

The complaint

Mr F complains about Hargreaves Lansdown Asset Management Limited's promotion of the Woodford Equity Income Fund (WEIF) and Woodford Income Focus Fund (WIFF).

What happened

The investments Mr F bought from HL were called the Woodford Equity Income Fund (WEIF) and the Woodford Income Focus Fund (WIFF), both 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 WIFF was launched in April 2017. The Authorised Corporate Director (ACD) of both funds 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 the 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.

The WIFF had a different mandate and objective to the WEIF. The fund brochure explained that the WIFF was designed to deliver "*a high level of regular and sustainable income*" together with capital growth. According to the Key Investor Information Document (KIID), "*the fund had a discretion to invest in a range of investments*" and "*predominantly in shares of companies listed in the UK and overseas with a focus on investments that provide dividends*". Some of the underlying securities in the WEIF were also in the WIFF, but the two funds did not invest in each other. In addition, the WIFF did not invest in unlisted securities – although some companies may have become unlisted at a later date.

The performance of the WIFF was disappointing from 2018 onwards and after the suspension of the WEIF in 2019, HL removed the WIFF from its Best Buy lists. In October 2019 WIM resigned as investment manager of the WIFF, leading Link to the decision to suspend dealings in the fund until February 2020. At that point dealings in the fund were permitted again, and the fund was managed by a new investment manager.

HL's communications relating to the WEIF and the WIFF

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. HL also promoted the WIFF when it launched in 2017.

The WEIF and the WIFF were the subject of, or featured in, many communications from HL over the period from both funds launch.

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 WIFF was also promoted via website articles and emails, and was included on HL's Wealth Lists until June 2019, when the WEIF was suspended.

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

Mr F's dealings in the WEIF and the WIFF

Mr F bought shares in the WEIF via his ISA between August 2014 and August 2017, investing £2,011.59. He invested £5,000 in the WIFF in April 2017, and a further £433.86 between July 2017 and June 2018. He then sold £2,089.50 worth of units in the WIFF in June 2019.

When the WEIF was suspended, Mr F still held units in the WEIF. As part of the WEIF's liquidation, capital distribution payments were paid to consumers and calculated based on the number of units consumers held. Mr F received a number of these payments in his ISA.

Although not the subject of this complaint, a Scheme of Arrangement is now in place with the WEIF's ACD which will likely make, if it hasn't already made, additional payments to

investors in the WEIF who, like Mr F, retained units in it at suspension. The Scheme of Arrangement does not apply to Mr F's investment in the WIFF.

Mr F's complaint to HL and its response

In January 2020 Mr F complained to HL. In short he complained about HL's continued inclusion of the WEIF and the WIFF on its Wealth lists.

HL looked into Mr F's complaint but didn't agree it had done anything wrong.

It acknowledged the "*difficult periods of performance*" that both funds had experienced, but said that its convictions in the long term prospects of both funds remained until the WEIF's suspension. It said most fund managers would have periods of time when their funds underperformed and explained how it considered Woodford's investment approach and why it believed, at the time, that his track record and his approach to investment would mean that both funds would outperform their respective benchmarks in the long term.

It said that its investment team chose the WEIF and the WIFF for its Wealth Lists on the basis of Woodford's track record as a "*talented stock picker*". It said that it provided an "*execution only*" service to Mr F and this did not involve personalised investment advice or managing his investments. It said that as part of the services it provided, it made information available to its customers (compiled by its investment research team) to help them decide where to invest. Whenever it provided its views on an investment, including the WEIF and the WIFF, it was obliged to ensure this information was clear, fair and not misleading. It said that its opinions on the WEIF and the WIFF had always been properly held and based on the research and due diligence it carried out. It said that there could be no guarantees when investment and ultimately, the decision to invest and to remain invested in a particular fund rested with Mr F.

Mr F remained unhappy and the complaint was referred to this 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 F didn't agree and asked for an ombudsman's decision. He said the investigator's response did nothing to reassure him that funds hadn't been profiting from promoting these funds while customers paid the price. He also "*rejected*" the investigator's conclusion that HL had provided sufficient and transparent information to him.

As agreement couldn't be reached, the case was passed to me to decide.

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.

I should start by saying that I understand and fully accept Mr F's strength of feeling on his case, and the comments he has provided in response to the investigator's assessment.

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

When making communications about the WEIF and the WIFF, whether through its Wealth Lists or other commentary, HL needed to ensure they were clear, fair and not misleading. This means that as long HL's communications during the relevant period were factual and gave a balanced view of its assessment of the WEIF and the WIFF, then it didn't do anything wrong.

In relation to the WEIF, it's clear that HL provided significant positive commentary about Woodford and the WEIF when Mr F invested in 2014 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. Whilst I accept that Mr F took what HL was telling him about the WEIF into account when he decided to invest in the WEIF, the decision to invest was one that he was making for himself, without advice from HL. And it was therefore up to him to ensure that he was comfortable with the makeup of the WEIF, its objectives and its overall risk profile.

And so Mr F's decisions not to sell his holdings in the WEIF were also his to make.

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 at this point in time, Mr F 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 their customer's 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 obviously for Mr F to decide for himself whether the risks and the features of the WEIF which HL was describing to him were right for his circumstances.

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*". In my view this update gave Mr F sufficient knowledge to decide for himself whether he was comfortable with the risks the WEIF represented and crucially, whether as an investment it remained consistent with his aims and objectives.

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.

It's clear to me that Mr F had sufficient information from these updates 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 needed to be comfortable with.

In that context, I don't agree the message that HL continued to believe the fund would improve its performance over 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 50 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*”. 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.

When looking at the updates it provided, 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 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 acknowledge Mr F has raised the issue of the WEIF’s management and the fees he

believes HL was profiting from when promoting the WEIF. It's important to highlight that HL wasn't managing the WEIF and had no say over what stocks Woodford was choosing to buy. It also was not responsible for the decision to suspend and subsequently liquidate the fund – this was the responsibility of the authorised corporate director of the fund and wasn't something HL had any say over. In terms of the fees that HL was generating, it has explained that these were not dependent on the WEIF itself – it charged clients a fee based on the overall value of their investments they held with it. I can understand why Mr F believes that HL was promoting the WEIF in order to benefit from it financially, but I'm not persuaded there's sufficient evidence for me to conclude that this was the reason it promoted the WEIF instead of its belief that the WEIF would turn out to be a profitable investment in the long term.

In relation to HL's promotion of the WIFF, I'm persuaded HL fairly, clearly and not misleadingly outlined its thoughts on the WIFF's potential and the reasons why it considered it a good investment. In looking through HL's communications, it's clear to me that HL highlighted as early as June 2018, in its Wealth 150+ report, that Woodford's rationale combined with "*some stock specific disappointments*" had "*held back performance*". The November Wealth 150+ report highlighted that the WIFF had "*struggled*" but that Woodford was sticking to his philosophy. I note that despite the performance, and HL's commentary, Mr F didn't disinvest from the fund. And although I accept that it was reasonable for him to place some weight on what HL was telling him about the WIFF, including its belief that the WIFF remained a good long-term investment, I'm not persuaded it was reasonable, in the particular circumstances of this case, for Mr F to base his investment decisions solely on this.

Furthermore, Mr F knew at this point that the WIFF had not been performing to HL's expectations – and I'm not persuaded the mere fact that the WIFF continued to be present on the Wealth list ought to have overridden the additional commentary that HL actually provided on the fund or its performance.

In June 2019 HL made the decision to remove the WIFF from its Wealth list. The WIFF was not suspended at this point, and I note that Mr F sold around £2,089.50 worth of units in the WIFF, just over half his holding – he didn't sell his whole investment. Although this might have been because he was banking on the WIFF recovering in the future, in my view this is evidence that Mr F wasn't solely reliant on HL's commentary or the presence of the fund on the Wealth list to make his decisions.

I appreciate my conclusions will be disappointing to Mr F 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 he has experienced was not caused by something HL did or didn't do or because it misled him in anyway. I'm satisfied those losses were caused by the performance of the underlying investments in the WEIF and the WIFF, and in relation to the WEIF, the initial suspensions and subsequent liquidation of the fund clearly exacerbated those losses and his ability to exit the fund.

For all these reasons, I don't uphold Mr F's complaint.

My final decision

My final decision is that I don't uphold Mr F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 16 August 2024.

Alessandro Pulzone
Ombudsman