

The complaint

Mr and Mrs R have complained about the advice they received from Alan Steel (Asset Management) Limited ('ASAM') regarding their investment in the Woodford Equity Income Fund ('WEIF'). They have also complained about the information they received about the WEIF after its suspension.

What happened

Mr and Mrs R hold an investment portfolio within a jointly owned collective investment account (CIA) plus ISAs in their individual names. ASAM provides ongoing advice to Mr and Mrs R about their portfolio. In March 2015 ASAM advised Mr and Mrs R to invest £56,970.80 in the CIA into the WEIF.

The WEIF was a fund managed by Neil Woodford that launched in May 2014. It broadly tracked 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. On 3 June 2019 the extent of those outflows - and the portion of the WEIF's assets which were not liquid - led to trading in the fund being suspended. There was also a change of investment manager around this time.

ASAM issued an update to its clients on 4 June 2019 confirming the WEIF's suspension. The WEIF did not trade again, and later in 2019 it was decided that it should be liquidated. 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 has now been sanctioned by the courts and will conclude the winding up of the fund with further distributions being made to investors who held units in the fund at suspension.

On 2 November 2023 Mr and Mrs R wrote a letter to ASAM complaining about the investment in the WEIF. They said that ASAM had failed to tell them to take any corrective action about the WEIF in the period leading to its suspension, despite its deteriorating performance and with withdrawals being made by other investors. They highlighted that ASAM had continued to charge them for ongoing advice, but they said it had not monitored the WEIF adequately.

Mr and Mrs R commented that the WEIF held a substantial proportion of its investments in illiquid assets, but ASAM had failed to identify this. They also said that they were vulnerable customers due to a diagnosis of serious ill health for Mr R before the WEIF was suspended, but that ASAM's communications about the fund were lacking and did not adequately inform them about the situation. Mr and Mrs R asked ASAM to compensate them for the loss they had suffered on their WEIF investment.

ASAM responded that the advice it had provided about the WEIF formed part of its recommendations about Mr and Mrs R's investment portfolios as a whole. Based on Mr and Mrs R's attitudes to investment risk, their objectives and the degree of diversification within their portfolio, ASAM's view was that recommending investment in the WEIF was not unsuitable. It said it was for Mr and Mrs R to decide if they wished to follow advice given to invest in the WEIF.

ASAM stated it had a rigorous fund selection process which included meeting with fund managers. It had done so with Neil Woodford and had confidence in recommending the WEIF, taking into account his track record. ASAM explained that its investment committee meets regularly to discuss funds and decide whether to retain, add, or remove them from its panel of recommended investments. It said that when it became aware about speculation regarding the liquidity of the WEIF, it carried out additional due diligence and research, and it consulted with representatives from the fund and with the fund's authorised corporate director. ASAM said it had been reassured that the WEIF did not have liquidity concerns and that it was performing within acceptable degrees of volatility. After the WEIF's suspension, ASAM considered it had provided Mr and Mrs R with appropriate levels of communication about the fund.

ASAM did not offer to compensate Mr and Mrs R for their financial loss on their WEIF holding. It also said that it considered the complaint had been brought too late. Unhappy with ASAM's response, Mr and Mrs R referred a complaint to this service.

Our investigator firstly considered ASAM's comments that the complaint had been brought too late. His view was that this service is able to consider issues relating to Mr and Mrs R's investment in the WEIF from November 2017, as they had complained to ASAM within six years of this date. However the investigator stated that we are not able to assess the initial advice given to invest in the WEIF in March 2015 as a complaint about this had been raised too late and is therefore outside our jurisdiction.

In terms of the advice and information ASAM provided Mr and Mrs R from November 2017 about their WEIF holding, the investigator did not uphold this complaint. He said that the ongoing advice fees ASAM charged Mr and Mrs R reflected the fact that it provided annual reviews and ongoing advice to them. With regard to that advice, the investigator's view was that from November 2017 until the WEIF's suspension in June 2019, ASAM's investment committee had confidence in the fund being an appropriate asset to hold, taking into account Mr and Mrs R's attitude to investment risk. He considered the WEIF was a suitable investment for Mr and Mrs R to hold as it formed part of a diversified portfolio of holdings. The investigator also concluded that ASAM had kept Mr and Mrs R adequately informed about events related to the WEIF after its suspension, bearing in mind there was a limited amount to report about the fund aside from confirming liquidation payments.

Mr and Mrs R did not agree with the investigator's findings. They commented that when the WEIF was initially recommended to them, ASAM should have exercised greater due diligence because it was a new fund. Mr and Mrs R said that when significant withdrawals occurred from the WEIF between 2017 and 2019, ASAM failed to proactively monitor this and take action to mitigate losses. They said that ASAM should not have relied on assurances from Neil Woodford about the fund, but instead carried out further checks to identify the risks applicable to it.

In terms of communications after the WEIF was suspended, Mr and Mrs R said that ASAM should have told them about the options available to them, rather than simply confirming liquidation payments. They commented that ASAM did not proactively communicate on this subject, falling short of standards for vulnerable customers, and failing to protect them.

In light of Mr and Mrs R's further comments, this complaint was passed for review by an ombudsman.

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.

Firstly, although the parties have not disputed the investigator's view about our powers to consider this complaint, I should confirm my assessment on this matter, which reaches the same conclusions as the investigator.

Our powers to consider this complaint

The Dispute Resolution (DISP) rules determine the powers of this service to consider complaints, including rules which relate to time limits. DISP 2.8.2R states that – where a business doesn't agree – I can't look into a complaint if it was made more than six years after the event complained of, or if later, more than three years from the date on which the complainant became aware (or ought reasonably to have become aware) that they had cause for complaint. An exception to this is where I conclude that the failure to comply with the time limits is the result of exceptional circumstances.

ASAM did not consent to us looking at this complaint if it had been brought too late. Mr and Mrs R's complaint relates both to the initial advice they received from ASAM in March 2015 to invest in the WEIF, and to the ongoing advice and information they received about the WEIF.

Mr and Mrs R complained to ASAM in a letter dated 2 November 2023. At that time, the initial advice given in March 2015 to invest in the WEIF was more than six years ago. I therefore need to consider at what date Mr and Mrs R became aware, or should reasonably have become aware, that they had cause for complaint about that initial advice. On 4 June 2019 ASAM sent an update to its clients, including Mr and Mrs R, confirming that trading in the WEIF had been suspended for the foreseeable future. Mr R acknowledged this update and in an email to his adviser commented that he thought ASAM might have been contacted by "*irate Woodford investors.*"

My view is that the WEIF's suspension meant Mr and Mrs R were aware from June 2019, or should reasonably have been aware from that date, that they had cause for complaint about the initial advice given in March 2015. Mr and Mrs R complained about the March 2015 advice to invest in the WEIF more than six years later, and more than three years after they were aware in June 2019, or ought reasonably to have been aware, that they had cause for complaint.

Although I appreciate that Mr R received a diagnosis of serious ill health in 2018, my view is that this would not constitute exceptional circumstances that resulted in Mr and Mrs R failing to comply with the time limits laid out in DISP. I say that because after his diagnosis, Mr R continued to engage with the ASAM adviser about the portfolio. Consequently I consider this service does not have the power to look at the advice given in March 2015.

However, in terms of ongoing advice and information Mr and Mrs R received about their portfolio, and the suitability or otherwise of retaining the WEIF in it, I consider we can look at the events that occurred from November 2017. That is because those events took place within six years of Mr and Mrs R's complaint being made to ASAM in November 2023.

My view of the complaint made about the advice and information Mr and Mrs R received from ASAM from November 2017

The agreement in place between ASAM and Mr and Mrs R meant that the business provided annual reviews about their investment portfolio. In December 2017 ASAM confirmed that the attitude to risk it had recorded for Mr R was 'balanced' and for Mrs R was 'cautious to balanced'. In February 2018 the adviser met with Mr and Mrs R to discuss their portfolio. In his note of the meeting the adviser stated that Mr R had had some "*bad news from his doctor regarding a health condition.*" Understandably Mr and Mrs R didn't go into specific detail with the adviser about the cause of Mr R's ill health, but it was noted they wanted to discuss Mr R's pension and inheritance tax.

For the accounts advised on by ASAM, as at February 2018 the CIA was worth £404,417.03 and Mr and Mrs R's ISAs were worth £38,369.85 and £38,527.39 respectively. The WEIF held within the CIA represented about 12% of this total portfolio.

The adviser's letter to Mr and Mrs R in March 2018 summarised their meeting, and focused on their discussions around pensions and inheritance tax. The WEIF holding within the CIA was not mentioned in the letter. ASAM has said that its adviser reviewed Mr and Mrs R's portfolio on an ongoing basis, and that the investment in the WEIF formed part of a diversified range of assets aiming to achieve the objective of capital growth over the medium to long term.

ASAM has also said that it met Neil Woodford and had confidence in the fund, partly due to his successful track record. Mr and Mrs R have stated that ASAM should not have relied on Neil Woodford's assurances, and should have carried out additional checks to identify risks. Whilst I note their comments, ASAM has stated that it has a thorough process for reviewing funds when considering if they remain suitable for their clients, and it does not seem unreasonable to me that this would involve discussing a fund's strategy with its manager. Taking into account the proportion of the portfolio held in the WEIF as at February 2018, the overall risk profile of the portfolio, and Mr and Mrs R's financial aims, my view is that it was reasonable for ASAM to conclude in February and March 2018 that the WEIF remained suitable for the portfolio.

The ASAM adviser sent Mr and Mrs R a further review letter in March 2019. Their investment objective of capital growth, and their individual attitudes to risk, remained the same as the year before. The adviser recommended selling two holdings that would utilise most of Mr and Mrs R's capital gains tax allowance, and was also in part intended to reduce the portfolio's non sterling currency exposure. There was also a recommendation to sell one holding that again related to reducing currency exposure, but was also because ASAM said it had "*lost a bit of faith in the fund manager.*"

These recommendations made by ASAM demonstrate that at least to some degree, an assessment of the likely success or otherwise of a fund manager was carried out by ASAM when it gave advice about Mr and Mrs R's portfolio. The WEIF was again not mentioned in ASAM's letter. My understanding is that this was because ASAM still considered in March 2019 that the WEIF was an appropriate holding for the portfolio, based on its analysis of the fund including its research around its liquidity and volatility.

Mr and Mrs R have highlighted the levels of withdrawals made from the WEIF between 2017 and 2019. I have carefully considered their comments, but on balance my view is that ASAM acted reasonably when determining whether the WEIF was a suitable fund to remain in Mr and Mrs R's portfolio. It has explained that its investment committee reviews on an ongoing basis whether a fund should remain on its panel of recommended investments. Until the fund's suspension, ASAM's view remained that the WEIF was a suitable investment to retain

in Mr and Mrs R's portfolio in order to achieve capital growth based on its analysis and research.

The WEIF did not perform as ASAM had hoped in the period leading up to its suspension, and regrettably this led to Mr and Mrs R suffering a loss once it was liquidated. But it is the nature of investments that not all of them will achieve the returns hoped for. Overall, taking into account the diversified assets that ASAM recommended to Mr and Mrs R, their aims and attitude to risk, and ASAM's view of the WEIF based on its research, my view is that it was not unreasonable for the business to conclude that the WEIF was appropriate to remain in the portfolio up to its suspension.

With regard to ASAM's communications after the WEIF was suspended, Mr and Mrs R have said that they should have been told about options available to them, and they consider that ASAM was not proactive enough. I appreciate that Mr and Mrs R would have been keen to resolve matters relating to their WEIF holding once the fund was suspended, and particularly once it was known it would be liquidated. I also note their comments that they were vulnerable customers.

But in my view there was a limited amount that ASAM could have told Mr and Mrs R about the liquidation, as it was outside ASAM's control. In addition, I consider the options available to Mr and Mrs R regarding their WEIF holding were also limited, because essentially they were waiting for the liquidation payments to materialise before they could make decisions about what next to do with those funds. ASAM kept Mr and Mrs R informed about those payments, and about the proposed redress scheme for investors. My view is that ASAM's communications to Mr and Mrs R about the WEIF after its suspension were appropriate.

I appreciate that Mr and Mrs R will likely be disappointed with my findings. However my conclusion is that the advice and information ASAM provided Mr and Mrs R from November 2017 about the WEIF was reasonable, as was their communication after the fund had been suspended.

My final decision

My final decision is that I do not uphold this complaint, and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs R to accept or reject my decision before 31 December 2024.

John Swain
Ombudsman