DRN-4723917

## The complaint

Mr A complains that Hargreaves Lansdown Asset Management Limited (HL) gave misleading information about the Woodford Equity Income Fund (WEIF), Woodford Income Focus Fund (WIFF) and Woodford Patient Capital Trust (WPCT). Mr A maintains that he suffered a substantial financial loss as a result of relying on this misleading information and seeks compensation.

## What happened

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

The WEIF broadly tracked the benchmarks (albeit whilst providing a greater return and experiencing some more volatility) until the second half of 2017, when there was a significant fall which was not experienced by the benchmarks. It began to significantly underperform benchmarks from early 2018 and the performance followed a very different pattern to the benchmarks from early 2019 to the date of suspension.

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

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

The fund did not trade again. Later in 2019, Link decided to liquidate the fund. Investors have since received payments as and when the fund's assets have been sold. A small amount remains invested in assets which are not liquid i.e. cannot currently be sold. A scheme of arrangement between investors and Link has now been sanctioned by the High Court and will conclude the wind up of the fund with further distributions being made to investors who held units in the WEIF fund at suspension.

WIFF launched in April 2017 and again Link was the ACD. Whilst there was some overlap with underlying securities in WEIF, the funds were separate and did not invest in each other. WIFF was designed to deliver, "a high level of regular and sustainable income" together with capital growth. The fund had discretion to invest in a wide range of investments, *"predominantly in shares of companies listed in the UK and overseas with a focus on investments that provide dividends"* (KIID). HL accepted that performance of WIFF was disappointing in 2018 and after WEIF was suspended, WIFF was removed from HL's best buy lists. In October 2019, WIM resigned as investment manager of WIFF and Link suspended dealing in the fund until February 2020 when a new investment manager was appointed.

WPTC launched in 2015 with a different strategy to WEIF. The factsheet from the time made clear that unquoted companies were always going to be a feature of the WPCT, with a focus on firms in early stages where the aim was longer term growth. Unlike WEIF and WIFF, WPCT was not promoted on HL's wealth lists.

**HL's communications relating to the WEIF**

HL's relationship with WIM and the WEIF began prior to the fund's launch. HL met with WIM in early 2014 and decided to promote the WEIF to its customers and visitors to its website ahead of the fund's launch.

The WEIF was the subject of, or featured in, many communications from HL over the period from the fund's launch to its suspension. HL's communications relating to the WEIF can be categorised broadly as follows:

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

**The Wealth List**

HL published a list of what it considered, in its view, to be the "best" or "favourite" funds. This was initially called the Wealth 150 (and a subset of this, featuring discounted management charges for HL clients, the Wealth 150+) then later the Wealth 50 – I'll refer to these generally as the Wealth List. The WEIF featured on the Wealth List from its launch until its suspension. WIFF was removed from the list in 2019 and WPCT was not promoted on it.

I understand the list was available on HL's website to any visitor and also sent to all customers on its general mailing list who had elected to receive communications, alongside the bi-annual Wealth Reports published by HL. HL says the list was updated from time-to-time with funds being added or removed as a result of the ongoing cycle of review, monitoring and analysis of funds by its investment team.

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

**Mr A's dealings in the WEIF, WIFF and WPCT**

In June 2014 Mr A purchased units in WEIF in his HL SIPP, additional purchases were made through 2014 to 2017. These units were transferred to Mr A's SL SIPP drawdown account on 6 December 2016.

In April 2017, Mr A purchased shares in WIFF in his HL SIPP and went on to sell his holding on 30 July 2019.

Mr A also purchased shares of WPTC in a stocks and shares ISA and in his SIPP in April 2015.

**Mr A's complaint to HL and its response**

After the suspension of the WEIF, Mr A made a complaint to HL about its promotion of these investments and its communications around it, in particular its Wealth Lists, alleging misrepresentation and negligence on HL's part.

HL looked into Mr A's complaint but didn't think it had done anything wrong. It acknowledged the WEIF had experienced a "difficult period of performance" but emphasised that although it had a reasonably held conviction in the prospects of the WEIF outperforming its benchmark, it provided an "execution-only service", which meant that it was not providing investment advice or making personal recommendations.

It said that the information it provided about the WEIF on its Wealth Lists or in other communications was not designed to be taken as a personal recommendation to deal in a fund and was provided  in order to help investors decide whether or not to invest. No guarantees were given as to performance, HL believed that risks about the fund were made clear.

Mr A remained unhappy and the complaint was referred to this service. Mr A said HL exaggerated the capability of Neil Woodford and implied that a good return was "a certainty". Mr A maintained that HL then mismanaged the reports about performance and potential, continuing to recommend the fund, overstating performance and ignoring the increasing illiquidity of the investment.

One of our investigators looked into the complaint but didn't consider it should be upheld. In short, she concluded that HL's communications met its regulatory obligations and were clear, fair and not misleading.

Mr A did not agree with the outcome and asked or HL's "exaggerated claims about Woodford", to be considered by an ombudsman, highlighting the unfairness of being left with a "sizeable reduction in pension." The case has passed to me to decide.

**What I've decided – and why**

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

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

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

**What are the relevant regulatory obligations?**

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

The Principles for Businesses, which are set out in the FCA's handbook "are a general statement of the fundamental obligations of firms under the regulatory system" (PRIN 1.1.2G). I consider that Principles 6 and 7 are of particular relevance to this complaint. They say:

- Principle 6 – Customers' interests – A firm must pay due regard to the interests of its customers and treat them fairly.
- Principle 7 - Communications with clients – A firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading.

I have also taken into account the FCA rules for firms carrying on investment related business set out in the Conduct of Business Sourcebook (COBS). In particular, COBS 4.2.1R, which sets out the requirements on authorised firms, like HL, when communicating with clients. COBS 4.2.1R(1) says:

"A firm must ensure that a communication or a financial promotion is fair, clear and not misleading." COBS 2.1.1R (1) (the client's best interests rule) is also relevant to this complaint. It says: "A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule)."

**WEIF**

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

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

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

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

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

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

HL was explicit that the fund had a "significant bias to smaller companies relative to the FTSE All Share Index which adds risk, and also has more invested in medium sized companies than the index." Ultimately HL's view was that this approach would "add significant value for investors able to withstand the additional risk and volatility that comes from investing in smaller and unquoted companies."

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

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

I acknowledge that in 2017 the WEIF began to underperform its benchmark, but I'm satisfied that HL's continuing communications about the fund remained balanced. It was clear that it viewed the WEIF as a long-term investment and explained in its June 2017 update that Woodford had "a long history of making big stock or sector bets, and while these decisions have at times taken time to come to fruition, they have added significant value for investors over the long term".

In an article it published in September 2017 on its website, it explained that "judging a fund manager over a time period of a few months is folly, especially one with such a long and distinguished track record". This article explained that Woodford had experienced poor performance in the past, and that it was "quite right to question any fund manager on their performance" which HL said it had done. But it explained that his approach involved seeking out undervalued companies and this strategy had "seen his investors well-rewarded over the long term".

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

I acknowledge Mr A has raised concern about the make up of the fund and illiquidity. But it's important to highlight that HL wasn't managing the WEIF and had no say over what stocks Woodford was choosing to buy.

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

The key issue here is that none of these updates differed markedly from the concerns HL was expressing to Woodford throughout the year and from its internally held view that whilst the fund was suffering from a period of poor performance, HL remained of the view that over the long term the investment would come good. The evidence shows that HL was aware of the WEIF nearing the 10% limit and was clearly aware of the poor performance of the fund.

I've seen evidence that it robustly challenged WIM when necessary, but it was also reassured by WIM's responses to those concerns – in particular in relation to the levels of unquoted stock. Ultimately, HL continued to believe that periods of poor performance were temporary, and that whilst it was important to ensure it was open about the nature of the WEIF and how it had changed, it continued to believe it was a good investment for the long term.

Overall, I consider that sufficient information was given in these updates for Mr A to know that the WEIF was not a typical equity investment – and that there were specific risks in the way the WEIF was managed that he needed to be comfortable with.

With that in mind, I don't agree the message that HL continued to believe the fund would improve in long term was misleading; HL believed that to be the case and was entitled to that reasonably held belief.

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

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

In 2019 HL issued an update in January in which it explained its recent catch-up with Woodford. It said that although it had been a long-term supporter of Woodford, "his funds have recently performed poorly" and so it had been "an uncomfortable time to hold the fund and our own conviction has been tested". The update then went on to explain why it continued to keep the fund on its Wealth 50 and provided a detailed explanation of how the WEIF had changed since its launch, and some of the inherent risks of Woodford's approach to investing. And it said it was clear that some of Woodford's investments hadn't "paid off" and importantly highlighted to investors "the importance of having a diversified portfolio, spreading your investments amongst managers that invest differently".

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

Crucially, it said:

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

Further updates in March highlighted that Woodford was experiencing “his worst spell of performance” and the fact that HL had been urging Woodford to “address the weighting [of unquoted] stocks in his portfolio,” and overall it said that Woodford had “shown an ability to make the big calls right, and when he does, investors profit”.

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

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

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

Whilst I appreciate HL’s view has turned out to be wrong, largely as a result of the liquidation of the fund which was not something it had anticipated, I don’t consider that means its communications were not clear, fair and not misleading. It wouldn’t be fair and reasonable for me to make an assessment of those communications with the benefit of hindsight.

In my view HL clearly explained the risks of the fund, the areas where it had concerns and the reasons why it thought it was still worthwhile to hold it as part of a diversified portfolio. It was then for individual investors to decide, for themselves, whether in light of that information, the risks as described as well as the ongoing period of under-performance, holding the WEIF remained suitable for them.

**WIFF**

As with WEIF, HL was not responsible for monitoring WIFF on behalf of Mr A. I’ve looked to see if HL did provide clear information about the investment. Again, I’ve not seen anything to show that any guarantees were made about future performance.

The November 2017 edition of the Wealth 150 list noted the fund manager’s rational behind management of WIFF and by June 2018, the Wealth 150+ report recorded that it was the fund manager’s rationale combined with “some stock specific disappointments” that had “held back performance.” By November 2018, the report noted the fund had “struggled” but that Woodford was sticking to his philosophy. I'm persuaded that Mr A was given clear information about underperformance and by this time Mr A ought reasonably to have known WIFF was not performing to expectation. WIFF was removed from the Wealth List in June 2019 and it's clear that Mr A went on to make his own assessment of risk and on 30 July 2019, sold his entire holding of WIFF.

As Mr A was an execution only client, HL didn't provide any advice about whether the investment was suitable for Mr A's needs and risk appetite. These were matters for Mr A to form a view upon and I can't reasonably say that the decision to sell the holding in WIFF was down to anything done or not done by HL, I'm satisfied losses were caused by the performance of the investment, over which HL had no control.

**WPTC**

Unlike WEIF and WIFF, HL did not promote WPCT on any of its best buy lists – Wealth 150 or Wealth 50. It gave some commentary in newsletters and website and whilst HL gave its opinion, I've not seen anything to show that any performance guarantees were made. I'm satisfied that Mr A was given sufficient information to be able to make an informed decision about whether to invest and the information provided was clear, fair and not misleading. Notably HL communicated when WPTC was underperforming, as in January 2019. Further, in April 2019, HL recorded that WPTC had lost money since launch and whilst it could be used to diversify a portfolio, its higher risk and specialist nature meant it should only form a small portion of it. And it's relevant that WPTC wasn't managed by HL, so it wasn't responsible for downturn in performance. Ultimately, it was for Mr A to decide whether to invest and remain invested in WPTC and I'm satisfied HL shared clear information, to enable Mr A to make an informed decision.

**Conclusion**

I appreciate my conclusions will be disappointing to Mr A and I understand why he feels HL ought to be responsible for the losses he's sustained. But overall, I'm satisfied this was not caused by something HL did or didn't do or because it misled Mr A in anyway. I'm satisfied the losses were caused by the performance of the underlying investments, and for WEIF, also by the subsequent liquidation by the authorised corporate director.

**My final decision**

For the reasons given, I am not upholding the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 19 June 2024.

Sarah Tozzi
**Ombudsman**