hold fire. He said this may not be seen as advice but it clearly is.

As Mr N didn't agree with the investigator the matter has been referred to me for review and decision.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In doing so, I've taken into account relevant law and regulations; relevant regulators' rules guidance and standards; codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time. But I think it's important to note that while I take all those factors into account, in line with our rules, I'm primarily deciding what I consider to be fair and reasonable in all the circumstances of the case.

It is for me to decide what weight to give evidence a party relies on and where there is a dispute about the facts my findings are made on a balance of probabilities – what I think is more likely than not.

The purpose of my decision isn't to address every point raised and if I don't refer to something it isn't because I've ignored it but because I'm satisfied I don't need to do so to reach what I think is the right outcome. Our rules allow me to do this, and it simply reflects the informal nature of this service as a free alternative to the courts.

The investigator set out the relevant regulatory obligations of HLAM so the parties are aware of these. However, I think it is appropriate for me to set these out again in this provisional decision before I explain my findings.

### **The regulatory obligations**

The following regulatory rules are particularly relevant to the issues in this complaint and my assessment of whether HLAM dealt with Mr N fairly.

The FCA sets out the rules that firms need to comply with within its Handbook and they include the Principles for Businesses.

PRIN 1.1.2G in the FCA's Handbook explains:

“The Principles are a general statement of the fundamental obligations of firms and the other persons to whom they apply under the regulatory system.”

The Principles are set out under PRIN 2.1.1R and I think the following are of particular relevance to the issues in this complaint:

Principle 6 - Customers' interests: A firm must pay due regard to the interest 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.

In addition to the principles the Handbook sets out specific rules in its Conduct of Business Sourcebook (COBS) within the Handbook. Those rules include COBS 4.2.1R(1) which states:

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

misleading.”

And COBS 2.1.1R(1) which states:

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

It is with the above rules in mind that I have considered whether HLAM did anything wrong.

Although Mr N doesn't appear to have suffered a capital loss as a result of his investment I acknowledge his return has been minimal and I understand why he feels HLAM is at fault for him remaining in the fund for as long as he did and acknowledge that if he had got out sooner his return may have been better, perhaps significantly so. I accept that Mr N may well have decided to sell his holding in the WEIF sooner than he did but for HLAM continuing to include the fund in its Wealth List and its communication of its ongoing faith in Neil Woodford as a fund manager and belief that the fund would deliver long term returns throughout the period he was invested.

However, HLAM isn't responsible for the poor performance of the fund and its underlying companies and it had no say in the choices that Neil Woodford made as to the specific companies the fund should invest in. In providing an execution only service to Mr N its responsibility was to ensure that the information it provided about Neil Woodford as fund manager and the WEIF was clear, fair, and not misleading. Having considered the evidence in this case I am satisfied that it did provide such information. Put simply I am satisfied that it made clients aware of the issues it was raising and discussing with Neil Woodford and WIM and expressed opinions that were genuinely held by it in respect of him as a fund manager and the long term prospects of the WEIF.

Mr N doesn't appear to be suggesting that the information provided by HLAM around the time he decided to invest in the WEIF was unfair or misleading although no doubt what its positive comments will no doubt had some bearing on his decision to invest shortly after launch. In any event, I am satisfied that there is no reason to think the information HLAM provided to prospective investors such as Mr N wasn't clear, fair, or was misleading. In the circumstances I am satisfied that Mr N's decision to invest in the fund wasn't therefore the result of any failure on the part of HLAM to comply with its regulatory obligations at that time.

Mr N does take issue with the information provided by HLAM following his investment but having considered this carefully I am satisfied that the information it provided over the years following his investment up to suspension of the fund in 2019 continued to be clear, fair, and not misleading. I am satisfied that over this period HLAM informed clients of issues arising with the fund which were the subject of discussions between it and Neil Woodford/WIM and the opinions it expressed were clearly identified as such and also in accordance with what was being discussed and its own internal view. I am not going to refer to every document wherein HLAM commented on the fund or Neil Woodford but will provide relevant excerpts that show how HLAM kept clients informed of Neil Woodford's approach when managing the fund as well as changes to the fund and its performance.

For example in an article dated October 2014 HLAM referred to the fund being at the top of the Income Equity sector performance table but also referred to Neil Woodford's search for out of favour and overlooked companies and to smaller companies making up around 13% of the portfolio. In an article in June 2015, a year after launch of the fund, HLAM refers to the fund being the best performing in the UK equity income sector but warns that this short-term performance isn't guaranteed to continue. And in an article dated 14 January 2016 titled 'How to build an income portfolio for ISA's' which named the WEIF as one of the funds for such a portfolio, HLAM refer to around two thirds of the fund being invested in large well

established businesses but also that Neil Woodford looks for *'tomorrows dividend winners amongst higher-risk smaller and medium-sized companies, including unlisted businesses'*.

As the makeup of the portfolio changed HLAM made its clients aware of this. For example, in the November 2016 Wealth List it said:

*"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."*

This was followed by a 'special report' on the WEIF dated 13 December 2016, following a meeting with Neil Woodford where HLAM stated that *"the funds sizeable exposure to small and medium sized 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."*

The article goes on to state that Neil Woodford had increased the fund's exposure to higher-risk small and unquoted companies and that only around 50% of the fund is invested in large high-yielding companies with the remainder invested in medium and small-sized companies or those not listed on the stock market. This was followed shortly afterwards with a research update dated 22 December 2016 which referred to a bias to small and medium sized companies remaining and to underperformance of the fund over the last year. And under the heading '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."*

So, by the end of 2016 HLAM had, through its communications on the website, identified to its clients that; the WEIF wasn't a typical equity income fund; it expected the fund to fall out of the sector; the fund had underperformed over the past year; Neil Woodford's approach as fund manager included him identifying higher risk small and medium sized companies including unlisted companies; there had been an increase in the proportion of the fund invested in medium and small sized companies; there was an additional risk from the investment in small and unquoted companies. These were issues that HLAM were discussing with Neil Woodford/WIM and wanted to ensure its clients were made aware of. The information provided to clients reflected the discussions it was having at the time and I am satisfied on the evidence I have seen that its ongoing expression of faith in Neil Woodford and the long-term prospects of the fund reflected what it genuinely thought internally.

I am satisfied that the information it provided at this time was clear, fair, and not misleading and in managing his own portfolio it was for Mr N to decide whether he wanted to remain invested in a fund which had increased the proportion of the fund invested in medium and small companies, some of which were unquoted, with the increased risk and volatility arising with such investment. I appreciate that Mr N may not have read all the information that

HLAM provided about the WEIF, but in providing an execution only service its responsibility was to provide clear, fair, and not misleading information for its clients. It didn't have to ensure its clients considered the information it provided, that was a matter for its clients, so if Mr N didn't do so HLAM isn't responsible for that.

Through 2017 HLAM continued to provide clients with information arising from its ongoing due diligence of the WEIF and the meetings with WIM through which various issues were raised and discussed. For example in a research article dated 12 May 2017 headlined 'Woodford's change of heart' HLAM refers to him adding Lloyds Banking Group and other 'economically sensitive' companies to the portfolio whilst also stating that it agreed with his positive outlook for the UK economy. And in a research update dated 22 June 2017 it referred to the WEIF as not a typical equity income fund and again pointed out to clients that Neil Woodford had *"invested a significant portion of the portfolio in higher risk smaller companies – some of which are not yet quoted on the stock market."* It also made clear its ongoing support for Neil Woodford and the fund, pointing out that he *"had an exceptional long-term track record and a history of making big stock or sector bets which have added significant value for investors over the long term."*

In a further research article dated 7 September 2017 HLAM referred to Neil Woodford hitting the headlines for the wrong reasons and that *"a spell of poor performance has led some to question his abilities."* The article states that the 'current stock market environment hasn't favoured the types of company he looks for but that he is convinced the portfolio is positioned correctly for the long term.' It goes on to state that its view *"judging a fund manager over a time period of a few months is folly, especially one with such a long and distinguished record."* And it confirms that it retains its faith in him to add value for investors over the long term. HLAM also stated that its quite right to question any fund manager on their performance but that having spoken with Neil Woodford at length it was encouraged he was sticking to his long held approach – *"of seeking undervalued and out of favour companies that had seen investors well rewarded over the long term."*

In a further research update dated 19 December 2017 HLAM, in setting out its view, repeated previous statements it had made about the WEIF wasn't a typical equity income fund and that 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 update identifies that 9.5% of the fund is invested in unquoted companies with a maximum of 10% allowed but that Neil Woodford expects the proportion of the fund invested in unquoted companies to fall during the next 12 to 18 months as some of the biggest investments seek to list on the stock exchange. The update reminds investors 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."*

HLAM went on to state that it believes that it is premature to write Neil Woodford off and that his long term track record has been exceptional and that it believed he would continue to add value for investors over the long term. Again, the information provided by HLAM to clients generally reflected the discussions it was having with Neil Woodford and its internal view in this period. So, I am satisfied that the information HLAM provided to investors continued to be fair, clear, and not misleading.

This continued through 2018 and into 2019, with HLAM providing information about the fund through articles on its website with clients directed to these through emails. So, for example, on 22 March 2018 HLAM emailed clients about a website article on the WEIF through which it notified clients that the fund was moving to the IA UK ALL companies sector because it was no longer eligible to be included in the equity income sector because of its low yield. The article refers to almost 40% of the fund being invested in small and mid-sized lower

yielding companies with almost an additional 10% invested in unquoted companies. So, HLAM continued to make clear the bias towards small, medium, and unlisted companies.

At the same time it maintained its support for Neil Woodford as manager and the long-term prospects of the fund, based *“on the strength of his track record and believe he has the ability to deliver excellent long-term returns”* and that *“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.* It pointed to him having delivered a return of almost 27 times an original investment over his career but warns that there are no guarantees this will be repeated. The article refers to the WEIF remaining on the Wealth List *“but as ever investors should ensure they are comfortable with the investment approach and risk”* reminding execution only clients such as Mr N, that it was for him to decide whether he wanted to remain in the WEIF based on the information available about it.

In another research update clients were emailed about on 7 January 2019, HLAM refers to the poor performance of the fund and acknowledges it has been an uncomfortable time to hold the fund and that its own conviction has been tested. It goes on to state that *“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 that there’s a greater probability he’ll deliver attractive returns in the years to come than there is he’ll continue to perform poorly.”* It goes on to explain that Neil Woodford often invest ‘against the herd’ and that as a ‘contrarian’ investor his views will be out of kilter with the market and it expects extended periods of underperformance as well as out performance and that currently we are seeing one of the periods of underperformance. It points to Neil Woodford investing in sectors that rely on the UK economy at a time the UK market is unloved by investors and fund managers alike and that so far these investments hadn’t paid off. It also points out that *“the fund’s future performance is likely to be heavily tied to the strength of the UK economy and how Brexit plays out.”*

The update concludes by saying:

*“It’s understandable that some investors are getting impatient with Woodford. We’ve been disappointed with recent performance ourselves. No manager outperforms every year through, so as investors we will have our convictions 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.”*

So, HLAM through 2017, 2018 and into 2019 provided clear, fair and not misleading information about the WEIF to clients, drawing their attention to the fact that the fund had been underperforming, was significantly invested in small and medium sized companies, including unlisted companies, with the increased risk this presented. Having provided this information it also explained clearly why it still had faith in Neil Woodford and the long term prospects of the fund which led to it keeping the fund on its Wealth List throughout. As it said in its January 2019 update ‘it could be wrong’.

Its ongoing belief in Neil Woodford and the fund continued with it providing a further update to clients on 3 May 2019 HLAM informing them that Neil Woodford had committed to reducing the WEIF’s direct investment in unquoted and less liquid companies and that in due course he intended to sell out the fund’s unlisted direct investments entirely. In the article HLAM being in the *‘midst of his worst spell of performance in a career spanning decades’* but goes on to state that he has built his career on investing against the herd and this is why it has backed him, because *“he’s shown an ability to make the big calls right, and when he*



*does, investors profit.*” I have seen no persuasive evidence that this didn’t reflect the discussions that HLAM was having with WIM at the time and HLAM’s honest opinion.

Mr N sold his units in the WEIF three weeks later, shortly before its suspension. As I indicated at the outset, I accept that Mr N more likely than not remained invested in the fund for as long as he did because HLAM continued to express its belief in Neil Woodford and the long term prospects of the fund. Mr N has suggested that what it said amounted to advice but I have to disagree with him about that. I am satisfied that HLAM expressing its honestly held opinion about Neil Woodford and the long term prospects of the WEIF was its own view and opinion and expressed as such. It wasn’t intended, nor could reasonably be seen, as advice that clients should invest in, or remain invested in, the fund.

I am satisfied that the information that HLAM provided throughout was fair, clear and not misleading, in compliance with Principle 7 and COBS 4.2.1R and that it paid due regard to the interests of Mr N and treated him fairly in accordance with Principle 6 and COBS 2.1.1R and that as such it complied with its regulatory obligations.

### **My final decision**

I don’t uphold this complaint for the reasons I have set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr N to accept or reject my decision before 27 September 2024.

Philip Gibbons  
**Ombudsman**