DRN-4729069

The complaint

Mr G complains that Hargreaves Lansdown Advisory Services Limited ('HLAS') were negligent in allowing the inclusion of the Woodford Equity Income Fund (WEIF) within his investment portfolios.

Mr G states that its inclusion within his portfolio did not represent his stated attitude towards investment risk - he would now like HLAS to recompense him for his losses.

What happened

In July 2005, Mr G met with HLAS's adviser to discuss formulating an appropriate investment strategy for his pension and non-pension assets. The following month, HLAS wrote to Mr G confirming the outcome of their meeting. The adviser established that:

- The value of Mr G's non-pension assets were approximately £1,250,000, although he did have a mortgage of £150,000. He also held £678,000 in two pension plans.
- Mr G didn't have an immediate need for income as he was planning on continuing to work at that point.
- Mr G didn't have the inclination or the research capability to make investment decisions concerning funds on an ongoing basis so wanted help in this area.
- He also wanted a broad spread of investments and assets to provide diversification and the prospect of growth over the medium to long term. Mr G did not wish to be too defensive or aggressive with his investment strategy and wanted to have a well spread and diverse portfolio.
- When agreeing the level of risk Mr G was prepared to accept with his money, the adviser established that:
    - For 50% of his funds: "*You are seeking improved returns than those offered by deposit accounts to provide better protection against inflation. You accept that there may be some fluctuation in capital values*."
    - And for the remaining 50%: "*You are seeking a balanced investment approach with moderate risk to enhance potential returns. This may involve a greater amount of capital fluctuation and possible loss of capital*."
- An investment strategy was agreed that "should not be too aggressive or defensive" and HLAS determined that Mr G was a 'moderate risk' investor.
- In addition to recommending Mr G transfer his deferred money purchase pension and invest the monies across nine different funds, HLAS also recommended £200,000 was invested into HLAS's portfolio management service via their SIPP.

- HLAS also recommended Mr G transfer his PEP and ISA portfolios (c£53,000) into HLAS's portfolio management service (PMS).

Mr G was originally advised to invest his monies into PMS portfolio 6 but following an annual meeting with Mr G in 2011, HLAS's adviser recommended that he restructure his portfolio and invest for income and growth. At that meeting, the adviser said that Mr G confirmed he would be "*happy to place 50 to 60% of your investment into higher risk investments such as UK equity income accepting that these investments are higher risk and accept the value can decrease as well as increase*". He also confirmed that he'd be happy to place 15 to 25% of his monies into "*higher risk investments such as absolute return and total return funds as you are looking for an investment to provide a positive return over the long-term regardless of stock market conditions*". Mr G also confirmed that he'd be happy investing up to 30% of his funds into fixed interest investments accepting that he was "*aware they can still fall in value as well as rise*". HLAS's letter made clear that investing was not without risks and Mr G could get back less than he invested.

Consequently, Mr G's investment was transitioned into the 'Portfolio for Income and Growth 5'. The portfolio's key objective is to achieve growth in both income and capital over the medium to longer term. Mr G's monies were split across four multi manager funds - HL MM High Income, HL MM Income and Growth, HL MM Strategic Assets and HL MM Strategic Bond. And, from 2014, some of the funds that Mr G was invested in had exposure to the WEIF. Following the inclusion of the WEIF within the portfolio, its exposure varied over the years:

- October 2014 – 56.4% of the portfolio was invested in equities. Of this, 8.9% was in invested in the WEIF.

- October 2015 – 58.6% of the portfolio was invested in equities. Of this, 10.1% was in invested in the WEIF.

- October 2016 – 56.7% of the portfolio was invested in equities. Of this, 9.9% was in invested in the WEIF.

- October 2017 - 56.5% of the portfolio was invested in equities. Of this, 7.8% was in invested in the WEIF.

- October 2018 - 51% of the portfolio was invested in equities. Of this, 6.6% was in invested in the WEIF.

- July 2019 – 51.5% of the portfolio was invested in equities. Of this, 6.6% was in invested in the WEIF.

In March 2019, Mr G had an annual review discussion with his HLAS adviser. At that meeting, as at all of the other review meetings Mr G had, HLAS revisited the level of risk he was prepared to take with his investments. Mr G confirmed the level of risk he was prepared to take with his monies hadn't altered and he was happy to continue with his existing PMS asset allocations and the associated risk within the portfolios (which was cash 0 to 5%, fixed interest 30 to 40%, managed equities 50 to 60%). He wished to continue leaving all of the investment decisions to HL.

At that meeting, the adviser noted that Mr G felt able to continue to tolerate losses because he had experienced first-hand the rise and fall of markets over the years.

<u>The WEIF and its background</u>

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 fund invested predominantly in UK companies and aimed to provide a reasonable level of income together with capital growth.

The Authorised Corporate Director (ACD) of the WEIF 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. And, in June 2019 the extent of those outflows - and the portion of the WEIF's assets which were not liquid - led Link to decide to suspend trading in the fund. Link removed WIM as the investment manager around this time. The fund did not trade again.

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

Mr G's complaint

Over the years, HLAS's financial adviser conducted annual reviews with Mr G to determine the ongoing suitability of his underlying investments. In July 2019, HLAS completed a review with Mr G and during that meeting it was determined that his portfolio remained suitable for his circumstances, objectives and appetite for risk.

In October 2019, Mr G decided to formally complain to HLAS. In summary, he said that exposure to the WEIF within his portfolio was leading to financial losses and that he was concerned that the inclusion of the fund didn't reflect the level of risk he was prepared to take with his savings. Mr G went on to say that the WEIF accounted for 5.7% (in July 2019) of the HL Fund 5, which given the WEIF included a very high proportion of unlisted and illiquid stocks, many of a start-up nature, he was at a loss as to how HLAS could knowingly make such choices.

After reviewing Mr G's complaint, HLAS concluded they were satisfied they'd done nothing wrong. They also said, in summary, that they were content their advice to him was appropriate and suitable on each occasion. HLAS went on to say that the portfolio their adviser had recommended was designed to build his wealth for the future to ensure a comfortable retirement. In addition, HLAS said that the inclusion of the WEIF within the recommendations their adviser had made to Mr G was aligned to his desired asset allocation and his attitude to risk.

HLAS also said, in summary, that Multi-Manager Funds invested in a wide range of underlying investments, meaning that the negative impact of one of their investments underperforming or (as in the case of WEIF) being suspended, should be limited. HLAS said that they were satisfied that the Multi-Manager Funds Mr G had invested were managed in accordance with the mandate of the fund, including each fund being sufficiently diversified.

HLAS explained that they did not agree that they (as the manager of the Multi-Manager Funds) had failed to comply with its policies with respect to diversification.

Mr G was unhappy with HLAS's response, so he referred his complaint to this service. His complaint was then considered by one of our Investigators. In summary, she concluded that HLAS hadn't treated Mr G unfairly because the WEIF made up a relatively small amount of his portfolio. And, the amount invested in WEIF wasn't enough to take the overall portfolio above his stated risk tolerance.

Mr G, however, disagreed with our Investigator's findings. In summary, he said:

- The Investigator had "applied a forensic approach of the facts and reached a conclusion" without factoring in "the real-life experience relating the specific asset, WEIF, which was considered to be a suitable component of the portfolio".

- He agreed that in his portfolio, "an element of risk would be appropriate, subject always to the caveat that in making such a recommendation the adviser exercises due care and professionalism and remains alert to the context of the recommendation".

- The Investigator had "failed to recognise that in giving the advice to be exposed to this stock, HLAS still have to use the same diligence and expertise to reach this conclusion, as they would for a lower risk or nil risk asset. The fact that the risk is proportionately low is not a free pass to absolve them from subsequent challenge of irrational decision making".

In addition, Mr G also said that if Hargreaves Lansdown did apply rigorous analysis of the WEIF, then their conclusion to include exposure to it was perverse and constituted a failure in their duty of care obligations because:

    - The published performance data universally indicated an investment in terminal decline.

    - HLAS was singularly alone within the financial community in supporting WEIF.

    - The high-quality financial press highlighted the unattractive management behaviour.

    - It was well known that WEIF was in breach of its original approvals (portfolio content).

    - WEIF attempted an undisguised corporate manoeuvre to appear to comply with its listing approvals.

    - WEIF management failed to fulfil, when challenged by HLAS, undertakings that had been given by WEIF to rectify problems.

    - WEIF attracted the supervisory attentions of the FCA.

Our Investigator was not persuaded to change her view as she didn't believe that Mr G had presented any new arguments she'd not already considered or responded to. Unhappy with that outcome, Mr G then asked the Investigator to pass the case to an Ombudsman for a decision.

What I've decided – and why

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

I very much recognise Mr G's strength of feeling about this matter and I don't underestimate how upsetting both he and his wife have found this experience to be.

I have summarised this complaint in less detail than Mr G has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts.

My role is to consider the evidence presented by Mr G and HLAS in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's incomplete or conflicting information about what happened, my role is to weigh up the evidence we do have. It is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, I'm not upholding Mr G's complaint and it's largely for the same reasons that our Investigator has set out - I'll explain why below.

Before I do, I think it's important to be clear that Mr G is not a direct holder of the WEIF. Mr G is invested (via his PMS account) in a number of HL Multi-Manager Funds, some of which have exposure to the WEIF. Mr G therefore does not hold the WEIF in his portfolios, has not had dealings in his investments suspended, and he is not entitled to receive any capital redemption payments from Link. But in any event, Mr G's concerns are anchored around the fact that the nature of investments that WEIF was purchasing meant that it was wholly unsuitable for someone with his risk appetite and that including the WEIF within the wider portfolio was negligent. Having thought carefully about Mr G's comments, I don't agree, and I'll explain why.

To be clear, Mr G has stated that he's not unhappy with HLAS's recommendation to invest in the PMS service and portfolio 5, rather it's their decision to include the WEIF within it after 2015 because the manager changed the nature of the fund. However, in shaping my decision, I do feel it is relevant to understand the broad reasons why HLAS recommended the PMS and whether it was suitable for his needs, largely because Mr G states that the inclusion of the WEIF in the managed funds meant that it didn't match his risk profile.

I think it's clear from HLAS's early interactions with Mr G that he's an experienced investor - he's held stock market-based investments for a number of years and during that time, he stated that he'd experienced seeing the value of his monies fall as well as rise. Having looked at Mr G's interactions with HLAS in the five years running up to the Woodford fund being suspended (so from 2014 to 2019), he held the same investment objective, that of capital growth above the rate of inflation and a desire for income. HLAS's interactions with Mr G confirmed that he's not risk averse and was prepared to take some risk in order to help meet that objective.

The key consideration when looking at Mr G's portfolio is whether or not the assets that it held were consistent with what he was told the portfolio would be invested in, including the spread of assets, the individual split between funds and any other relevant information involving risk. It's clear to me that the portfolio was invested in line with the factsheet and what he was told at the outset. The four multi manager funds that the portfolio held were aligned with the split that was described in the factsheet and I'm satisfied each funds' objectives and holding were also consistent with the particular portfolio that Mr G had chosen. I don't believe that it would be fair and reasonable to look at the WEIF in isolation.

There's no doubt that the performance of the WEIF wasn't as the fund managers had hoped and its eventual suspension and liquidation is unfortunate, but the reality is that these are performance considerations that could apply to almost any collective investment predominantly invested in equities. I don't think it's fair or reasonable to hold HLAM responsible for not foreseeing the suspension and subsequent liquidation of a fund it had no involvement in managing. I should make clear that Mr G's PMS portfolio is managed by the Hargreaves Lansdown Asset Management (HLAM) discretionary management team and not the HL Advisory Services advisor, and the decision to have exposure to the WEIF was a fund management decision taken by Hargreaves Lansdown Fund Managers Limited (HLFM), the manager of the HL Multi-Manager Funds in which Mr G's portfolio is invested.

So, while I've considered Mr G's more detailed comments about the WEIF's inclusion in the individual funds, HLAS wasn't responsible for those investment decisions. HLAS was responsible for giving Mr G suitable advice, and reviewing the PMS yearly as it did, to ensure it remained suitable for him – and as I've said, I consider it was despite the exposure to the WEIF.

Overall, the WEIF was a UK equity fund which it told investors would focus on 70% listed companies, with a view to the remainder being in unlisted or overseas equities, as well as derivatives. The fund aimed to provide capital growth, it also aimed to produce an income. HL's PMS portfolio 5 aimed to achieve growth in both income and capital growth over the medium to long term, so I don't think it was unreasonable for HLAS to have included the WEIF within the portfolio as it met Mr G's objective. Mr G agreed with his adviser that he didn't wish to take undue risks with his monies and having no more than 65% invested in equities suited his attitude towards risk – but this referred to his whole portfolio. Whilst I should acknowledge that the WEIF was able to invest more into equities, I'm not persuaded that its inclusion within the portfolio was unreasonable because typically, a managed portfolio may at times include investments that are slightly higher than a consumer's stated risk profile and others that are below. The key consideration for Mr G's adviser was whether the PMS portfolio 5 was overall suitable and in line with Mr G's objectives and attitude to risk.

So, when looking at investment losses arising from holdings in a portfolio, it isn't usually fair to focus on the one holding that's suffered a loss, ignoring the remainder of the portfolio, like Mr G's which contained four different funds, which themselves held a multitude of different assets. Instead, it's important that I take into account both the asset itself, as I've done above, and the extent to which his portfolio was invested in it. The same is true when looking at whether the description of a particular fund is fair, clear and not misleading, compared to what it actually invests in.

Despite Mr G's willingness to invest up to 65% of his funds in equities, between October 2014 and July 2019, HL held around 55% of Mr G's portfolio in equities and of that, his exposure to the WEIF gradually reduced from nearly 9% to 5.7%. It seems that as the performance of the WEIF stalled, the fund manager reduced the exposure to the fund.

Within Portfolio 5, around 50% is invested in the HL MM Income and Growth Trust, 34% in the HL MM Strategic Bond trust, 9% in the HL MM High Income trust and 4% in the HL MM Strategic Assets trust. The WEIF wasn't included in all of funds Mr G's monies were invested in, only the Income and Growth Trust and the Strategic Assets Trust.

In terms of the makeup of the WEIF, I'm not persuaded it was entirely unreasonable for its inclusion within each of those funds. The Income and Growth factsheet states:

'The Fund may invest, either directly or indirectly via other collective investment schemes and exchange traded funds, in a range of equities and/or fixed interest securities. The Manager will select equities and/or fixed interest securities for their income and/or capital growth potential, including smaller companies and overseas markets. In addition, the Fund may invest, directly or indirectly in closed ended funds, money market instruments, deposits and warrants.'

Under the risks section, it states '*The Fund may invest in smaller companies, which are more volatile and sometimes more difficult to trade than larger companies.*'

In addition, the fund factsheet for the Strategic Assets Fund states that the investment objective is to provide long-term capital growth. It goes on to state:

'The Fund will invest principally in collective investment schemes whose underlying investments consist of equities, floating and fixed interest securities, property, currencies and/or commodities. The Fund will take a long term approach to asset allocation but will have flexibility to alter this allocation to meet its capital growth objective. Other permitted investments include (directly or indirectly) deposits, transferable securities and money market instruments.'

And, having considered the investment approach of the WEIF, it broadly invested in the same type of assets so it wouldn't be fair to conclude that the fund itself was therefore no longer consistent with what it said it would do by virtue of its investment in the WEIF.

<u>Summary</u>

Having looked at the various interactions that Mr G had with HLAS over the years, I'm satisfied that the WEIF wasn't recommended in isolation, rather it was simply included within some of the multi manager funds which Mr G's portfolio was invested in. It clearly formed part of a broader strategy which HLAS was advising Mr G on. This means that when looking at HL's recommendation to invest in the PMS, it wouldn't be fair to assess it purely on the basis of how risky the WEIF was without an understanding of what else Mr G had in his portfolio. And it certainly wouldn't be fair to be critical of HLAS's decision to invest in the WEIF purely on the basis that it was later suspended and liquidated – neither of those events had anything to do with HL. Importantly, from the literature that I've seen, at no point did HL offer Mr G any warranties that his monies were invested risk-free.

All of the funds HLAS recommended had a mixture of equity funds and fixed interest funds, and some had an exposure to WEIF. I've taken into account the various investments in the WEIF between 2014 and 2019 and I don't think they were unsuitable or not in line with the individual funds, and with the portfolio the customer was invested in.

In terms of the broader advice which Mr G received, I'm satisfied it was fair and reasonable for HLAS to have concluded that its recommendations were suitable for him. As an experienced investor, Mr G knew of course that performance could not be guaranteed and that whilst HLAS was clearly aiming to recommend investments which would perform well, there was a risk (in some cases a high risk) that there might be volatility in the value of Mr G's holdings.

I've seen nothing to persuade me that the individual funds that made up the PMS were not in line with what Mr G wanted, and crucially aligned to the aim and risk profile of the specific PMS he was invested in. It's clearly the case that even in early 2019, neither HLAS nor Mr G anticipated the WEIF being suspended or liquidated in the short term – and it is unfortunately that event which caused Mr G's loss, not HLAS's decision that this investment was suitable for him.

So overall, I consider the portfolio's limited exposure to the WEIF was consistent with its aims and objectives; I don't agree that exposure made these funds unsuitable for the portfolio Mr G had invested in, or meant that overall the portfolio represented more risk than he was willing to take - as such, I don't uphold the complaint.

My final decision

I'm not upholding Mr G's complaint and as such, I'm not going to instruct Hargreaves Lansdown Advisory Services Limited to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 6 November 2024.

Simon Fox
Ombudsman