Financial Ombudsman Service

The complaint

Mr T complains about the actions of Hargreaves Lansdown Asset Management Limited ('HL') after investing in the Woodford Income Focus Fund ('WIFF') in his pension. He says they:

- Recommended the fund by including it in their Wealth List despite its poor performance and failure to achieve the income yield it targeted.
- Should not have included the fund on the Wealth List because of the risks arising from the WIFF's overlap with the Woodford Equity Income Fund ('WEIF') which they should have identified.
- Communicated the WIFF's poor performance too late as the losses he'd suffered were already embedded in the fund unit price.

Mr T would now like HL to recompense him for his losses.

What happened

In May 2016, Mr T opened a self-invested personal pension (SIPP) with HL.

The WIFF was launched in April 2017 as an equity fund whose primary aim was to generate income by investing in a relatively concentrated portfolio of larger, predominantly UK-based, high-yielding companies. The same month, HL offered its customers the opportunity to purchase the WIFF in the investments it held with them. And, on 13 April 2017, Mr T bought £25,000 worth of units in the WIFF for his pension.

The operation of the WIFF was the responsibility of its Authorised Corporate Director, Link Fund Solutions ('Link'), and its Depositary, Northern Trust. Link appointed Woodford Investment Management to manage the WIFF when it was originally launched.

I understand that Link and Northern Trust agreed to temporarily suspend dealings in the Fund in October 2019, in order to protect the Fund's investors following concerns about increased redemptions. Initially the suspension was for a period up to 28 days; and was subsequently extended. The fund reopened in February 2020, and at the same time Aberdeen Standard Investments (ASI) took over as manager of the WIFF. The WIFF (now renamed as the LF Abrdn Income Focus Fund) continues to operate.

After seeing the value of his investment in the WIFF fall, Mr T decided to formally complain to Hargreaves Lansdown (HL) in 2022. In summary, he said that the inclusion of the WIFF on HL's Wealth Lists was driven by their relationship with Mr Woodford (the fund manager), rather than any due diligence taken on the fund. Mr T also said that by including the WIFF on the Wealth List was in fact a recommendation which had led to his investment and resulting losses.

After reviewing Mr T's complaint, HL concluded they were satisfied they'd done nothing wrong. They also said, in summary, that they had not provided him with any personalised advice and the decision to invest in the WIFF was his alone. HL also said that any funds listed on their Wealth List were not a personalised recommendation to invest and that they were satisfied their website made that clear.

Mr T was unhappy with HL's response, so he referred his complaint to this service. The complaint was then considered by one of our Investigators. He concluded that HL hadn't treated Mr T unfairly and that based on what he'd seen, the inclusion of the WIFF on HL's Wealth List didn't amount to a personalised recommendation, and as such, the decision to invest with Mr T's alone.

Mr T, however, disagreed with our Investigator's findings. In summary, he said that:

- The Wealth List is an extremely small number of stocks relative to the universe of stocks available for possible inclusion. That means that inclusion requires a very high degree of conviction on the fundamentals by HL.

- The identity of the fund manager and past performance seems to have been a relevant decision on the inclusion of the WIFF within HL's Wealth List.

- Some of the information available supported a different opinion which is exactly why HL should not have included the stock within its Wealth Lists as opposing opinion must decrease the degree of conviction held.

- Woodford's communications weren't fair or clear and were misleading.

- HL's opinion on the WIFF (and the WEIF) was unreasonably held, leading to misleading and unfair statements given the close access to the fund investment specifics and strategies which they would have had due to their long standing and close relationship with Woodford.

- Our Investigator had failed to recognise the unequal position of an entity which puts itself forward as an investment expert and an ordinary investor.

Our Investigator was not persuaded to change his view as he didn't believe Mr T had presented any new arguments he'd not already considered or responded to. Unhappy with that outcome, Mr T then asked the Investigator to pass the case to an Ombudsman for a decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have summarised this complaint in less detail than Mr T has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts.

My role is to consider the evidence presented by Mr T and HL in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, I'm not upholding Mr T's complaint - I'll explain why below.

To start, I think it's useful to be clear about what HL's Wealth List is. HL say the list is a shortlist of funds across a range of sectors which their investment professionals consider to have strong potential for performance over the long term (i.e., a minimum five-year time horizon). They say the Wealth List is provided as a tool for investors, including clients (or potential clients), to use when making their own investment decisions when choosing from the full range of funds available on their platform. The Wealth List is aimed at investors doing their own research and choosing their own funds, by reducing the universe of funds to a shorter list from which they can choose (if they so wish).

Whilst HL provided a suite of information to its customers about the different investment choices that were available to them (including on their Wealth Lists), from what I've seen, Mr T was trading as an execution only client – this meant HL was not responsible for advising him on what investments to purchase for his pension or managing his positions. As the plan holder, Mr T alone was responsible for deciding how much money to deposit, when to open trades and in what investments, monitoring those positions, and when to close them. So, this means that HL were not responsible for advising on which investments were suitable for him, keeping him abreast of what was happening on the markets or when to alter his investments – that responsibility rested with him. In addition, I've seen no evidence that Mr T approached HL at any point to ask for financial advice to be provided to him.

And, I think it's clear that HL weren't responsible for advising Mr T from the declaration that he signed when he opened his pension with HL. He signed to confirm (on 13 May 2016) that he understood HL weren't providing him with any advice and that before making *any* investment decisions, he should carefully read the key information documents about any funds he was planning to invest in, provided on HL's website.

But in any event, the regulator, The Financial Conduct Authority's (FCA) rules are clear on the matter. The FCA defines a personal recommendation as a recommendation that is "presented as suitable for the person to whom it is made, or based on a consideration of the circumstances of that person". The Wealth List was distributed and available to all of HL's clients and the funds which were recommended within this list were not recommended based on HL's assessment of Mr T's personal circumstances. Therefore, under the FCA's definition, this was not a personal recommendation – and as such, HL had no obligation to ensure the WIFF was suitable for Mr T. And, having seen HL's website from the time, it clearly states that their Wealth List isn't personal advice and if the customer is not sure if the investment is right for them, they can always ask HL for advice. It also goes on to state that the list is designed for people who would like to choose their own funds and the list "doesn't constitute advice". So, whilst Mr T might think that HL's Wealth Lists were a personal recommendation to invest, it's sufficiently clear to me that they weren't.

Even though HL didn't provide Mr T with a personalised recommendation to invest in the WIFF, any communications they issued still had to be clear, fair and not misleading. And, the rules that HL needed to follow are covered under the FCA's COBS4.2 rules.

But, even before I consider HL's communications on the subject, prior to investing, HL made available the fund fact sheets and key investor information document (or KIDD) on each of the funds they offered. The KIDD for the WIFF explained that it was intended to deliver a reasonable level of income with capital growth. The WIFF was categorised as relatively high risk (5 of 7) on the Synthetic Risk and Reward Indicator (SRRI) risk scale, a standard independent industry measure used to show risk and reward. It was also described as not being an appropriate fund for investors who wished to withdraw their money within three to five years. The WIFF fund factsheet also highlighted key risks – it stated that "the value of the fund and any income from it may go down as well as up, so you get back less than you invested". So, putting to one side any communications on HL's website, I'm satisfied that both those Woodford documents make it adequately clear that investing in the WIFF wasn't without risks. And, as an execution only customer, it was incumbent on Mr T to have made himself familiar with the nature and more specifically, the risks of the fund prior to reaching any decision to invest in it.

HL have said that the WIFF was included on the Wealth List because they believed the fund had long term potential for performance. Neil Woodford (the fund manager) had a proven long term track record of performance whilst at Invesco, including managing the Invesco High Income fund (which had also been included on the Wealth List). HL's communications commented on Woodford's investment style and the funds he'd managed, and this was a prominent feature in the research and analysis that HL undertook on the WIFF.

HL provided consumers with twice yearly updates in their investment reports as well as on the Wealth Lists. The reports provided insight into how investors' monies were put to use along with background information from the fund manager. The commentary detailed why the fund was performing in the manner it was. For example, in November 2017 (only seven months after Mr T had made his original investment), HL highlighted that the WIFF was under-performing relative to its peers because Mr Woodford was cautious about China, and several Chinese businesses in which peer funds had invested, had performed well in comparison.

In both January 2018 and November 2018, HL again highlighted the lagging performance of the WIFF as a result of avoiding investments in popular Asian and emerging markets. And, in January 2019, HL explained that the WIFF continued to be included in the Wealth List despite its poor performance because they believed that the fund would deliver attractive returns in the years to come. HL highlighted that the fund's future performance was likely to be heavily tied to the strength of the UK economy and the outcome of Brexit negotiations and an increase in holdings in small and medium sized companies, which were higher risk than larger firms, and Real Estate Investment Trusts; and finally the importance of investors having a diversified portfolio of investments.

The under-performance of the WIFF was highlighted to investors again in May 2019 in the Client Investment Report and the following month, it was removed from the Wealth List. So, given the nature of the regular communications that HL issued, I can't conclude that HL failed to highlight the WIFF's performance or paint a rosier picture of the fund than was actually the case to customers.

Mr T has said that HL should not have included the fund on the Wealth List because of the risks arising from the WIFF's overlap with the WEIF which they should have identified. Mr T also says that because there were opposing views on the WIFF, its inclusion within the Wealth List was questionable because only funds that had a very high level of conviction should have been included. To be clear, it's up to HL what funds it chooses to place on any lists it presents to its consumers. That's a commercial decision for HL alone and it's not the role of this service to instruct businesses like HL on how they should go about any research they undertake or what conclusions they should arrive at. The regulator also doesn't provide any specific rules about how a business should analyse different funds that might be worthy of investment; that's for firms themselves to determine. Each firm typically takes a different approach to such endeavours which is why consumers will find results of favoured investments will ordinarily vary from business to business. But, just because a fund that's included on a list doesn't go on to yield the expected results, it doesn't necessarily follow that the business has done something wrong.

It also doesn't follow that just because the WEIF was invested in similar underlying investments to the WIFF, that HL were wrong to include the WIFF on their Wealth List. Many of the funds of on HL's Wealth Lists will include similar underlying investments but there will be subtle differences between them, notably the funds' aims and objectives. And, it seems clear to me that HL already recognised the overlap in underlying securities between the WEIF and WIFF because at the time of the WIFF's launch, HL acknowledged as much on their website, so if Mr T was concerned about such a scenario, he could've chosen an alternative fund to invest in.

It's important to acknowledge that the WIFF was only launched in April 2017 so there was limited meaningful past performance data. But HL acknowledged the WIFF's struggles on multiple occasions and gave insight on where it was invested and why the returns were lacking. However, at the same time, they also provided clarification about why the fund had been retained on the Wealth List, for example in January 2019 they referenced Woodford's prior background and their belief that there was a greater probability that he'd deliver attractive returns in the years to come than continue to perform poorly. Whilst with the benefit of hindsight it's now clear that HL's faith was misplaced, from what I've seen, HL genuinely held the view that the fund would deliver good returns for their customers, but unfortunately that proved not to be the case. That doesn't mean that they were wrong to include the WIFF on their list.

Mr T says HL communicated the WIFF's poor performance too late as the losses he'd suffered were already embedded in the fund unit price, but I don't agree. I say that because despite HL's regular communications about the WIFF's fortunes (which I've highlighted above), HL's offering is provided through an online portal so at any given time, Mr T could log into his account and check the progress of his investments. As an execution only customer, it was his responsibility to keep abreast of how his investments were performing and if at any time he was unhappy with the fund's returns, it was down to him to decide what to do, either selling or holding the investment. In addition, HL provides regular statements to consumers so had Mr T not logged into his pension account for some time, the statement should have acted as a prompt to put him on a path of discovery that he may have needed to take action. However, HL were not responsible for prompting Mr T to act with any poorly performing funds because in doing so, any encouragement to sell the WIFF would be considered advice, which as I've already explained, Mr T wasn't paying HL for.

I've seen no evidence to persuade me that HL have treated Mr T unfairly. I've also seen no evidence to suggest that HL's communications were not clear, fair or misleading so for the reasons that I've set out above, I'm not upholding his complaint.

My final decision

I'm not upholding Mr T's complaint and as such, I won't be instructing Hargreaves Lansdown Asset Management Limited to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 14 November 2024.

Simon Fox
Ombudsman