DRN-4731766

The complaint

Mr A complains Hargreaves Lansdown Asset Management Limited (HL) provided mis-leading information and data when promoting of a fund, which he invested in through an ISA, a Self-Invested Personal Pension (SIPP) and a share dealing account. He says This information influenced his decision to invest and as a result he has lost a significant amount of money.

What happened

The investment relevant to Mr A's complaint is the units he bought from HL in a fund called the Woodford Equity Income Fund (WEIF) and 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.

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

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

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

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

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.

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

Mr A first invested in June 2014 when he bought around £4,500 worth of units in the WEIF to be held in his ISA and made further unit purchases for his ISA over the following years. In 2015, he first purchased WEIF units to be held in his SIPP, and he made further purchases in his SIPP including buying approximately £40,000 worth of units in 2016. He also invested further funds in the WEIF in 2016 through a share dealing account. He sold some WEIF units in 2018 and 2019 but held units in the fund in all three accounts at the point of suspension.

Mr A's complaint to HL and its response

In April 2019, Mr A raised queries with HL about the data it provided on the performance of the WEIF. He wasn't satisfied with the responses he received, so raised a formal complaint in June 2019.

HL looked into the complaint but didn't think it had done anything wrong. In summary it said:

- The Wealth 50 (and the Wealth 150 before it) is a rigorously constructed list of funds, provided as a useful tool for clients to use in making decisions when choosing from the full range of funds available on its platform.

- It provided Mr A with an execution-only service, which meant that it was not providing investment advice or making personal recommendations.

- It was satisfied it complied with its obligations to provide information that is clear, fair and not misleading when issuing research communications on the WEIF.

- The data Mr A refers to relates to the performance of the fund manager over a given period of time relative to the performance of the UK stock market as a whole. It does not provide a fixed perspective; you are able to choose any period since March 1988. The percentage performance of any time period should be referenced to the start of the period in question.

Mr A remained unhappy and the complaint was referred to this service for an independent review.

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

Mr A didn't agree and asked for an ombudsman's decision. In summary he said:

- In making his original complaint, he referenced specific performance graphs published by HL up until the point when the fund was suspended. These graphs show the performance of Neil Woodford as a fund manager not only managing the Woodford fund but also prior to this and his performance as the Invesco fund manager. The result of which showed the overall performance to be extremely good. What HL failed to do is display the performance graph showing only the Woodford fund performance. If the data was presented in this way it would show the Woodford fund performance to be very poor and trending down.

- HL didn't provide meaningful data regarding the specific fund performance to allow him to make an informed decision on whether to invest. Rather, HL intentionally camouflaged the Woodford fund poor performance with data extracted from the Invesco Fund.

- He didn't see the communications sent by HL regarding the downturn in the performance of the WEIF, so the method of communication was not adequate.

- He questions whether or not HL shareholders had financial interest in any of Neil Woodfords Fund dealings and may have benefited financially from promoting the WEIF.

The investigator provided a further response. He provided further evidence from HL to show where communications had been provided about the underperformance of the WEIF during the latter years before suspension. He didn't find reason to change the outcome he set out. In summary he said:

- After reviewing HL's communications, it did share with investors both the periods of positive and negative WEIF performance. HL gave Mr A sufficient information, chart and performance data, and it was a matter for him whether he read it, and to make decisions on whether he wanted to invest in the WEIF or retain existing investments in the WEIF.

- In respect of Mr A's point whether or not HL shareholders had a financial interest or benefitted financially from promoting the Woodford funds. He could only comment on HL employees. HL advised that all trades were disclosed in line with the Stock Exchange requirements and were announced on their website at the time. This

service has no regulatory or disciplinary powers, we provide an informal dispute resolution service where each case is considered in its own particular facts. Any wider concerns about the actions of individuals at HL would be a matter for the regulator.

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 on the complaint and why he considers HL is responsible for the losses he has suffered due to his investment in the WEIF. However, for the reasons I set out below, I'm not persuaded he was misled into investing (or remaining invested) in the WEIF – and consequently, I'm satisfied the issues 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 think the following regulatory requirements are of particular relevance to my assessment of whether HL acted fairly and reasonably in its dealings in this case.

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

They say:

- Principle 6 – Customers' interests – A firm must pay due regard to the interests of its customers and treat them fairly.

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

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

"A firm must ensure that a communication or a financial promotion is fair, clear and not misleading."

COBS 2.1.1R (1) (the client's best interests rule) is also relevant to this complaint. It says: "A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule)."

Findings

Firstly, I note it is accepted HL provided Mr A with an execution-only service in respect of the HL accounts in question, and he didn't receive personal advice to invest in the WEIF. This means there was no ongoing obligation on HL in this respect. So, I've considered the

communications HL *did* issue over the relevant period up to the fund suspension. I acknowledge Mr A has made particular reference to the chart data he viewed and I've considered this as part of my overall analysis of the information HL provided.

The rules I've set out above show the obligations that HL was required to adhere to when making communications to investors like Mr A. HL was required to issue communications which were clear, fair and not misleading. This means that as long as HL's communications during the relevant period were factual and gave a balanced view of its assessment of the WEIF, then I would be unable to reach a finding that it did something wrong.

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. The communications it produced in 2014 (around the time Mr A first invested) were enthusiastic about the WEIF 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.

In December 2016, at which point Mr A was still 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 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 for Mr A to decide whether he wanted to stay invested based on the risks and the features of the WEIF which HL was describing to him.

I acknowledge that in 2017 the WEIF began to underperform its benchmark, but I'm satisfied that HL's continuing communications about the fund remained balanced. It was clear that it viewed the WEIF as a long term investment and explained in its June 2017 update that

Woodford had "*a long history of making big stock or sector bets, and while these decisions have at times taken time to come to fruition, they have added significant value for investors over the long term"*.

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

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

In December 2017 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 explained clearly that "*small and unquoted businesses are typically considered higher-risk because their shares are difficult to sell"*. And it concluded that Woodford's approach would "*result in periods of poor performance"* but it was "*premature to write Neil Woodford off"*.

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.

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. The fact HL didn't take action to stop promoting the WEIF at this time isn't, in my view, a failing.

In that context, I don't agree the message that HL continued to believe the fund would improve its performance over the long term was misleading, because HL believed that to be the case – and was entitled to that reasonably held belief.

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

The evidence I've seen of HL's internal views and the meetings it had with WIM during 2018 show that HL was largely reassured that WIM had taken onboard its feedback, particularly in

relation to continued investment in unquoted stock. And this is clearly reflected in the communication above. Internally it continued to believe that the fund would come good in the long term, but it acknowledged that it needed to ensure clients were aware of the nature of the fund, the need to diversify and the strategy WIM was following. In my view, the updates I've quoted above achieve this in a clear, fair and not misleading way.

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

It concluded by saying that it was "*understandable that some investors are getting impatient with Woodford"* and that it had also "*been disappointed with recent performance"*. But it said that its approach was to back proven managers for the long-term and "*as part of a diversified portfolio, we still think Woodford has a place".* It acknowledged it could be wrong but didn't think it needed to change its opinion at this time.

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

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

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

When Mr A made his initial complaint, he made specific reference to the charts he was provided with. He argues that the graphs provided are misleading because they show cumulative performance of all the funds Woodford has managed against the FSTE index, and not a comparison with just the WEIF. He says by including data on a timeline of different funds is erroneous and misleading as the funds are not related and are different investments.

HL has explained the graph Mr A referenced did cover the history of Woodford as a fund manager compared to the UK stock market as a whole (by reference to the FTSE All-Share)- but this was marked clearly, so not misleading.

It has also provided evidence to counter Mr A's argument that it sought to camouflage the WEIFs poor performance with data extracted from the Invesco Fund. It has highlighted two communications it gave to support this.

Firstly, an article titled "LF Woodford Equity Income – change of sector" dated 22 March 2018. The article includes a chart of Woodford's career track record. HL says this was included to show why it continued to have faith in Woodford and the WEIF at this time. But below the chart was a table showing the annual percentage growth of the WEIF, the FTSE All-Share and the IA UK Equity Income. That table shows that between February 2017 and 2018 the WEIF's percentage growth was -8.9% compared to 4.4% and 4.2% for the FTSE All-Share and IA UK Equity Income respectively.

Secondly, it has referenced an article it published titled "*Waiting with Woodford*" dated 7 January 2019. This has a chart showing the WEIF's performance since launch. There is also text that says "*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*". The article also includes another chart showing Woodford's career track record. HL says this was relevant as to why it retained faith in Woodford and the WEIF in the long-term. There was a table showing annual percentage growth comparing the WEIF with the FTSE All-Share index – again highlighting the fund was underperforming.

In deciding whether Mr A has been provided with misleading information, I don't think it is helpful to consider the graphs he references in isolation, particularly as there has been many other pieces of information provided to investors over a number of years. In my view, there is a need to consider all of the communications given by HL to gain a proper understanding of the impression it gave to investors about the performance of the fund. I'm satisfied that the inclusion of graphs showing Neil Woodford's performance as a fund manager in his career wasn't misleading, particularly when considered in the context of the full communications. I think HLs explanation for including the graphs (it was relevant to why it continued to have faith in Woodford over the long term despite the poor performance of the WEIF) is reasonable. The articles HL has referred to are evidence that it didn't hide the performance of the WEIF and highlighted that it was underperforming the FTSE index from 2017. It is unclear if Mr A read all of the communications HL provided to him. I accept it is possible that he didn't review everything in significant detail. But I don't find that HL can be held responsible for this.

For this reason and those I've already given, I'm satisfied HL did provide sufficient information to Mr A about the performance of the WEIF, and it did explain that it had underperformed the benchmarks from 2017.

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 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.

I'm satisfied 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.

Mr A has questioned whether HL's shareholders had financial interest in any of Neil Woodfords Fund dealings and may have benefited financially from promoting the WEIF - suggesting a conflict in interest. But I have not seen sufficient evidence to show HL's decision to continue to promote the WEIF (i.e. by continuing to include it on the Wealth List) was as a result of protecting shareholder interests. Furthermore, as I've noted above, HL was upfront about the challenges relating to the WEIF – including its performance and at times the investments Woodford had chosen. In my view HL's intention was clearly for investors to take into account both the WEIF's presence on the lists as well as the commentary it was providing about it. I'm satisfied from the evidence available it was considering what was best for its clients when including the WEIF on the Wealth List and providing the detailed commentary that it did. For these reasons, and the other points I've set out above, I haven't found HL failed to meet its obligations to act in the best interests of its customers.

I appreciate my conclusions will be disappointing to Mr A and I understand why he feels HL ought to be responsible for the situation he finds himself in respect of the investments he made. But I'm satisfied that any losses he has experienced were not caused by something HL did or didn't do or because it misled him in anyway. I'm satisfied any losses were caused by the performance of the underlying investments in the WEIF, and its subsequent liquidation by the authorised corporate director.

My final decision

For the reasons I've given, I don't uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 July 2024.

Daniel Little
Ombudsman