DRN-4729086

The complaint

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

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

For ease, I'll refer to all submissions as having come from Mrs G.

What happened

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

- The value of their non-pension assets were approximately £1,250,000, although they did have a mortgage of £150,000.
- Mrs G didn't have an immediate need for income as she was planning on continuing to work at that point.
- Mrs 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.
- She also wanted a broad spread of investments and assets to provide diversification and the prospect of growth over the medium to long term. Mrs G did not wish to be too defensive or aggressive with her investment strategy and wanted to have a well spread and diverse portfolio.
- When agreeing the level of risk Mrs G was prepared to accept with her money, the adviser established that:
    - For 50% of her 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 Mrs G was a 'moderate risk' investor.

- HLAS recommended Mrs G transfer her PEP and ISA portfolios (c£50,000) into HLAS's portfolio management service (PMS).

Mrs G was originally advised to invest her monies into PMS portfolio 6 but following an annual meeting with Mrs G in 2011, HLAS's adviser recommended that she restructure her portfolio and invest for income and growth. At that meeting, the adviser said that Mrs G confirmed she 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*". She also confirmed that she'd be happy to place 15 to 25% of her 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*". Mrs G also confirmed that she'd be happy investing up to 30% of her funds into fixed interest investments accepting that she was "*aware they can still fall in value as well as rise*". HLAS's letter made clear that investing was not without risks and Mrs G could get back less than she invested.

Consequently, Mrs 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. Mrs 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 Mrs 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, Mrs G had an annual review discussion with her HLAS adviser. At that meeting, as at all of the other review meetings Mrs G had, HLAS revisited the level of risk she was prepared to take with her investments. Mrs G confirmed the level of risk she was prepared to take with her monies hadn't altered and she was happy to continue with her 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%). She wished to continue leaving all of the investment decisions to HL.

At that meeting, the adviser noted that Mrs G felt able to continue to tolerate losses because she 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.

<u>Mrs G's complaint</u>

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

In October 2019, Mrs G decided to formally complain to HLAS. In summary, she said that exposure to the WEIF within her portfolio was leading to financial losses and that she was concerned that the inclusion of the fund didn't reflect the level of risk she was prepared to take with her savings. Mrs 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, she was at a loss as to how HLAS could knowingly make such choices.

After reviewing Mrs 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 her was appropriate and suitable on each occasion. HLAS went on to say that the portfolio their adviser had recommended was designed to build her 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 Mrs G was aligned to her desired asset allocation and her 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 Mrs 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.

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

Mrs G, however, disagreed with our Investigator's findings. In summary, she 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".
- She agreed that in her 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, Mrs 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 Mrs G had presented any new arguments she'd not already considered or responded to. Unhappy with that outcome, Mrs 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 Mrs G's strength of feeling about this matter and I don't underestimate how upsetting both she and her husband have found this experience to be.

I have summarised this complaint in less detail than Mrs 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 Mrs 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 conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but 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 Mrs 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 Mrs G is not a direct holder of the WEIF. Mrs G is invested (via her PMS account) in a number of HL Multi-Manager Funds, some of which have exposure to the WEIF. Mrs G therefore does not hold the WEIF in her portfolios, has not had dealings in her investments suspended, and she is not entitled to receive any capital redemption payments from Link. But in any event, Mrs 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 her risk appetite and that including the WEIF within the wider portfolio was negligent. Having thought carefully about Mrs G's comments, I don't agree, and I'll explain why.

To be clear, Mrs G has stated that she'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 her needs, largely because Mrs G states that the inclusion of the WEIF in the managed funds meant that it didn't match her risk profile.

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

The key consideration when looking at Mrs G's portfolio is whether or not the assets that it held were consistent with what she 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 she 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 Mrs 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 Mrs 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 Mrs G's portfolio is invested.

So, while I've considered Mrs 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 Mrs G suitable advice, and reviewing the PMS yearly as it did, to ensure it remained suitable for her – 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 Mrs G's objective. Mrs G agreed with her adviser that she didn't wish to take undue risks with her monies and having no more than 65% invested in equities suited her attitude towards risk – but this referred to her 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 Mrs G's adviser was whether the PMS portfolio 5 was overall suitable and in line with Mrs 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 Mrs 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 her 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 Mrs G's willingness to invest up to 65% of her funds in equities, between October 2014 and July 2019, HL held around 55% of Mrs G's portfolio in equities and of that, her 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 Mrs 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 Mrs 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 Mrs G's portfolio was invested in. It clearly formed part of a broader strategy which HLAS was advising Mrs 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 Mrs G had in her portfolio. And it certainly wouldn't be fair to be critical of HL'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 HLAS offer Mrs G any warranties that her 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 Mrs G received, I'm satisfied it was fair and reasonable for HLAS to have concluded that its recommendations were suitable for her. As an experienced investor, Mrs 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 Mrs 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 Mrs G wanted, and crucially aligned to the aim and risk profile of the specific PMS she was invested in. It's clearly the case that even in early 2019, neither

HLAS nor Mrs G anticipated the WEIF being suspended or liquidated in the short term – and it is unfortunately that event which caused Mrs G's loss, not HLAS's decision that this investment was suitable for her.

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 Mrs G had invested in, or meant that overall the portfolio represented more risk than she was willing to take - as such, I don't uphold the complaint.

My final decision

I'm not upholding Mrs 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 Mrs G to accept or reject my decision before 6 November 2024.

Simon Fox
Ombudsman