

The complaint

Mr B complains that Hargreaves Lansdown Asset Management Limited (HLAM) failed to warn him about the consequences of the change in strategy for the Woodford Equity Income Fund (WEIF) whereby more of the fund was invested in unquoted stock and continued to be positive about the fund even when performance was waning which led him to remain invested when he would otherwise have moved out of the fund.

What happened

Mr B opened a HLAM Individual Savings Account (ISA) in 2013. The relationship between HLAM and Mr B was execution only, so HLAM didn't advise him about investments he chose to make in his account. Mr B purchased units in the WEIF in August 2017 for a total cost of £15,000. He was still invested in the fund when it was suspended by Link, the Authorised Corporate Director, on 3 June 2019.

As Mr B'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 was well managed – was Capita Financial Managers, later known as Link Fund Solutions.

The WEIF broadly tracked its 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 met with WIM in early 2014 following which it decided to promote the WEIF to its customer's 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 B's complaint to HLAM

Mr B made the following points in his complaint to HLAM:

- When he invested in the WEIF he relied on the information provided by HLAM and Neil Woodford's track record.
- HLAM stated that the strategy was aligned with the previous strategy of Neil Woodford, with a small proportion of the fund invested in unquoted companies.
- Over time this situation changed but the information HLAM provided and its opinions didn't warn of the consequences of this even when performance began to wane and result in negative returns and losses on investment.
- Had HLAM not continued to provide a positive and bullish opinion about the fund recovering quickly he would have moved his investment away from HLAM whilst his losses were restricted to lack of return rather than loss of capital.

HLAM 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 B 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 B 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 B aware of the increasing exposure to smaller companies and the consequent increase in risk.
- There was also a consequential 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 needed 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 B 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 B and it was a 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 B didn't agree with the investigator. In summary he made the following points:

- He is at a loss as to how the investigator judged that HLAM had acted fairly and reasonably.
- The updates on the performance of the WEIF consistently referred to Neil Woodford's past good performance and continued to back him to turn things around right up until the fund was suspended.
- From the outset HLAM also stressed that the fund was low to medium risk and he is not aware this changed.
- HLAM had a close working relationship with Neil Woodford, unsurprisingly as it controlled more than 20% of the WEIF's shares and earned more than £40 million in fee income from the fund being purchased through its platform.
- HLAM therefore had a vested interest in promoting the WEIF despite its underperformance.
- HLAM was not justified in keeping the fund on its 'Best Buy' list, as several respected experts have said, especially given its concerns over the level of investment in unquoted companies – possibly in breach of UCITS guidelines.
- Had HLAM made him aware of its concerns he would have withdrawn funds well before the run on the WEIF that led to its eventual suspension.
- He is surprised by the reasoning that investors have to make their own decisions and not be guided by HLAM's positive opinion about the potential for the fund performance to improve.
- He fully accepts that investment platforms don't provide independent advice but doesn't accept that the opinions they express about their funds will not be influential in investor decisions.
- He doesn't accept that HLAM complied with its regulatory obligations.

As Mr B 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.

Having considered everything I agree with the investigator that this complaint shouldn't be upheld for the reasons set out in his opinion. 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 B 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.

Mr B has referred to the close working relationship between HLAM and Neil Woodford and that it had a vested interest in promoting the fund. However, whilst I acknowledge the point he has made the evidence I have been provided with doesn't support a finding that it is more likely than not this was the reason it continued to include the WEIF on its Wealth List and comment positively about its long term prospects. From the information I have seen I am satisfied that it did so because it continued to believe that the fund would be successful in the long term following discussions it had with WIM when it aired concerns it had.

Mr B has also suggested that HLAM identified the WEIF as being low to medium risk. I have considered the information provided by HLAM prior to Mr B investing in August 2017. I have not seen any document in which HLAM risk rated the fund as low to medium and I am satisfied that the overall information available to Mr B couldn't reasonably have led him to conclude that the fund had such a rating. Even if he did conclude for some reason that the fund was low to medium risk at the time he invested it is reasonable to have expected him to have realised long before the fund was suspended that this wasn't the case.

I accept that Mr B may well have decided to sell his holding in the WEIF sooner than he did but for HLAM continuing to include the fund on its Wealth List and its communication of its ongoing faith in Neil Woodford as a fund manager and its belief that the fund would deliver long term returns from throughout the period he was invested up to the suspension of the fund. However, in providing an execution only service to Mr B HLAM's responsibility was to ensure that the information it provided about 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 which they reasonably ought to have been made aware of 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. I explain why I have come to this conclusion in more detail below.

I have considered the information provided by HLAM prior to Mr B investing. From the launch of 2014 through to the first half of 2016 HLAM promoted the fund to clients and visitors to its website in various communications such as its Wealth List - which consistently named the fund as one of its best buys - and articles on its website. I have seen nothing that makes me think that HLAM had any concerns about the fund in this period or was raising any significant issues with WIM about the fund that it would be reasonable to expect it to have made clients aware of. I am therefore satisfied that its favourable commentary about, and promotion of, the fund over this period was in accordance with its regulatory obligations.

In the second half of 2016 HLAM made clients aware of changes to the WEIF. So, in its autumn 2016 Client Investment Report it referred to the reduction to 47% in the proportion of the fund invested in FTSE 100 stocks from the 58% invested as at launch of the fund and the increase in exposure to FTSE 250, Aim-listed and unquoted companies.

And in its 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 fund’s 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.

From considering the notes of meetings that HLAM had with WIM in this period the above issues reflected the concerns that it was raising at the time and its expression of faith in Neil Woodford as fund manager and the long-term prospects of the fund mirrored its internal view at the time. In the circumstances I am satisfied that in identifying the above issues to clients whilst at the same time continuing to confirm its ongoing belief in the fund HLAM provided clear, fair, and not misleading information and complied with its regulatory obligations.

HLAM continued to promote the fund in 2017 both before and after Mr B invested in August 2017, with it being included in its Wealth List and in various articles on its website but with it also continuing to keep clients and visitors to the website informed of changes to the fund. For example, in an article on the most popular ISA and SIPP funds dated 30 March 2017 HLAM said that the WEIF *“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 fledging companies also brings extra risk.”*

In a further 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.”*

I am satisfied that the communications made by HLAM in this period are broadly consistent with what the evidence shows was its view of the WEIF and Neil Woodford as fund manager. Its communications made clients aware of key information about the fund – such as its investment in early-stage and smaller companies and the higher risk resulting from this and the fact some of these were unquoted. At the same time it explained why it continued to believe in Neil Woodford and the long term prospects of the fund, which remained consistent with what the evidence shows was its genuine view and one that it was entitled to hold and express. In the circumstances I am satisfied that prior to Mr B investing HLAM provided information that was fair, clear, and not misleading and that Mr B wasn't misled into investing into the fund when he did.

In its communications in the months after his investment, HLAM continued to keep clients informed of key information, commenting on the recent poor performance and continuing to make clients and investors aware of the fund's investment in higher risk smaller companies with some of these being unquoted and that such companies are more prone to failure than larger well-established companies. It also continued to express its faith in Neil Woodford as a fund manager and the ability of the WEIF to provide value to clients in the long term.

Its communications included a research article dated 7 September 2017 in which 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 in 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.”* It points to Neil Woodford having suffered a period of poor performance previously which was questioned but that he was proven *‘spectacularly correct’* and confirmed that it retains its faith in him to add value for investors over the long term. HLAM also stated that it's 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 not being 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 was invested in unquoted companies with a maximum of 10% allowed but that Neil Woodford expected the proportion of the fund invested in unquoted companies to fall during the next 12 to 18 months as some of the biggest investments sought 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 believed that it was premature to write Neil Woodford off and that his long term track record had been exceptional and that it believed he would continue to add value for investors over the long term.

The issues that HLAM brought to the attention of clients, in particular the level of investment in unquoted companies and the risks associated with this, were the issues it was raising with WIM in the meetings it had over this period. And it is clear from the evidence that whilst HLAM was raising these concerns about the WEIF with WIM it also retained its belief that

the fund would be successful over the long-term with Neil Woodford's strategy such that there wasn't reason to remove it from the Wealth List. So, its identification of issues that it rightly considered clients needed to be aware of whilst at the same time confirming its ongoing belief was in accordance with its regulatory obligations to provide fair, clear, and not misleading information and treat its clients fairly.

This continued through 2018 and into the first part of 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 warned that there were no guarantees this would 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 B, 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 referred to the poor performance of the fund and acknowledged 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 invests '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 fair, clear, and not misleading information about the WEIF to clients, drawing their attention to the fact that the fund had

been underperforming, that it 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. And as it made clear to clients in its January 2019 update 'it could be wrong'.

HLAM provided a further update to clients on 3 May 2019 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 referred to Neil Woodford 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.*".

Mr B sold his units in the WEIF three weeks later, shortly before its suspension. As I indicated at the outset, I accept that Mr B 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 B accepts that HLAM didn't provide independent advice but says that its opinion is influential and is surprised by the suggestion that investors have to make their own decisions and not be guided by HLAM's positive opinion about the fund.

However, in operating an execution only account it was for Mr B to make his own decisions based on the information available to him about what he invested in. HLAM made clear the fund had underperformed and that it had increased risk due to the proportion invested in small and medium sized companies, including unlisted companies. It was for Mr B to decide whether he wanted to remain in a fund with those issues or get out. The fact he chose to continue investing because HLAM had expressed its own belief in the fund doesn't mean that it did anything wrong in expressing that belief. Mr B's argument in effect would mean that a firm could never express an opinion that turned out to be wrong. That argument is not tenable in my view.

In the circumstances I am satisfied that HLAM provided information that was fair, clear, and not misleading in compliance with Principle 7 and COBS 4.2.1R and that it paid due regard to the interest of Mr B and treated him fairly in accordance with Principle 6 and COBS 2.1.1R. In the circumstances I am satisfied that 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 B to accept or reject my decision before 27 September 2024.

Philip Gibbons
Ombudsman