

## **The complaint**

Mr E complains Hargreaves Lansdown Asset Management Limited (HL) provided misleading information when promoting a fund, which he invested in through a Self-Invested Personal Pension (SIPP) and an ISA. Mr E says HL failed to warn investors about problems with the fund and instead continued to promote it on its Wealth List. He has now suffered losses and wants them refunded.

## **What happened**

The investment relevant to Mr E'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 E’s dealings in the WEIF**

Mr E first invested in the WEIF in June 2014 when he bought around £500 worth of units in it to be held in his ISA. He made several further investments into the WEIF through his ISA including a purchase of nearly £10,000 worth of units in November 2014. These transactions were made on an execution only basis.

In March 2015, after receiving advice from HL to adjust the portfolio he held in his SIPP, Mr E also purchased approximately £7,000 worth of units in the fund and commenced making regular further contributions. He has complained about the suitability of this advice, and this matter has been dealt with separately.

Mr E held funds in the WEIF in both his ISA and SIPP at the point of suspension. He has received some capital distribution payments but has still lost part of his capital.

### **Mr E’s complaint to HL and its response**

After the suspension of the WEIF, Mr E raised concerns with HL – and a number of responses were exchanged. He was unhappy that the fund continued to be promoted as part of the Wealth List. He also raised concerns about problems with the concentration of unlisted stock held in the WEIF, HL’s knowledge of this and lack of intervention. He felt HL misrepresented the situation to him and this has resulted in him suffering losses. Mr E also raised concerns about advice he received in 2019 regarding the retention of funds in the WEIF.

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

- It acknowledged the WEIF had experienced a difficult period of performance, but it had a reasonably held conviction in the prospects of the WEIF outperforming its benchmark over the long term, this is why it continued to include the WEIF in the Wealth 50 list of funds.
- In respect of the unlisted stock held in the WEIF. It maintained that it didn't have knowledge of any regulatory breaches until after the suspension of the fund.
- It didn't accept the advice it provided was unsuitable or there had been any failings in the process.

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

Mr E's complaint was split at this time – with one complaint looking at the issues relating to advice he received, and the other complaint looking at HL's wider promotion of the WEIF during the period.

One of our investigators looked into the complaint about HL's promotion of the WEIF, 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 E didn't agree and asked for an ombudsman's decision. In summary he said:

- The WEIF remaining in the Wealth 50 best buy list, was the main influence of his decision to remain invested through a sustained period of poor performance. He refers to HL's claim a breach of the 10% limit on unquoted stocks would result in it removing the fund from the Wealth list. He said this is incorrect because it was aware of the limit being breached twice, in February and March 2018. So, by its own admission it was aware of multiple breaches prior to the suspension.
- He has found clear information about the nature of the holdings within the fund. These indicate the percentage of unquoted/delisted stock detailed by each report. He says it is clear to see how the figure goes from 10.04% in December 2017 and increases further. According to this data and HL's "red line" rule about the unquoted stock limit, it is clear that the fund should have been removed from the Wealth List in June 2018, due to a very significant 3.25% breach (of the 10% limit).
- In his view, had HL removed the WEIF from the Wealth List, there would have been a run on the fund, and it would likely have gated sooner. But this is not a reason to sweep the problem under the rug and keep the WEIF on the Wealth List. This would have covered HL by removing it, at the expense of burning its extensive bridges with Mr Woodford and WIM.
- The crux of the issue hinges around more than just the 10% limit breaches. The fund was clearly in distress and HL misled its customers by misrepresenting the fund. The WEIF being listed on the Wealth List was a misrepresentation of the true state of the fund, due to the ever-increasing redemptions and maintaining below 10% illiquid holding difficulties that HL already knew about.

## **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 E's strength of feeling on the complaint and why he considers HL is responsible for the losses he has suffered due to his investments in the WEIF. However, for the reasons I set out below, I'm not persuaded he was misled into 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, to be clear, I'm not considering the advice Mr E received in 2015 to invest in the WEIF or the subsequent advice he received in 2019 as part of this complaint. These matters have been dealt with separately as part of another complaint this service has considered for Mr E. So, I've focussed my findings and considerations on the communications HL issued over the relevant period up to the fund suspension.

The rules I've set out above show the obligations that HL was required to adhere to when making communications to investors like Mr E. 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 E 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 E was still holding funds in the WEIF in both his ISA and SIPP, 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 E 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 E to decide whether he wanted to stay invested (and continue to make contributions) 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.

Mr E has raised concerns about HL’s actions (or lack of) when it became aware that the fund was nearing the 10% limit. He says there is evidence that HL knew the fund had breached the 10% limit. He has provided copies of fund reports produced by the ACD covering the year end to December 2017, the year end to December 2018 and interim reports covering up to June 2018 and June 2019. He went through the list of holdings in each report and added up the percentages of securities which are designated unquoted or delisted according to their superscript annotations. He says his calculations show the level of unquoted/delisted stock had reached 10.04% in December 2017, 13.25% in June 2018, 14.66% in December 2018 and 21.16% in June 2019. He refers to HL’s “red line” rule about the unquoted stock limit, and says it is clear that the fund should have been removed from the Wealth List in June 2018, due to a very significant 3.25% breach. But this didn’t happen, so HL either missed this data or kept it quiet so as to avoid delisting from the Wealth List– which he sees as a misrepresentation.

HL has answered Mr E’s point. It says there were breaches that occurred in February and March 2018, but it only became aware of these after the WEIF was suspended in June 2019. It discovered this when they were referred to in the FCA’s letter of 19 June 2019 to the Treasury Select Committee. In relation to the 10% limit itself, HL says the relevant regulation from the FCA’s Collective Investment Schemes Sourcebook (COLL 5.2.8R(4)) permitted no more than 10% of the WEIF’s property to be invested in transferable securities which did not meet the criteria in COLL 5.2.8R(3). These have generally been referred to for simplicity as unquoted securities. However, COLL 5.2.8R(3) includes not only those securities which have been admitted to trading or which are dealt on an eligible market as defined in COLL 5.2.10R(1)-(2), but also recently issued securities where the terms of the issue include an undertaking to apply for admission to trade on an eligible market and such admission is secured within a year of issue. It says this means not all of the securities which are referred to in the reports Mr E has highlighted as “unlisted” or “unquoted” would have counted towards the 10% limit. It reconfirmed its position that HL had received assurances from WIM in late 2017 that the 10% limit had not been breached, and that HL would be notified if there

was a breach. Despite WIM providing HL with monthly updates on the levels of unquoted securities in the WEIF, at no point did WIM inform HL of any breach of the 10% limit.

I've considered the points Mr E's made here but I'm not persuaded the evidence shows that HL was aware of a breach of the 10% limit of unquoted stock. He has used the fund report produced by the ACD to make his own calculations using data within it, and from this he has reached a conclusion there was a breach from December 2017. But this isn't a verified position. HL has provided further arguments that counter the assumptions Mr E has made in his calculations, which I find relevant. I do understand how he reached his view there had been a breach, but I'm not persuaded that it accurately reflects the position. I think it is important to note that I haven't seen anything in the evidence provided from the meeting notes between HL and WIM to indicate that HL had an awareness of a breach in December 2017, or at any other point before the suspension.

Rather, I find 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. But I don't agree there is evidence to show HL knew the 10% limit had actually been breached at any point; so, from its perspective, the risk did not ultimately come to fruition. It is now understood there were two breaches in 2018, but HL has explained it only discovered this after the suspension of the WEIF, through the letter sent by the FCA to the Treasury Select Committee. It says WIM and Link did not inform it about any breaches at the time they occurred. And in any case, each breach was temporary – in that compliance was restored by the relevant month end – so it was not identifiable in the regular monthly reports on the WEIF's holdings. I also note the FCA didn't refer to other breaches in its letter to the Treasury Select Committee.

The evidence I've seen indicates that HL 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. I haven't seen it sought to hide breaches that it was aware of from investors. I find Mr E was told about the level of unquoted stock (including that by the end of 2017 it was close to 10%), and therefore it was up to him to decide if he was comfortable with such a high proportion. Ultimately, he decided to continue investing. It's clear to me that Mr E had sufficient information from the updates I've previously referred to, 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.

It follows that I don't think HL misrepresented the situation by continuing to include the WEIF on the Wealth List. As I've explained HL did consider whether to remove the WEIF from its Wealth Lists but decided not to as it accepted the reassurances received from WIM. I don't find it was actively seeking to treat this fund in a different way, but rather assessing its position before communicating to investors. But it is clear from the correspondence between HL and WIM (and meeting notes) I've seen that HL considered the key factor to be what was best for its clients and took the decision to continue to include the WEIF on the Wealth List having challenged WIM and received reassurances, and on the basis of a genuinely held view the WEIF was likely to recover and perform well. There was of course no guarantees that the WEIF would perform well, and that investors had to also accept a level of investment risk when deciding to invest.

Mr E says HL swept the issues about the WEIF under the carpet to avoid a run on the fund. But I have not seen sufficient evidence to show HL's decision to continue to include the WEIF on the Wealth List was as a result of a desire to hide information from investors. 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'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. 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 misplaced. 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.

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.

In my view it 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.

I appreciate my conclusions will be disappointing to Mr E and I understand why he feels HL ought to be responsible for the situation he finds herself 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 E's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 17 October 2024.

Daniel Little  
**Ombudsman**