

The complaint

Mr V complains about Hargreaves Lansdown Asset Management Limited's ("HL's") promotion of the Woodford Equity Income Fund ("WEIF"), which he invested in through his stocks and shares ISA with HL.

What happened

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.

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 its performance followed a very different pattern to the benchmarks from early 2019 to the date of suspension.

Alongside this, the fund began to see significant outflows from mid 2017, falling from around £10bn of assets under management to around £3bn in two years.

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.

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. A scheme of arrangement between investors and Link has now been sanctioned by the court and will conclude the wind up of the fund with further distributions being made to investors who held units in the fund at suspension.

HL's communications relating to the WEIF

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.

The Wealth List

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.

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, alongside the biannual 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.

As part of its ongoing research HL met with WIM to discuss the WEIF on a number of occasions.

Mr V’s dealings in the WEIF

Mr V received a holding in the WEIF gifted from his partner’s account in March 2018. Mr V remained invested in the WEIF at the point it was suspended from trading in June 2019. As a result, he was unable to sell units in the fund pending its full liquidation.

Mr V’s complaint to HL and its response

Mr V first wrote to HL about the performance of the WEIF in May 2019, prior to the fund’s suspension. In that email and the subsequent correspondence, Mr V raised a number of concerns related to the WEIF. In summary, Mr V said:

- He questioned whether the fund manager was investing in a manner consistent with the investment objective of providing a reasonable level of income and capital growth.
- He felt he had been misled and asked what percentage of stocks held in the WEIF paid dividends; whether the WEIF should be described as high risk; and whether HL was satisfied that the fund manager was investing in line with the WEIF’s objectives.
- HL had a conflict of interest and failed to warn its customers about WEIF because it had invested considerable amounts in the WEIF through its own multi-manager funds (MMFs).
- He was concerned that the transfer of assets from the WEIF to another fund - the Woodford Patient Capital Trust (WPCT) - was being done to disguise the number of

non-income producing assets in the WEIF and that investors could be double charged.

HL looked into Mr V's complaint but didn't think it had done anything wrong. In short it said that the Wealth Lists were "*a tool for clients to use in making their decisions when choosing from the full range of funds available on our platform*". It acknowledged the WEIF had experienced a "*difficult period of performance*" but emphasised that although it had a reasonably held conviction in the prospects of the WEIF outperforming its benchmark, it provided an "*execution-only service*", which meant that it was not providing investment advice to Mr V or making personal recommendations.

It said that the information it provided about the WEIF on its Wealth List or in other communications was not designed to be taken as a personal recommendation to deal in a fund and was provided to clients in order to help them decide whether or not to invest.

On Mr V's concerns about the HL MMFs, HL said that the total invested in the WEIF was a relatively small proportion of the total value of the MMFs. Whilst there was a modest reduction in the concentration of WEIF held in the MMFs overall, that was due in part to the declining value of the WEIF. The MMFs invested in a wide range of underlying investments, meaning that the negative impact of one of their investments underperforming or (as in the case of WEIF) being suspended, should be limited.

Prior to the WEIF's suspension, HL also provided Mr V with information about the transfer of investments from the WEIF to the WPCT and said it saw the move as a positive step. HL said Woodford thought the higher-risk unlisted companies had a bright future ahead of them and the transfer still allowed WEIF investors to benefit if they did well. HL said their only concern was that Woodford should take steps to make sure WEIF investors would not be double charged, and that was being investigated.

Mr V remained unhappy and his complaint was referred to our service. One of our investigators looked into the complaint but didn't consider it should be upheld. In short, he concluded that HL's communications met its regulatory obligations and were clear, fair and not misleading.

Mr V disagreed with our investigator's findings for two main reasons. He said:

- It wasn't reasonable for HL to include the WEIF on the Wealth List. Referring to the record of some of HL's deliberations at the time, Mr V said it can't be right that HL decided to retain the WEIF on the Wealth List because significant outflows from the fund may scare investors and cause problems.
- He disagreed that HL had treated its customers fairly. He questioned the extent to which HL withdrew the WEIF holdings for its MMFs and whether HL had decided not to remove the WEIF from the Wealth List because of the impact that would have had on the MMFs. He said it was obvious that if HL gave themselves a preference, then it was not treating its customers fairly.

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.

Although Mr V and his partner had previously been given advice by HL, I've not seen evidence that Mr V was receiving ongoing advice; instead, he was an 'execution only' client.

As I've already noted, Mr V was gifted his holding in the WEIF from his partner's account in March 2018. I understand his partner held the WEIF from 2014 in an account that was linked to Mr V's. So, although Mr V didn't hold the WEIF himself until 2018, I have also looked in this decision at HL's promotion of the WEIF prior to that date.

Mr V has also raised concerns about other businesses who he thinks bear some responsibility for his losses on the WEIF. Our investigator has provided information to Mr V on the role of our service, and I will not be addressing in this decision the concerns Mr V has raised about other parties.

I understand Mr V's strength of feeling on the complaint and why he considers HL is responsible for his losses on the WEIF. However, for the reasons I set out below, I'm not persuaded Mr V was misled into investing, or remaining invested, in the WEIF – and consequently, I'm satisfied the losses arose due to the poor performance of the investment and its underlying holdings, which HL had no responsibility for.

I've first set out what I consider the relevant regulatory obligations that HL's communications needed to meet.

What are the relevant regulatory obligations?

I think the following regulatory requirements are of particular relevance to my assessment of whether HL acted fairly and reasonably in its dealings in this case.

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.

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."

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)."

My findings

I should say firstly that the investigator didn't conclude that HL's Wealth Lists, or its commentary about the WEIF, didn't influence Mr V's investment decisions. I accept that Mr V's decisions were made by taking into account what HL said about the WEIF, including what it said about its long-term prospects.

But the rules (set out above) that HL was required to adhere to when making these communications required HL to issue communications which were clear, fair and not misleading. This means that as long as HL's communications during the relevant period were factual and gave a balanced view of its assessment of the WEIF, then it didn't do anything wrong.

It's clear that HL provided significant positive commentary about Woodford and the WEIF before and during the period Mr V was invested in the fund, and it obviously believed that Woodford's track record, as well as the objective and performance of the WEIF between 2014 and 2016 were such that it continued to be a fund that it thought met its criteria for inclusion on its Wealth Lists.

The evidence I've seen shows that whilst HL met numerous times between 2014 and 2016 with Woodford and had frank conversations about his management of the fund, its views were largely consistent with what it was telling its customers.

In December 2016, HL said on its website that the WEIF was "*not a typical equity income fund*" and said that unlike most equity income funds which were exposed to large high-yielding companies, "*only around 50%*" of the WEIF was invested in this area. The remainder was "*invested in small and medium sized companies, or those not listed on the stock market*".

So I think it's fair to say that Mr V ought to have known that the WEIF had certain risks associated with its investment strategy.

HL was explicit that the fund had 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*". Ultimately HL's view was that this approach would "*add significant value for investors able to withstand the additional risk and volatility that comes from investing in smaller and unquoted companies.*"

Having reviewed the evidence of HL's meetings with WIM in 2016, I can see that in summary it was aware that the WEIF was no longer a typical equity income fund. I can also see that it knew there had been a shift towards small cap and growth stocks which it had not expected – and it recognised that in the event of significant outflows, that proportion would increase and potentially affect WIM's ability to invest further. HL was also aware that its customers might not know how the fund had changed – and it agreed to take steps to address this. It's clear to me that the update above was designed to draw these concerns to its customers' attention.

But HL also continued to hold the view that the WEIF was still an investment that would add value for investors – and I'm satisfied it held that view internally and so it was clear, fair and not misleading to have continued to say that in its updates. It was for individual investors to decide for themselves whether the risks and the features of the WEIF which HL was describing were right for them.

I acknowledge that in 2017 the WEIF began to underperform its benchmark, but I'm satisfied that HL's continuing communications about the fund remained balanced. It was clear that it viewed the WEIF as a long term investment and explained in its June 2017 update that Woodford had "*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*".

In an article it published in September 2017 on its website, it explained that "*judging a fund*

manager over a time period of a few months is folly, especially one with such a long and distinguished track record". This article explained that Woodford had experienced poor performance in the past, and that it was *"quite right to question any fund manager on their performance"* which HL said it had done. But it explained that his approach involved seeking out undervalued companies and this strategy had *"seen his investors well-rewarded over the long term"*.

In its November 2017 Wealth Report HL said that performance *"over the past year has been disappointing relative to the FTSE All Share Index"* and that some of Woodford's stock selections had under-performed. But HL continued to have *"faith in his abilities to deliver for investors"*. In my view HL was entitled to continue to believe in the long term prospects of the WEIF – and I'm not persuaded it was misleading for it to communicate its view that, over the long term, the WEIF would still be a good investment. I'm not persuaded that this belief, and its communication of it, was inconsistent with the obligations I've set out above.

In December 2017 HL said on its website that the WEIF wasn't *"a typical equity income fund"* and highlighted that around 9.5% of the fund was in unquoted companies. HL explained clearly that *"small and unquoted businesses are typically considered higher-risk because their shares are difficult to sell"*. And it concluded that Woodford's approach would *"result in periods of poor performance"* but it was *"premature to write Neil Woodford off"*.

The key issue here is that none of these updates differed markedly from the concerns HL was expressing to Woodford throughout the year and from its internally held view that whilst the fund was suffering from a period of poor performance, HL remained of the view that over the long term the investment would come good. The evidence shows that HL was aware of the WEIF nearing the 10% limit and was clearly aware of the poor performance of the fund. I've seen evidence that it robustly challenged WIM when necessary, but it was also reassured by WIM's responses to those concerns – in particular in relation to the levels of unquoted stock. Ultimately, HL continued to believe that periods of poor performance were temporary, and that whilst it was important to ensure it was open about the nature of the WEIF and how it had changed, it continued to believe it was a good investment for the long term.

The evidence refers to HL reducing – or not increasing – its exposure to the WEIF in some MMFs. But I don't think that means it could not reasonably continue to retain the WEIF on its Wealth List. The changing nature of the WEIF might have meant it was no longer suitable for a particular fund, or only suitable to be held at a lower level than previously. But that doesn't mean HL could not continue to hold out a reasonably held view that the WEIF should remain on the Wealth List, in the context of giving 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.

I note from the evidence that HL also said it did *"not want to scare investors out of the Woodford fund after one of his worst periods of performance"*. I think 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 therefore to factor into its conclusions and communications – as long as those communications were ultimately consistent with its regulatory obligations.

I have considered the points Mr V has made about HL having a conflict of interest and putting its own interests ahead of treating its customer fairly. 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 MMFs, 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 that 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.

Overall, it's clear to me that Mr V would have had sufficient information from the updates at this time to know that the WEIF was not a typical equity investment – and that there were specific risks in the way the WEIF was managed that he would need to be comfortable with.

In that context, I don't think the message that HL continued to believe the fund would improve its performance in the long term was misleading, because HL believed that to be the case – and was entitled to that reasonably held belief.

And I'm satisfied that HL's communications in 2018 and 2019 were equally clear, fair and not misleading. In March 2018, for example, HL published an update following WEIF's change of sector. It clearly explained how almost *"40% of the fund is invested in small and mid-sized lower-yielding companies"* with *"an additional 10% invested in companies not yet listed on the stock market"*. And the same update was clear that HL accepted Woodford's approach would *"lead to tough periods of performance"* but that it remained *"comfortable with the inclusion of unquoted companies"* although it did not *"want to see them increase as a proportion of the fund from here"*. It reminded investors to *"ensure they are comfortable with the investment approach and risks"*.

The evidence I've seen of HL's internal views and the meetings it had with WIM during 2018 show that HL was largely reassured that WIM had taken onboard its feedback, particularly in relation to continued investment in unquoted stock. And this is clearly reflected in the communication above. Internally it continued to believe that the fund would come good in the long term, but it acknowledged that it needed to ensure clients were aware of the nature of the fund, the need to diversify and the strategy WIM was following. In my view, the updates I've quoted above achieve this in a clear, fair and not misleading way.

In 2019 HL issued an update in January in which it explained its recent catch-up with Woodford. It said that although it had been a long-term supporter of Woodford, *"his funds have recently performed poorly"* and so it had been *"an uncomfortable time to hold the fund and our own conviction has been tested"*. The update then went on to explain why it continued to keep the fund on its Wealth List and provided a detailed explanation of how the WEIF had changed since its launch, and some of the inherent risks of Woodford's approach to investing. And it said it was clear that some of Woodford's investments hadn't *"paid off"* and importantly highlighted to investors *"the importance of having a diversified portfolio, spreading your investments amongst managers that invest differently"*.

It concluded by saying that it was *"understandable that some investors are getting impatient with Woodford"* and that it had also *"been disappointed with recent performance"*. But it said that its approach was to back proven managers for the long-term and *"as part of a diversified portfolio, we still think Woodford has a place"*.

Crucially, it said:

"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".

Further updates in March highlighted that Woodford was experiencing *"his worst spell of performance"* and the fact that HL had been urging Woodford to *"address the weighting [of unquoted] stocks in his portfolio"* – and overall it said that Woodford had *"shown an ability to*

make the big calls right, and when he does, investors profit”.

In an update on 3 May 2019, HL said that Woodford had publicly committed to removing the WEIF’s direct investments in unquoted and less liquid holdings altogether over time, and instead gaining exposure through the WPCT. It went on to say:

“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.”

During this period, the evidence shows that HL was in regular contact with Woodford in a bid to understand the challenges he was facing in managing the fund and to ensure that its faith in his ability to turn things around wasn’t mis-placed. The suspension of three stocks on the Guernsey exchange was a significant cause for concern – but this suspension was only temporary. Furthermore, although it discussed whether the time had now come to remove the WEIF from its Wealth List, it’s clear that internally it also considered the likelihood that the WEIF would recover. It had been reassured by WIM that it would deal with the level of unquoted stock in the portfolio – and HL told its clients this. I’m satisfied at this point, HL was clearly finding a way to balance communicating the risks and its concerns to consumers, while at the same time being open that it continued to believe that the WEIF would recover in the longer term.

I think it’s clear from HL’s updates that there were risks in remaining invested in the WEIF, and the performance had now been disappointing for some time. But it was entitled to tell its clients that it believed the fund would recover – because that is what it believed internally at the time, for reasons which it gave in its updates.

Overall it’s clear that there were periods between 2016 and 2019 when HL raised concerns with Woodford, for example around the level of unquoted stock in the WEIF, but it explained these concerns in its public updates or Wealth Lists – at the same time, it held the view that whilst there were some concerns in the short term, over the long term the WEIF would end up being a good investment for its clients. HL was entitled to hold that view, and I’ve seen insufficient evidence that it came to that conclusion unreasonably, capriciously or in a way that was not genuinely based on its assessment of the WEIF and its future prospects.

Whilst I appreciate HL’s view has turned out to be wrong, largely as a result of the liquidation of the fund which was not something it had anticipated, I don’t consider that means its communications were not clear, fair and not misleading.

In my view it clearly explained the risks of the fund, the areas where it had concerns and the reasons why it thought it was still worthwhile to hold it as part of a diversified portfolio.

It was then for individual investors to decide, for themselves, whether in light of that information, the risks as described as well as the ongoing period of under-performance, holding the WEIF remained suitable for them.

I appreciate my conclusions will be disappointing to Mr V and I understand why he feels HL ought to be responsible for the losses to his investments. But I'm satisfied that the financial loss Mr V has experienced was not caused by something HL did or didn't do or because it misled Mr V in any way. I'm satisfied those losses were caused by the performance of the underlying investments in the WEIF, and its subsequent liquidation by the authorised corporate director.

My final decision

For the reasons given, I don't uphold Mr V's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 17 September 2024.

Matthew Young
Ombudsman