The complaint

1. Mr G's complaint is about the actions of Hargreaves Lansdown Asset Management Limited ("HL") in relation to the CF (later LF) Woodford Equity Income Fund ("WEIF").

2. Mr G invested in the WEIF through his HL account when it launched in 2014, and made further investments in 2015 and 2016. Mr G held his investments until the WEIF was suspended in June 2019.

3. In his initial complaint to HL Mr G said, in summary:

   - In common with many other investors, he relied on the detailed and comprehensive research provided by HL relating to its Wealth List recommendations. In relation to the WEIF he was directly influenced by HL's support at launch and its recommendations up until the day the fund was suspended.

   - There appeared to be multiple failures by the research team at HL in relation to the WEIF. These included understanding the fund holdings mismatch, investigating governance of liquidity as well as wider governance, appropriate pricing of unlisted securities and investigation into whether the underlying holdings were appropriate to the name and stated objectives of the fund.

   - It was clear that changes to the risk profile of the fund that resulted in its catastrophic performance were ascertainable by informed investment professionals, including HL, some considerable time before they became general knowledge.

   - He relied on HL's oversight and assumed it would not provide different advice to its customers from that available to its directors or other employees. The press commentary concerning the timing of share dealings by HL directors raised suspicions. Mr G requested full disclosure of internal research notes and internal communications provided by HL's team in relation to the WEIF.

   - The Wealth List, while no doubt containing disclaimers, is clearly a promotional publication designed to encourage investment and HL's clients are entitled to expect it not to contain misleading information. It is therefore unacceptable that the WEIF remained on the list for some time after it knew about the problems of the fund.

   - HL should accept responsibility for these serious shortcomings and offer appropriate financial compensation for the losses already sustained and further losses anticipated.

4. And in reply to HL's response to his complaint Mr G made the following further points:

   - He had no doubt that HL had good reason to include the WEIF in the Wealth List at launch. His complaint is that HL continued to do so beyond the time when HL had made a substantial reduction of its holding in the WEIF in its multi manager fund. Where a fund is included in the Wealth List at launch, rather than as a result of historic performance, it is surely reasonable to expect a special level of scrutiny to be applied by HL to the fund as it develops. The fact that the WEIF was only removed from the Wealth List on the day of suspension underlines the point.

- He asked whether HL concluded from its due diligence and extensive research that the Authorised Corporate Director and the Depository for the WEIF were fulfilling their proper tasks and that the risk profile on which the fund was originally promoted continued to be observed?

Background

The WEIF

5. The WEIF was managed by Neil Woodford, who left Invesco Perpetual in 2013 to set up Woodford Investment Management ("WIM"). The WEIF was launched in May 2014, with a £1 per unit fixed offer price until 18 June 2014. The Authorised Corporate Director (ACD) of the fund was Capita Financial Managers, later known as Link Fund Solutions (I will refer to "Link" throughout).

6. Our investigator, when setting out the background in his view on this complaint, provided a summary of the performance of the WEIF. I have considered a graph from Morningstar which shows the performance of the WEIF against benchmarks, from launch. This shows:

   - The WEIF broadly tracked the benchmarks (albeit whilst providing a greater return and experiencing some more volatility) until the second half of 2017, when there was a significant fall which was not experienced by the benchmarks.

   - It began to significantly underperform benchmarks from early 2018 and that the performance followed a very different pattern to the benchmarks from early 2019 to the date of suspension

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

8. In June 2019 the extent of those outflows - and the portion of the WEIF's assets which were not liquid - led Link to decide to suspend trading in the fund. Link removed WIM as the investment manager around this time.

9. The fund did not trade again. Later in 2019, Link decided to liquidate the fund. Investors have since received payments as and when the fund's assets have been sold. A small amount remains invested in assets which are not liquid i.e. cannot currently be sold.

HL's communications relating to the WEIF

10. HL's relationship with WIM and the WEIF began prior to the fund's launch. HL met with WIM in early 2014 and decided to promote the WEIF to its customers and visitors to its website ahead of the fund's launch. The WEIF was the subject of, or featured in, many communications from HL over the period from the fund's launch to its

suspension. HL's communications relating to the WEIF can be categorised broadly as follows:

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

11. HL has provided us with a log of all the emails it sent to Mr G specifically, and details of the communications Mr G received at the launch of the WEIF.

The Wealth List

12. HL published a list of what it considered, in its view, to be the "best" or "favourite" funds. This was initially called the Wealth 150 (and a subset of this, featuring discounted management charges for HL clients, the Wealth 150+) then later the Wealth 50 – I'll refer to these generally as the Wealth List. The WEIF featured on the Wealth List from its launch until its suspension.

13. I understand the list was available on HL's website to any visitor and also sent to all customers on its general mailing list who had elected to receive communications, including Mr G (although from December 2016 Mr G elected to stop receiving email marketing 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. From the launch of the WEIF until the June 2018 Wealth Report publication, the introduction in the Wealth Report was as follows:

"The Wealth 150

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

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

The Wealth 150+

We have used our position as the UK's largest broker to negotiate even lower fund charges for our clients on what we believe are some of the best funds available. The Wealth 150+ is the result, and these funds represent what we feel is the ultimate combination of first-class *management and low charges.*

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

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

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

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

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

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

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

INTRODUCING THE WEALTH 50

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

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

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

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

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

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

The June 2014 introduction:

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

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

The July 2017 introduction:

"*Quality, value, simplicity*

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

The January 2019 introduction:

"*A shortlist by experts*

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

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

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

16. The fund was removed from the Wealth List on 4 June 2019 (after it had been suspended).

17. I have seen the commentary on the WEIF HL included on its entry on the list from time to time, and the bi-annual Wealth Reports which were sent to HL's customers, including Mr G.

HL's communications with WIM

18. As part of its ongoing research HL met with WIM to discuss the WEIF on a number of occasions. These meetings became more frequent in 2017. The investigator considered the notes relating to the meetings on the following dates to be key, and referred to these in his view:

- 2015 – 7 October
- 2016 – 14 June, 5 July and 12 September
- 2017 – 21 February, 2 May, 20 July, 29 August, 6 November and 27 November
- 2018 – 8 March, 24 April and 8 October
- 2019 – 19 March, 15 April and 17 April

19. The investigator also considered an email dated 24 November 2017 sent by HL to WIM.

20. These notes and the email form part of the file I have considered. I should however make it clear I have considered all of what HL has provided (including the further information summarised below in the "Further information provided by HL" section) – not just what the investigator thought was key.

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

Mr G's dealings with HL and the WEIF

22. At the launch of the WEIF, Mr G was an existing customer of HL. Mr G made the following investments in the WEIF through his HL account:

- June 2014 launch – 11,880 units purchased at a cost of £11,880
- 30 March 2015 – 2,698 units purchased at a cost of £3,120
- 21 March 2016 – 13,475 units purchased at a cost of £15,240

23. In total Mr G invested £30,240. He retained his holdings until the suspension of the WEIF. By December 2020, Mr G had received payments of £13,603.49 (on 30 January 2020), £916.95 (on 25 March 2020), £1,173.01 (on 26 August 2020) and £630.70 (on 11 December 2020) following the liquidation of the fund. He may have received further payments since this, as I understand some further distributions were made.

24. Mr G may also receive further payments from a redress scheme funded by Link and its parent company, as a result of the Scheme of Arrangement recently approved by the courts.

HL's response to Mr G's complaint

25. HL did not uphold Mr G's complaint. It said, in summary:

- Before the WEIF was included in the Wealth list, its investment research team undertook extensive research across a large number of funds, focused (in part) on fund managers who had added value in the long-term through reputable skill rather than market movements or thematic biases. Its investment team chose WEIF for inclusion in the Wealth list partly on the basis of Neil Woodford's track record as a talented stock picker.

- Clearly the WEIF experienced a difficult period of performance through 2018 and 2019 and, while that was disappointing, its conviction in its long-term prospects remained. During his career, Neil Woodford had a track record of underperforming for periods but then recovering strongly.

- Based on its research it believed that, in the long term and once Brexit was resolved, the WEIF had the potential to outperform its benchmark.

- The decision of Link to suspend the fund following Kent County Council's attempt to withdraw a large sum was disappointing and unexpected.

- Its opinions on the WEIF have always been properly held and based on the extensive research and due diligence it has carried out. It has always made it clear that there are risks with the fund and there cannot be any guarantees when it comes to investing. It is also the case that, with any execution only service, the decision to invest and to remain invested in a particular fund rested with Mr G.

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

- This investment was made of Mr G's own volition – the instruction was accepted on the basis of its Key Features, Terms & Conditions and the Fund's Key Investor Information Document. Mr G's decision to invest in WEIF was not the result of a personal recommendation made by HL.

- The Wealth List (and the inclusion of a fund on it) is not personal advice or a recommendation. This was clearly disclosed through its website and in other communications regarding the Wealth List.

- During 2017, and as part of the ongoing monitoring, it identified that there was an increase in the proportion of holdings in unquoted investments. It continued to monitor the position during 2018 and 2019, and engaged with WIM regarding the steps being taken to reduce the level of exposure to unquoted securities. It updated its clients regularly about these matters.

- In its communications, it also noted the importance of investors diversifying their investments across funds with different styles, approaches and areas of focus.

- It is satisfied that these communications were clear, fair and not misleading. Based on the information known to it at the time, it is of the view it was appropriate for it to retain the WEIF on the Wealth List until it was suspended.

- For the avoidance of doubt, whilst it is now known that WEIF had in 2018 twice breached the UCITS rule that prohibits a regulated UCITS fund such as WEIF from holding more than 10% of its portfolio in unquoted assets, it only discovered this after the suspension of the WEIF, in a letter sent by the FCA to the Treasury Select Committee in June 2019. WIM and Link did not inform it about these breaches at the time they occurred. Further, as each breach was temporary – in that compliance was restored by the relevant month end – it was not identifiable in the regular monthly reports on the WEIF's holdings. It was therefore impossible for it to identify the breach of UCITS limits, or to communicate this to clients.

Mr G's submissions to us

27. When making his complaint Mr G said he relied on the "detailed and comprehensive research" provided by HL and that he was influenced by the support given to the fund by HL at launch and advice repeatedly given by HL after that.

28. Our investigator asked Mr G if there was any particular advice or research he could recall. In response Mr G said he saw various communications from HL but didn't keep a record of these and given the passage of time, can't immediately recall the detail of what he saw. He said he could remember lots of promotion from HL at the launch of the WEIF and his main point was HL held the fund out as a recommended fund right up to the point of the fund's collapse.

The investigator's view

29. Our investigator concluded Mr G's complaint should be upheld. She said, in summary:

- While, in her view, HL's recommendation of the WEIF to Mr G at the fund's launch amounted to a personal recommendation, there was insufficient evidence to show that recommendation was unsuitable for him.

- There was insufficient evidence to say HL's initial communications to Mr G did not meet its regulatory obligations.

- However, the enthusiastic way in which HL initially recommended the fund as a typical equity income fund suitable for nearly all investors should have been at the forefront of its mind when considering how it made future communications on the fund.

- She was satisfied from the views HL expressed in the notes of the meetings it held with WIM and in email exchanges between it and WIM that, over time, HL developed significant concerns about how the fund was being managed and lost some of its confidence in WIM.

- By 27 November 2017, at the latest, the gap between the views HL was expressing in its communications to Mr G and those it expressed internally became sufficiently wide that HL's communications at this time did not meet its regulatory obligations to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; pay due regard to the interests of its clients and treat them fairly; and to act honestly, fairly and professionally in accordance with the best interests of Mr G.

- Although HL did take some steps in reaction to its concerns, these did not go far enough, particularly given the way in which HL had initially recommended the fund. HL's concerns and its loss of confidence in WIM ought, fairly and reasonably, to have led it, by 27 November 2017 at the latest, to stop advising consumers to consider investment in the WEIF (i.e. to have removed the fund from the Wealth List) and to explain why it had done so.

- Had HL acted fairly and reasonably (and met its regulatory obligations), Mr G would have surrendered his investments in the WEIF, once HL removed the WEIF from the Wealth List and explained why it had done so.

- It is therefore fair for Mr G be paid compensation to put him in the position he would have been in if he had surrendered his investment around this time.

Mr G's response to the view

30. Mr G accepted the view and did not make any further substantive comments.

HL's response to the view

31. The below is a summary of what I consider to be the key points made by HL in its response to the view. It is not exhaustive, but I have considered the response in full.

32. On the nature of the service HL provided:

- HL provided Mr G with an execution-only service. It was not required to advise Mr G on the suitability of the investments he purchased through his account or held within it. Mr G had responsibility for making his own investment decisions and ensuring his investments remained suitable for his needs.

- The Wealth List (and associated communications) were marketing communications to existing and potential investors, rather than the provision of a contractual service to clients. They were a tool for investors to use when making their own investment decisions.

- It was made clear the inclusion of a fund on the Wealth List did not constitute a personal recommendation that consumers should obtain financial advice if they had doubts about the suitability of an investment. Risk warnings were given. Mr G was also referred to the Key Investor Information Document (KIID) and was required to confirm he had read this when investing.

- Whilst the Wealth List and associated marketing communications amounted to generic (non-personalised) advice, they did not constitute personal recommendations as to the suitability of an investment for a particular investor.

33. On whether there was a gap between the views HL expressed internally and externally:

    - The communications to clients fairly and reasonably reflected HL's views regarding the fund. It is correct that HL's confidence in the fund's ability to deliver outperformance over the long term was tested at points, but the factors that gave rise to this were clearly and fairly highlighted to customers at the time.

    - Its ultimate conclusion, at all times, was that it retained confidence in the ability of the investment manager to deliver long-term performance. That is the reason the fund remained on the Wealth list until dealings in the fund were suspended in June 2019.

    - It is not appropriate for us to substitute our own judgement, made with the benefit of hindsight, about whether a fund should continue to be included on the Wealth List, for the opinion of investment professionals reached on the basis of their assessment of the information and evidence available to them at the time.

    - The mere fact that HL's opinion about a fund was not universally shared by other market participants (for example, other platforms or research professionals) or proved ultimately to be incorrect (i.e. a fund performed poorly) does not mean that HL breached any obligations it owed towards its customers.

    - The central finding that, by November 2017, there was a material divergence between the concerns HL was expressing internally and the views it was expressing to clients externally is flawed as a factual matter. The investigator has selectively quoted evidence, misunderstood or mischaracterised some of the statements made, and ignored other relevant evidence, in reaching this view.

34. On HL's responsibilities:

    - Responsibility for poor performance and any non-compliance with applicable legal and regulatory requirements in relation to the management of the WEIF, rests with Link, rather than HL. We have taken no account of this.

    - The suggestion that the content and emphasis of HL's later marketing communications should have changed because of the content of HL's earlier launch-related communications represents a fundamental error of law. The content of HL's marketing communications did not vary depending on which specific communications had previously been viewed by or sent to investors, including clients or potential clients.

- The investigator's findings effectively convert an execution-only relationship where HL's platform clients might receive marketing communications amounting to generic (non-personalised) investment advice into a relationship where HL has ongoing obligations towards investors, including an obligation to communicate generic non- personalised advice to investors.

- Execution-only platform investors had no entitlement to receive generic advice.

- It would be unfair to conclude that HL owed positive obligations to investors and potential clients to update the content of previous marketing communications when that content fairly and accurately reflected HL's views at the time it was issued.

35. On the general approach:

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

36. On reliance/causation:

- The investigator had not based her findings as to causation on any verifiable evidence that Mr G relied on HL's post-launch marketing communications – not least because Mr G had opted out of receiving them. There is also evidence that Mr G continued to invest in other funds even when they were removed from the Wealth List. In any event, exclusive reliance by Mr G on HL's views as set out in the Wealth List would not have been reasonable, given the generic nature of HL's opinions via the Wealth List, the other fund information (such as research updates) made available to investors on its website and given that HL was not, through those communications, recommending an investment in any Wealth List fund as suitable for a particular investor.

37. On compensation:

- The implication of the investigator's reasoning is that all or a substantial portion of HL's platform clients would have sought to sell their investments in the WEIF shortly after a removal by HL of the fund from the Wealth List. It is possible that would simply have led to an earlier suspension of dealings in the WEIF

- There is no evidence to support the £500 award for trouble and upset.

- There is insufficient evidence to show the benchmark suggested by the investigator was a fair reflection of how Mr G would have invested, had he surrendered his investments in the WEIF. Alternative benchmarks should be considered.

- Again, no account appears to have been taken of the primary responsibility of the investment manager and Link for the losses incurred by investors in the WEIF.

Further information provided by HL

38. Following my initial consideration of a complaint similar to Mr G's, I asked HL to provide copies of any evidence relating to the discussions about, and consideration of, the WEIF and its continued inclusion on the Wealth List.

39. This consisted of a large number of meeting notes, emails, calls etc detailing internal discussions at HL about the WEIF and discussions with WIM (and occasionally Link). My request was for those documents which we had not seen – of which there was a large number. The evidence all had general application – it was not specific to the complaint I requested it on.

40. I have taken account of all this evidence (and quote the key parts of it in my findings) when considering Mr G's complaint.

My provisional findings

41. I issued a provisional decision in January 2024. In my provisional decision I explained that, having carefully considered all the available evidence, I was not persuaded HL failed to act fairly and reasonably in its dealings with Mr G and that it was therefore fair and reasonable to uphold Mr G's complaint.

42. The key points of my provisional findings were:

- HL was free to reach a reasonably held view on whether the fund should feature in its Wealth List, and I had not seen sufficient evidence to show its view was not at any point reasonably held.

- HL took a consistent approach when reviewing whether the WEIF should remain on the Wealth List.

- I was satisfied that, overall, when communicating its reasonably held view, HL acted in a way which was broadly consistent with its regulatory obligations.

- It had to be kept in mind that HL was only expressing an opinion about whether it thought the fund represented a good investment opportunity for customers making their own decisions about whether the fund potential, characteristics and risks were right for them.

- Whilst, in hindsight, it is clear HL's view was wrong, it does not follow, in the circumstances, that it would be fair and reasonable to ask HL to compensate Mr G for the losses he has suffered.

HL's response to my provisional findings

43. HL accepted my decision overall, but referred to submissions about the extent to which I had quoted from its internal meeting notes, emails etc, and questioned the appropriateness of including that detail in a final decision which was to be published (referring, amongst other things, to confidentiality and commercial sensitivity).

Mr G's response to my provisional findings

44. Mr G did not accept my decision. His main points, in summary, were as follows:

- My provisional decision gave evidence of either pure naivety, or incompetence, in HL's investigations and review of the WEIF. It repeatedly commented on HL's deep and frequently expressed concern about the failure to comply with the disciplines set out in the WEIF's prospectus and on the conflict between the title of the WEIF and its changing composition.

- These strong concerns appear to have been dismissed, time after time, by a blind faith in Neil Woodford's past reputation no doubt influenced by him "telling a great story" and his "unflagging belief in its validity".

- There are conflicting statements about Neil Woodford's experience, or lack of it, in investing in small cap companies – his experience here was limited, as is now appreciated.

- The content of his initial complaint letter had not been properly addressed. An FCA authorised firm is subject to certain conduct rules including openness and acting with due care and diligence. They must pay due regard of customers and treat them fairly. HL failed in every regard in its continued active promotion of the WEIF during and after a long period of concern about the direction of its management and, most significantly, a period of active disposal by HL where HL, a HL fund or its directors, had an interest.

- If authorised firms are able to promote investment from retail investors into products they are actively selling on their own account, regulation has failed. This is tantamount to ramping up, albeit taking advantage of liquidity of units rather than pricing. The end result is an investor being locked in and suffering a price fall at exit (or forced liquidation) which in effect is the same result and this should be viewed as market abuse.

- I should reconsider my decision; otherwise it opens up the abuse of retail investors by promotion of products whilst a firm can separately and knowingly take advantage of creating additional liquidity to achieve its private aims, which do not align with its wider commentary.

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.

45. Having done so, I have not been persuaded to depart from my provisional decision. So, where appropriate, I have repeated my provisional findings below and, at the relevant points, addressed the replies I received to my provisional decision from Mr G and HL.

46. I have also included only a summary of HL's internal and external meeting notes, emails etc in my findings, as I do not think it is necessary to include the detail of their contents in this final decision. Mr G has seen the detail, and been given the opportunity to comment on it. So, I think it is appropriate to include only a summary of what I consider the contents show.

47. In considering what is fair and reasonable in all the circumstances of this complaint, I am required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and where appropriate, what I consider to have been good industry practice at the relevant time.

48. I have again set out in detail below my reasons for reaching my decision. As mentioned at paragraph 45, this repeats my provisional decision, where appropriate.

What acts by HL is the complaint about?

49. Mr G's complaint is, in part, about the communications HL made in relation to the WEIF. Those communications took the form of:

- The entries for the WEIF on the Wealth List (which were sent to Mr G bi-annually with HL's Wealth report, and otherwise available to him on HL's website);
- associated articles which provided updates on the fund detailing analysis, opinion etc, which were sent by email to Mr G and/or otherwise available to him on HL's website; and
- general promotion of the WEIF through most popular fund lists and spotlight type articles, which were available to Mr G on HL's website.

50. HL has told us that on 1 December 2016 Mr G requested he no longer receive email marketing communications and it considered the Wealth List, and associated communications about the WEIF, to be marketing communications. It has confirmed however that the communications would each have been published on its website and so they would have been available to Mr G.

51. Pausing there, I note HL accepts the Wealth List entry and associated communications about the WEIF were generic/non personal advice. At 1.2.4 of its 8 April 2022 response to the investigator's view HL says:

Whilst the Wealth Lists and associated marketing communications amounted to generic (non-personalised) investment advice, they did not constitute personalised recommendations as to the suitability of an investment for a particular investor.

52. I agree with this position (save for what I mention below at paragraphs 55 and 56) and, given this point is not in dispute, I do not think it necessary to go into it in further detail here.

53. Our investigator considered Mr G was given a personal recommendation (i.e. advice on the suitability of the investment in the WEIF for him personally) when he was sent the initial pack in 2014. He set out Article 53(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("RAO"), and the FCA's Perimeter Guidance Manual (PERG) – specifically PERG 8.26.1, PERG 8.27.1, PERG 8.28.1, PERG 8.28.2, PERG 8.30B.9 and listed some relevant examples from Annex 1 of PERG 8.

54. In summary, the investigator said that "pack 1" was sent exclusively to customers who were identified as holding funds previously managed by Neil Woodford on the HL platform. And it included pre-populated dealing forms which Mr G could use if he wished to sell his holdings in those funds and re-invest in the WEIF. The letter also included a paragraph explaining which funds Neil Woodford managed at Invesco Perpetual and the enclosed factsheet included HL's assessment of those funds' new manager and an outlined of options for investors who held investments in those funds – which included HL's view on the merits of retaining the Invesco Perpetual funds Neil Woodford was no longer manager.

55. The investigator concluded that applying the guidance in PERG, this amounted to a

personal recommendation because it was personal to Mr G's circumstances (the pack was sent to Mr G specifically because of his previous investment in a fund managed by Woodford)

56. Having considered this, I'm inclined to agree with the investigator – Mr G may have received a personal recommendation when the WEIF was initially promoted to him. I have considered this point, taking into account Mr G's circumstances; the types of investments he was looking for; that it was left to Mr G to decide how much to invest in the WEIF; and what was known about the WEIF at this time. Having done so, I think it was fair and reasonable for HL to recommend an investment in the WEIF as suitable, in principle, for Mr G. So, I agree with the investigator that there's insufficient evidence to conclude that the initial recommendation wasn't suitable for Mr G.

57. Having made a finding about the personal recommendation made to Mr G at the WEIF's launch, I am proceeding on the basis that the remainder of his complaint is only about the general communications HL made in relation to the WEIF, and Mr G was therefore only given generic/non personal advice; and was an execution only client of HL. I have considered what the relevant regulatory obligations are with that in mind.

What are the relevant regulatory obligations?

58. I note Mr G, in his response to my provisional decision, refers to the content of his initial complaint letter and certain conduct rules. I remain of the view the following regulatory requirements are of particular relevance to my assessment of whether HL acted fairly and reasonably in its dealings with Mr G, and I have considered them carefully when looking at the communications HL made about the WEIF.

59. 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.

60. 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."

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

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

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

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

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

63. These are interlinked, to a degree at least. The first three arose in 2016 but became more pronounced from 2017 onwards. The remainder arose in 2017. All continued to a degree until the fund's eventual suspension.

64. Having identified the key things that "went wrong" with WEIF (i.e. the issues listed at paragraph 62) what I'm now going to turn to do is look at what HL's responsibilities and duties were towards Mr G given the nature of its relationship with him as investment platform provider, and whether it complied with those duties. And, when doing so, I am going to consider the regulatory obligations I have summarised in the previous section.

65. As I shall go on explain, the available evidence shows HL became aware of and considered the issues I have identified. And there is a significant amount of evidence to show that it was concerned about them (in particular the increase in the level of unquoted shares).

66. Mr G essentially says HL did not do enough to highlight the issues with the WEIF, and its concerns about them (and in response to my provisional decision he has explained again what he sees as HL's failings). HL says it did, and it was reasonable for it to maintain its support of the WEIF (i.e. to continue to include it on the Wealth List) as it gave careful consideration to the issues and retained confidence in the ability of the investment manager to deliver long-term performance i.e. it was of the view the WEIF would come good over the longer term, notwithstanding the issues and its concerns about them.

67. When deciding what is fair and reasonable in all the circumstances of this complaint, the question I therefore need to consider is whether the actions HL took in reaction to its awareness of the issues and its concerns about them were fair and reasonable. And a key consideration for me to take into account is whether in communicating to Mr G about the WEIF in the way it did knowing what it did at the relevant time, HL paid due regard to the information needs of Mr G, communicated information in a way which was clear, fair and not misleading, and whether HL acted fairly, honestly, fairly and professionally in accordance with Mr G's best interests.

68. It would not be fair and reasonable for HL to think one thing, but communicate another or to know something important about the WEIF that could impact the investment decisions of consumers using its service, but not tell them.

69. When considering this I am mindful HL was expressing an opinion about whether it thought the fund represented a good investment opportunity for customers making their own decisions about whether the fund potential, characteristics and risks were right for

them. And that such opinions won’t always be right and sometimes – as they were here - could be wrong.

70. I have again first set out a summary of my findings. Following that, I have again set out my findings in more detail.

Summary of my findings

71. My findings remain as summarised in my provisional decision. To confirm, those findings are:

- Mr G was an execution only customer of HL and there was no ongoing obligation on HL to provide him with generic/non personal advice. My focus is therefore on the communications HL *did* issue.

- There is insufficient evidence to say HL’s communications about the WEIF from launch to 2016 – a period over which HL did not have any significant concerns about the fund - did not meet its regulatory obligations. And taking that into account, I am not persuaded HL failed to act fairly and reasonably when communicating with Mr G during that period.

- It is clear from the available evidence that from 2017 onwards HL developed concerns – which were at times significant - about the WEIF, based on its awareness of the issues summarised above (and, in some instances, the increasing extent of those issues). However, it is also clear that HL reasonably held a genuine view that WEIF was likely to come good in the longer term, despite these issues and its concerns about them.

- I am satisfied that, viewing HL’s communications from 2017 onwards as a whole, HL was communicating the essence of the issues it had been identifying with the WEIF, and its concerns about them (including the linked increasing risks associated with the fund) in a way which was consistent with its regulatory obligations.

- HL therefore gave Mr G sufficient information. And it was a matter for him whether he read it, and to decide whether we wanted to invest in the WEIF and/or retain existing investments in the WEIF. If Mr G did not read all the communications I can’t say that meant HL acted unfairly, when it made sufficient information available to him.

- Similarly, I can’t say HL acted unfairly if Mr G reached a different view or understanding of the WEIF to that which HL set out in its communications.

- It would therefore not, in my view, be fair and reasonable to uphold Mr G’s complaint.

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

HL's communications about the WEIF 2014-2016

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

73. HL has told us that its customers at the launch of the WEIF, including Mr G, were put into three categories (which were based on a customer's history of investing in Neil Woodford managed funds), and one of three packs was then sent to them, depending on which category they fell into.

74. HL has told us Mr G was sent "pack 1", as he was an existing holder of one of the Invesco Perpetual funds Neil Woodford had previously managed. As HL sent Mr G this pack and he invested at launch I think it likely he received it. Pack 1 included a covering letter, signed by HL's Chief Executive, which began by informing Mr G of an "*exclusive*" low annual management charge available to HL customers. It then went on to say:

"The CF Woodford Equity Income Fund

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

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

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

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

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

What are the options for investors in Neil Woodford's former funds?

At Invesco Perpetual Neil Woodford managed the Income, High Income and UK Equity Pension funds. In the enclosed report we give our assessment of these funds' new manager, and outline the options for investors who hold them.

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

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

75. In the factsheet attached to the covering letter, HL's Head of Research said.

"I have no hesitation in adding the fund to our Wealth 150+ list of favoured funds, and will be investing at launch in my SIPP, and my wife will be investing in her ISA."

76. The factsheet also included an article titled "*Why almost every investor should consider equity income funds*".

77. Also enclosed with the letter, alongside the factsheet, were dealing forms which had been pre-populated with the name of the fund.

78. Around the same time HL's website was updated to include a page which was dedicated to the launch of the WEIF, in which HL's Head of Research again said he was investing and "*I urge you to consider this opportunity*".

79. HL also sent a number of general emails to its customers around this time, inviting the recipients to ask for a free research report on the fund, and highlighting the "*exclusive low annual charge*" and the "*last chance to apply*"

80. On 21 July 2014 HL published a "*research update*" on the WEIF on its website, and sent this to Mr G by email. This included the following:

"*Our view on this fund*

As we expected the portfolio has a similar look and feel to the previous funds Neil Woodford managed at Invesco Perpetual, with a number of bold stock and sector positions. Historically, this high conviction approach had been a key factor behind his success and he has tended to get the big calls right more often than not. Please remember, however, that this approach increases risk and there is no guarantee he will be able to repeat his previous successes.

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

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

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

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

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

"Our verdict

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

84. On 10 December 2014 HL published a further "research update" on its website, and sent this to Mr G by email, which included the following:

"Our view on this fund

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

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

85. These communications show HL was clearly enthusiastic about the WEIF at, and following, its launch and went to some lengths to encourage customers to consider investing. They also show the WEIF was presented as something which might be used as a core investment holding, which was suitable for most investors and would invest in larger companies which paid a sustainable or rising income (although not exclusively so). Given what was known about Neil Woodford and the WEIF at this time, I do not think this was unreasonable. If HL wished to promote the fund heavily that was a decision it was free to make. And, given what was known about the WEIF and Neil Woodford at this time, I do not think it would be fair and reasonable to say the communications HL made at this time were inconsistent with its regulatory obligations. So, I do not think it would be fair and reasonable to say HL had done anything wrong at this time.

2015

86. During 2015 HL continued to frequently promote the fund to its customers and visitors to its website, through commentary in its "*most popular fund*" lists and by including it in spotlight type articles on its website – some of which were specifically about the fund (for example, "*Neil Woodford: investing in an abnormal world*", which featured an interview with Neil Woodford) and some which also featured other funds (for example, "*Building a dream team for your portfolio*"). The tone of these articles is similar to those published in 2014.

87. HL also continued to provide updates on the WEIF over this period. For example, on 23 June 2015, it published a "*12 month report*".

88. The 23 June 2015 update was accompanied by a video interview with Neil Woodford. It also included the following:

"*We are encouraged by the fund's progress since launch, although it remains early days. While Neil Woodford's record on this fund is still relatively short, his pedigree as a fund manager rests on his achievements in the last three decades, not only the last 12 months.*

Neil Woodford adopts a concentrated, high-conviction approach to investing – this *means, like all active fund managers, the fund should be expected to go through period of underperformance. That said, those who have stuck with him for the long term have been handsomely rewarded. We are confident the fund can deliver an attractive income and capital growth over the long term – it therefore remains on the Wealth 150+ list of our favourite funds at the most attractive prices*."

89. In short, HL continued to heavily promote the WEIF during this period. Again, I think doing this was a decision HL was free to make, and I have not seen sufficient evidence to conclude the communications it sent were inconsistent with its regulatory obligations. There is nothing to suggest HL had any concerns about the fund at this time, and HL remained of the view – which it was entitled to come to – that the fund represented a good investment. Its communications reflected that view. So I do not think it would be fair and reasonable to say HL had done anything wrong at this time.

2016

90. HL continued to frequently promote the fund to its customers and visitors to its website during 2016, again through commentary in its "*most popular fund*" lists and including it in spotlight type articles on its website (for example, "*Neil Woodford: Brexit revisited*", which featured an interview with Neil Woodford).

91. In the second half of the year some of HL's communications began to include comments on how the WEIF was changing.

92. The Autumn 2016 Client Investment Report included a "one-liner" on the WEIF which said:

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

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

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

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

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

Special report: CF Woodford Equity Income

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

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

What does the fund do?

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

In simple terms this means he aims to ensure investors enjoy an increase in the value of their investment alongside an income payment, which they can choose to spend or reinvest. When the fund launched, he committed to paying a 4p per unit dividend in its first year, which equated to a 4% yield on the £1 launch price. He achieved this and now aims to grow the income over time, although please remember yields are variable and not a reliable indicator of future income.

….

Income

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

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

Performance

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

…..

How is the fund invested?

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

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

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

…….

Company size positioning

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

…

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

…..

How have these size biases affected performance?

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

…..

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

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

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

95. On 22 December 2016 a "*12 month review"* was communicated by HL. That included

the following:

A bias to small and medium companies remains

The manager continues to favour financial and healthcare companies

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

Our view

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

…..

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

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

HL's view at the time

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

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

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

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

100. The overall consensus view of HL's investment team was clearly that it should continue to include the WEIF on the Wealth List. And I'm satisfied the fact that issues/concerns were identified and recorded in the meeting notes does not mean that it was unreasonable for HL to ultimately to conclude that it continued to retain confidence in the

ability of a fund manager to deliver outperformance over the long term, when it had a basis for drawing that conclusion (and it clearly did) and its concerns were largely addressed or allayed.

101. Pausing there, I think this is an appropriate point at which to consider the points Mr G has made in his response to my provisional decision about what he describes as HL's deep and frequently expressed concern about the failure to comply with the disciplines set out in the WEIF's prospectus and the conflict between the title of the WEIF and its changing composition.

102. However, whilst HL had concerns, as noted, its view overall remained positive – the available evidence shows it reasonably and genuinely thought the WEIF would perform well over the longer term. I therefore think it was fair and reasonable – and consistent with HL's regulatory obligations – for HL to communicate the overall outcome of its deliberations and communicate any key information in a balanced way i.e. to highlight the key points of concern, whilst explaining its view remained positive overall.

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

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

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

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

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

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

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

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

- Acknowledge WIM is not investing as expected.
- Highlight the WEIF's variance from its benchmark.
- Explain the fund is not a typical equity income fund - and was instead only suitable for those able to "withstand the additional risk and volatility that comes from investing in smaller and unquoted companies".

105. The communications do not refer to the concerns expressed in one of the notes about Neil Woodford's relative inexperience with small cap stocks. I note Mr G says, in his response to my provisional decision, that were conflicting statements about Neil Woodford's experience of investing in small cap companies. However, I am not persuaded for there available evidence that there are conflicting statements – rather that a concern was identified then later addressed. A later meeting note shows the concern earlier identified about Neil Woodford's small cap experience was addressed to an extent that it would not be fair to say HL should then have highlighted it in communications. The notes of the later meeting record HL had concluded WIM's "capability in this area is vast when the specialist 'trusted partners' are taken into account". So, HL seems to have reasonably reached the view it was "more comfortable", following that meeting. In my view it is not reasonable to say HL had to communicate each challenge it had made to WIM and each response it received – rather to relay key information to investors' decision making, following discussions with WIM which appropriately challenged WIM on issues and consideration of the responses WIM gave.

106. The communications do not refer to HL's concerns about outflows either. But I am not persuaded it would it be fair to say that meant the communications were inconsistent with HL's regulatory obligations. The consequence of outflows was what was key (i.e. the impact this had on the make-up of the fund) and that was communicated, as set out above. At this time there were not significant outflows, in any event – so the point was more something for HL to be mindful of as it continued to monitor the fund, rather than a critical point it had to include in its communications, to act in a way consistent with its regulatory obligations.

107. Overall, the meeting notes show a number of HL's concerns had been addressed or allayed. HL had challenged WIM and received reasonable assurances. I think, in these circumstances, it was reasonable for HL to continue to include the WEIF on the Wealth List, having made the communications it did.

108. I appreciate Mr G may not have read some or all of HL's communications. But they were available to him. And, as I have set out, I think HL's communications were clear, fair, and not misleading at this time, and not otherwise inconsistent with its regulatory obligations.

2017

109. HL continued to frequently promote the fund to its customers and visitors to its website during most of 2017, again through commentary in its "*most popular fund*" lists and including it in spotlight type articles on its website. The communications continued to include comments on how the WEIF had changed or was changing. I have set out below a selection of the comments made on the WEIF in the relevant (to Mr G) communications.

110. 30 March 2017 – *Most popular ISA and SIPP funds.* In the section titled "*Equity income: still a firm favourite*" the following is said about the WEIF:

Aside from the new launch, three further equity income funds made it into the top ten. One was Neil Woodford's existing CF Woodford Equity Income Fund which aims to provide a combination of income and capital growth. To boost growth, part of the portfolio is invested in early-stage companies which pay little (or nothing) in the way of dividends. This means the income is likely to be lower than his new fund, but the capital growth potential is greater – though the addition of these fledgling companies also brings extra risk.

111. 5 May 2017 - *Most popular ISA funds bought last month*:

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

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

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

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

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

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

Other communications

114. On 22 June 2017 HL published a further update – "*CF Woodford Equity Income – three years on*". The update included the following:

Not a typical equity income fund

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

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

Neil Woodford has good form investing in these types of business, and this element of the portfolio could have a significant effect on returns, but please remember smaller companies are higher risk than their larger counterparts.

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

……

Our view

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

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

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

"Our view

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

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

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

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

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

116. On 19 December 2017 an update was issued, alongside another interview with Neil Woodford – "*Neil Woodford – exclusive video and our latest view*". The update included the following:

"Our view

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

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

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

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

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

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

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

Indeed, over the next 12-18 months he expects the proportion of the fund invested in unquoted companies to reduce, as some of his biggest investments in this area seek to list
their shares on the stock market. This is known as an Initial Public Offering, or 'IPO'.

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

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

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

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

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

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

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

HL's view at the time

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

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

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

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

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

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

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

124. The evidence now available (i.e. further notes and emails) shows HL did then follow through on this – its subsequent actions were consistent with the actions it had identified it should take following the August 2017 meeting.

125. Following the investigator's view, which identified an email sent by HL to WIM on 24 November 2017 as a turning point, and found that HL should have dropped the WEIF from the Wealth List then – largely on the basis of concerns about the level of unquoted stocks - HL provided further evidence which gives context and more detail about the action taken by it.

126. This further evidence shows HL did challenge WIM about the level of unquoted stocks, discussions took place, and reassurances and undertakings were given by WIM. Following this it seems HL was satisfied the level of unquoted stocks would be carefully managed and reduced over time, and WIM had agreed further actions on this.

127. The evidence also shows that one of the scenarios which HL said would lead to it continuing to include the WEIF in the Wealth List is what happened; WIM accepted the seriousness of the situation and it demonstrated to HL it was taking action. I think that shows HL had a reasonable basis to keep the WEIF in the Wealth List at this time. It had challenged WIM and received responses which addressed its concerns.

128. So, I do not think there is sufficient evidence for it to be fair and reasonable to find, as the investigator did, that HL should have dropped the WEIF from the Wealth List at this time. In my view HL was entitled to exercise its judgement and decide to continue to support the WEIF if, after reasonable consideration, and appropriate challenges to WIM on the issues it had identified, it concluded there was a basis for doing so i.e. that, overall, it remained of the view the WEIF was likely to perform well in future – the criterion for keeping it on the Wealth List.

129. I note there is reference to HL reducing – or at least not increasing – its exposure to the WEIF in some MM (multi manager) funds. I believe this is what Mr G refers to in his response to my provisional decision as "*products they are actively selling on their own account…..tantamount to ramping up*".

130. I do not share Mr G's view of this. I think HL could reasonably continue to retain the WEIF on the Wealth List, whilst reducing the exposure it had to the fund in some of its MM funds. The changing nature of the WEIF may have meant it was no longer suitable for a particular fund, or only suitable at a lower level that it had previously been held. But that doesn't mean HL could not continue to hold out a reasonably held view the WEIF should remain on the Wealth List, in the context of providing an opinion about whether it thought the fund represented a good investment opportunity for customers making their own decisions about whether the fund potential, characteristics and risks were right for them.

131. I also note HL said it did "*not want to scare investors out of the Woodford fund after one of his worst periods of performance*". In my view this was a legitimate point for HL to consider (particularly having acknowledged in its communications that it considered

WIM's approach could produce periods of under-performance) and to therefore factor into its conclusions and communications – as long as those communications were ultimately consistent with its regulatory obligations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

established companies."

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

136. In my view this again adequately highlights the exposure to smaller companies and unquoted stocks. It also prompts investors to consider the higher risk resulting from this and suggests diversification across funds of different styles. And, again, a further reminder the WEIF is not a typical equity income fund is given. I note HL is positive when referring to the investments in unquoted companies. But that, in my view, fairly reflects its view that it had no significant concerns about these holdings from an investment perspective – it was positive about them, in terms of the potential they added to the fund's portfolio. And I think HL fairly explained the associated risk, and put its clients on notice they should not put all their eggs in one basket.

137. In my provisional findings I referred to a part of a meeting note which, in isolation, suggests HL decided to withhold information ("*it is not helpful to tell people about the issues and discussions we are having*"). HL, in its response to my provisional decision, says this finding is misleading and inaccurate. I remain of the view this, if viewed in isolation, does suggest HL had considered not telling its clients about issues with the WEIF. And I think it is reasonable to make that point. But its also clear this is not what actually happened. As HL notes in its response, it did ultimately conclude "*we should communicate with clients about the issues, but in a positive way".* I think that is consistent with HL's conclusion that it retained confidence in the WEIF to deliver long-term performance but anticipated periods of under-performance.

138. In my view, HL's communications by the end of the year, viewed as a whole, clearly, fairly and not misleadingly conveyed the essence of the issues it had identified about the WEIF (the points I list at paragraph 119).

139. I therefore think, given the overall nature of HL's communications at this time and keeping in mind what had been said in the 2016 communications, HL had clearly, fairly and not misleadingly conveyed the message that the fund was higher risk. Its communications conveyed that a "*significant portion*" of the WEIF was invested in "*higher risk smaller companies*" and that the WEIF was not a typical equity income fund. And that it had 9.5% of its assets – close to the limit – invested in unquoted companies, which were higher risk.

2018

140. The WEIF was promoted less frequently by HL during this year, and was subject to less communication from HL generally.

141. The June 2018 Wealth Report commentary was as follows:

The fund has evolved markedly over the past 18 months. Neil Woodford is positive on the UK economy and has invested to benefit from this view. He's bought shares in housebuilders, including Taylor Wimpey and Barratt Developments, and financial services companies, such as Legal & General and Lloyds. He thinks they're undervalued and expectations of future growth are far too modest. The portfolio also contains a diverse and exciting collection of much earlier-stage, science-based businesses.

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

143. This included commentary on the WEIF as follows:

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

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

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

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

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

Other communications

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

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

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

Why has the yield been low?

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

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

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

Is this still a good income fund?

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

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

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

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

What is our view?

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

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

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

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

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

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

HL's view at the time

148. HL met with WIM again on a number of occasions during 2018. I have seen its notes of each meeting.

149. I have considered the notes in their entirety. I think they show HL was aware the issues which were impacting the WEIF remained present – at least to some extent; but, overall, its concerns were reduced. The consensus view seems to be more positive than in the latter part of 2017. It is clear HL's view was that it should continue to support the WEIF and that it had a reasonable basis for drawing this conclusion.

150. The notes also show that HL acknowledged steps should be taken to make customers aware of the nature of the fund – its risks, the investment strategy being followed – and of the need to diversify. And I think the communications HL issued broadly achieved this. HL's communications at this time appear to be broadly consistent with its internally expressed views.

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

152. The 9 January 2018 update. This repeats the 19 December 2017 update and so the findings I made above in relation to this update apply equally here. I think, like the 19 December 2017 update, this contains some important points about the exposure to smaller companies and unquoted stocks, prompts investors to consider the higher risk resulting from this and suggests diversification across funds of different styles.

153. The March 2018 update. I think the following parts of this communication are key:

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

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

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

154. In my view this adequately sets out how the WEIF is invested at this time, and makes clear the WEIF's significant exposure to smaller companies and unquoted stocks. It also encourages investors to ensure they are comfortable with the risks associated with the WEIF, and to consider diversification into other funds, if they are seeking income.

155. I note the June 2018 Wealth list commentary also says "*The fund has evolved markedly over the past 18 months",* and therefore takes a further step to identify how the fund has changed.

156. In relation to the unquoted stocks – picking up on the concerns and exchanges with WIM towards the end of 2017 - HL was consistently saying internally that it would remove the WEIF from the Wealth list if it breached the limit (and it knew it had breached the limit). So, to that extent, HL was acting consistently with what it was internally saying it was going to do. The evidence shows HL was monitoring the situation and was prepared to take action should the fund exceed 10%; but the risk did not ultimately come to fruition.

157. I note there are further references to HL reducing – or at least not increasing – its exposure to the WEIF in some of its multi manager funds. I think the findings I set out in paragraph 130 on this point apply equally here.

158. The meeting notes show HL also again identified the need to communicate key points to its clients – and its communications seem consistent with this.

159. I think, given the overall nature of HL's communications at this time – and keeping in mind what had been said in the 2016 and 2017 communications – HL was sufficiently communicating that the fund was higher risk by identifying that 40% of the WEIF was invested in "*small and mid-sized… companies*" with almost 10% invested in unquoted stocks, over and above this, and that the WEIF was not a typical equity income fund.

2019

160. There was limited promotion of the WEIF by HL in 2019. It featured in the February 2019 – "*Most popular ISA funds of 2018*", which repeats the commentary from "*most popular ISA funds October*" published on 13 November 2018, quoted above.

161. The WEIF also appears on the "*Most popular funds in March*" published on 5 April 2019, but with no commentary.

162. HL's January 2019 Investment Times introduced the Wealth 50 – a shorter version of its Wealth list. On this list the WEIF was categorised as a "UK growth" not "UK equity income". This includes the following reference to Neil Woodford and the WEIF:

THE EXCEPTIONS THAT PROVE THE RULE

There are a few fund managers who can successfully add value through their style, changing the areas they invest in as market conditions change. It's a similar story with Neil Woodford, who currently manages the LF Woodford Equity Income and LF Woodford Income Focus Funds. He's managed to rotate his style, investing in areas that have come back into fashion. He's also shown great stock picking ability in the past, but he's underperformed on this front over the last two years of his career.

Other communications

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

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

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

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

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

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

Investing against the herd

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

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

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

[sector allocation chart]

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

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

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

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

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

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

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

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

We're in it for the long run

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

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

[performance chart]

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

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

He's managed money through multiple market cycles, investor fads and unexpected events. He came close to losing his job in the late 1990s when he shunned internet stocks just before the big dotcom bust. Heading into the financial crisis, he stayed clear of banks. When he's made big calls, he's usually come out on top.

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

Where else is the fund invested?

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

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

What next?

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

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

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

1 March 2019 – "*Woodford Equity Income – Transfer of unlisted investments"*

18 April 2019 – "*Woodford Patient Capital Trust – playing the long game"*

3 May 2019 – "*Woodford Equity Income – a step in the right direction"*

3 June 2019 – "*Woodford Equity Income: all dealing suspended following redemption concerns"*

166. "*Woodford Equity Income – a step in the right direction"* included the following:

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

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

…

Our view

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

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

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

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

Woodford's recent performance

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

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

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

Not your typical income fund

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

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

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

HL's view at the time

168. HL met with WIM again on a number of occasions during 2019. I have seen its notes of each meeting. I have also considered internal HL email correspondence, and notes of internal meetings at HL where the WEIF was discussed.

169. I have considered the notes and emails in their entirety. I think they show HL, by this point, did have significant concerns about the WEIF but, on balance, retained faith in WIM to recover from the period of poor performance and took the view there was likely to be enough long term investors (including it) to ensure liquidity would not be an issue.

170. It seems HL did recognise by this point that there may not be a good outcome and it considered removing the WEIF from the Wealth List. But it also considered the possible consequences of removing the WEIF from the Wealth List and balanced this against its view that the fund was likely to ultimately recover.

171. It is clear the suspension of three stocks held by the WEIF on the Guernsey exchange was

a significant cause for concern. But the suspension was ultimately lifted.

172. Again, in relation to the unquoted stocks, HL was consistently saying internally that it would remove the WEIF from the Wealth list if it breached the limit (and it knew it had breached the limit). And, to that extent, HL was again acting consistently with what it was internally saying it was going to do. The evidence shows HL was monitoring the situation and was prepared to take action should the fund exceed 10%. I remain of the view there is no evidence to show HL knew the 10% limit had actually been breached at any point; so, from its perspective, the risk did not ultimately come to fruition.

173. In my provisional decision I said HL could perhaps be reasonably criticised for not bringing to light more what was recorded about it being uncomfortable that the Guernsey stock exchange listings weren't sticking to the "spirit" of the rules. I note HL says, in its response to my provisional decision, that it does not consider this is an accurate or justified statement. It refers to its communication of 3 May 2019, which, as noted above at paragraph 166, referenced less liquid companies as including those found "on stock exchanges without much active trading".

174. I remain of the view my finding on this point is reasonable. The 3 May 2019 update does refer to the exchanges on which the shares had been listed as "without much active trading", and to WIM looking to reduce such holdings by the end of the 2019, but I do not think that sufficiently reflects HL's recorded concern that the steps which had been taken by that point in time did little to improve liquidity and were not therefore within the spirit of the rules.

175. But I also remain satisfied this was not reason, overall, in the circumstances, to remove the WEIF from the Wealth List. WIM had undertaken to reduce these holdings by the end of 2019 and so this reasonably formed part of the internal narrative which ultimately led to the conclusion HL should still support the fund.

176. Overall, whilst it is clear HL did have some significant concerns at this time, I think the communications do largely reflect the position as HL saw it. In my view HL was reasonably attempting, at this point, to strike a fine balance between communicating risks and not strongly recommending further investment, whilst not taking action which might put the fund in peril - and at the same time reflecting its genuinely held view the WEIF would recover in the longer term.

177. The communications from HL do make repeated references to the poor performance of the WEIF, and I acknowledge that some investors had lost patience with the fund. They also make it clear HL could be wrong and that the fund is, by this point, essentially a binary bet – and that it was therefore important to consider holding the fund as part of a diversified portfolio that encompassed different styles/exposures.

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

179. 7 January 2019 update. This update includes the following (emphasis is HL's):

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

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

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

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

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

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

181. 3 May 2019 update. This update includes the following:

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

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

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

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

183. So I think HL sufficiently identified that the exposure to smaller companies remained high, that HL’s conviction had been tested, and that it recognised the outcome might not be a good one. It also continued to identify the greater risk and volatility than might be expected from a typical equity fund, and of the need to diversify.

In summary

184. Given my findings above, I do not think it would be fair and reasonable to uphold Mr G’s complaint:

- The fund changed significantly over the years following its launch, and at times HL had significant concerns about it. However, HL was free to reach a reasonably held view on whether the fund should feature in its Wealth List, and I have not seen sufficient evidence to show its view was not at any point reasonably held or that its view was anything other than the fund should remain on the Wealth List.

- HL took the view that a breach of the 10% limit on unquoted stocks required by the relevant rules was a “red line”, which would result in it removing the fund from the Wealth List. HL consistently applied this approach, and kept the position under regular review - and there is no evidence HL ever became aware of such a breach.

- I am satisfied that, overall, when communicating its reasonably held view, HL acted in a way which was broadly consistent with its regulatory obligations – namely to:

    - pay due regard to the interests of its customers and treat them fairly (Principle 6);
    - pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading (Principle 7);
    - ensure that a communication or a financial promotion is fair, clear and not misleading (COBS 4.2.1R(1));
    - act honestly, fairly and professionally in accordance with the best interests of its client (COBS 2.1.1R (1)).

- In my view HL's communications changed as the fund did; and did enough to make Mr G aware of the increasing exposure to smaller companies and the consequent increase in risk. There was also a clear shift in the tone of the communications as the poor performance of the fund continued and some of the issues impacting it prevailed.

- HL did not share all the concerns it had, nor the full detail of all the concerns it did share. But, overall, it did in my view share enough and it is not reasonable to say it had to share the full detail of its exchanges with WIM or every concern it had raised – only the overall conclusions it reached.

- It needs to be kept in mind that HL was only expressing an opinion about whether it thought the fund represented a good investment opportunity for customers making their own decisions about whether the fund potential, characteristics and risks were right for them. It did not hold the WEIF out as being a suitable investment for any particular client (save for what I mention at paragraphs 55 and 56) – rather it held it out as worth consideration by those making their own investment decisions. HL's communications need to be considered in this context.

- In hindsight, it is clear HL's view was wrong. But the fact HL's reasonably held view the WEIF would recover from its period of underperformance transpired to be wrong does not mean it would be fair for it to compensate Mr G for investment losses. As noted above, opinions won't always be right and sometimes – as they were here - could be wrong. I am satisfied HL made it clear it was simply offering its opinion, and it was for Mr G to make his own investment decisions. And HL made it clear, in its later communications, that its opinion might turn out to be wrong.

- I note Mr G infers that the fact the WEIF remained on the Wealth List was reason for him to remain invested. But, as I have set out above, HL's actions amounted more than simply keeping the WEIF on tis Wealth List. It also provided information about the fund, which communicated the key conclusions it had reached - and this was relevant to Mr G's decision whether to remain invested. The continued inclusion of the WEIF on the Wealth List did not mean an investment in the fund was suitable for Mr G personally.

- Whilst I appreciate Mr G likely did not read all of the information (as noted, he elected to stop receiving marketing communications in December 2016) and so may have had a partial view of the fund, the information was made available to him and I must take into account the entirety of the information HL put out, not just the more limited aspects Mr G actually engaged with.

- I remain of the view HL gave Mr G sufficient information about the WEIF. It was a matter for him whether he read it, and to make decisions on whether he wanted to invest in the WEIF and/or retain existing investments in the WEIF

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

My final decision

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

187. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 1 June 2024.

John Pattinson
Ombudsman