

The complaint

Mrs G complains about Hargreaves Lansdown Asset Management Limited's ("HL's") promotion of the Woodford Equity Income Fund ("WEIF"), which she invested in through her ISA with HL.

What happened

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 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 its 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.

Mrs G’s dealings in the WEIF

Mrs G invested in the WEIF through her HL stocks and shares ISA in September 2014 and April 2015. Further, smaller allocations of the WEIF were made to her ISA after the proceeds of her late husband’s account were transferred. Mrs G remained invested at the point the WEIF was suspended from trading in June 2019. As a result, she was unable to sell units in the fund pending its full liquidation.

Mrs G’s complaint to HL and its response

Following suspension of the WEIF, Mrs G complained to HL that she had received poor support and advice in relation to the fund. She said she had previously contacted HL when she saw a negative story about the WEIF in the press. She called HL, and the advisor told her that it was one of HL’s top performing funds. She was then sent a report in May 2019 which described the fund as one of HL’s favourites. After seeing another negative report on 3 June 2019, Mrs G instructed HL to sell her holding, but she couldn’t because the fund had been suspended. That was the first time she had heard of the suspension.

HL looked into Mrs G’s complaint but didn’t think it had done anything wrong. In short it said that the Wealth Lists were “a useful *tool for clients to use in making decisions when choosing from the full range of funds available on our platform*”. It acknowledged the WEIF had experienced a “*difficult period of performance*” but emphasised that although it had a reasonably held conviction in the prospects of the WEIF outperforming its benchmark, it provided an “*execution-only service*”, which meant that it was not providing investment advice or making personal recommendations.

HL said that the information it provided about the WEIF on its Wealth Lists or in other communications was not designed to be taken as a personal recommendation to deal in a

fund, and was provided to clients in order to help them decide whether or not to invest.

HL said it was satisfied that when Mrs G spoke to its helpdesk on 18 March 2019 its representative had acted entirely properly and not provided any personal advice. The decision to remain invested in the WEIF was therefore entirely Mrs G's.

HL said Mrs G was first informed during a conversation on the evening of 3 June 2019 that she would be unable to sell her holding in the WEIF. HL accepted that there was some initial confusion during that call but said that was solely because the WEIF had only been suspended very shortly before the call. As such, its helpdesk staff were not in possession of the full facts regarding the situation at that time. Mrs G was not advised of the suspension sooner as HL didn't know about it until the afternoon of 3 June 2019, which was the same time as investors. As soon as HL did find out it tried to communicate to clients as quickly and efficiently as possible

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

Mrs G disagreed and asked for an ombudsman's decision. She said that in 2018 she was given advice over the phone by an HL representative who omitted to disclose the liquidity issues the WEIF was experiencing. She said our service should obtain copies of her calls with HL.

Mrs G said that on reflection the volume of withdrawals the WEIF was experiencing was unprecedented and should have been explained when she called HL to get an informed explanation of the market and her investments. She questioned whether HL's conduct met the requirements set out in the FCA's regulatory framework, which are designed to protect retail investors with limited experience such as herself. She feels misled and misinformed about the risks associated with the WEIF, particularly at a time of heightened uncertainty. She thinks HL failed in its duty to act in her best interests by repeatedly recommending an investment despite her growing concerns.

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 Mrs G's strength of feeling on the complaint and why she considers HL is responsible for her losses on the WEIF. However, for the reasons I set out below, I'm not persuaded Mrs G was misled into investing (or remaining invested) in the WEIF – and consequently, I'm satisfied the losses arose due to the poor performance of the investment and its underlying holdings, which HL had no responsibility for.

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

What are the relevant regulatory obligations?

I 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).”

My findings

I should say firstly that the investigator didn’t conclude that HL’s Wealth Lists, or its commentary about the WEIF, didn’t influence Mrs G’s investment decisions. I accept that the investments were made by taking into account what HL said about the WEIF, including what it said about its long-term prospects.

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

It’s clear that HL provided significant positive commentary about Woodford and the WEIF before and during the period Mrs G made her investments in the fund, and it obviously believed that Woodford’s track record, as well as the objective and performance of the WEIF between 2014 and 2016 were such that it continued to be a fund that it thought met its criteria for inclusion on its Wealth Lists.

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

In December 2016, 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 Mrs G 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 customers’ attention.

But HL also continued to hold the view that the WEIF was still an investment that would add value for investors – and I’m satisfied it held that view internally and so it was clear, fair and not misleading to have continued to say that in its updates. It was obviously for Mrs G to decide for herself whether the risks and the features of the WEIF which HL was describing were right for her.

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 HL 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. The evidence shows that HL was aware of the WEIF nearing the 10% limit and was clearly aware of the poor performance of the fund.

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

It's clear to me that Mrs G had sufficient information from these updates 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 she needed to be comfortable with.

In that context, I don't agree the message that HL continued to believe the fund would improve its performance of 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"*.

Crucially, it said:

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

Further updates in March highlighted that Woodford was experiencing *"his worst spell of*

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

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

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, capriciously or in a way that was not genuinely based on its assessment of the WEIF and its future prospects.

Whilst I appreciate HL's view has turned out to be wrong, largely as a result of the liquidation of the fund which was not something it had anticipated, I don't consider that means its communications were not clear, fair and not misleading.

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.

Mrs G referred to conversations she had with HL in 2018 and 2019. I've seen a copy of HL's contact log for Mrs G's account and there is no record of any calls between June 2016 and 18 March 2019 when Mrs G called about the WEIF. I've therefore focused on the 18 March 2019 call, for which HL has provided a recording.

At the start of the call Mrs G said she had read an article about the WEIF and wondered if it was time to cut her losses and sell her holding. The HL representative said he wouldn't be able to comment on whether it was a good idea to sell or not, but she could sell and reinvest in other funds if she chose to do so. Mrs G said she didn't expect the representative to tell her what to do but asked if there was information about the WEIF she could look at. The representative pointed her to HL's online Wealth List and Mrs G asked what it said about the WEIF. The representative read the start of the entry for the WEIF and said she could refer to the list for more information. Mrs G said she would have a think about what to do.

Having listened to the call, I'm satisfied that HL did not give Mrs G a personal recommendation. The HL representative made clear that he was not able to give Mrs G advice and I think it was reasonable for him to point Mrs G to the Wealth List for HL's view on the WEIF. So I don't think HL did anything wrong during that call.

I appreciate my conclusions will be disappointing to Mrs G and I understand why she feels HL ought to be responsible for the losses to her investments. But I'm satisfied that the financial loss Mrs G has experienced was not caused by something HL did or didn't do or because it misled Mrs G in any way. I'm satisfied those 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 given, I don't uphold Mrs G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 14 August 2024.

Matthew Young
Ombudsman