

## **The complaint**

Mrs O complains Hargreaves Lansdown Asset Management Limited (HL) provided misleading information when promoting a fund, which she invested in through an ISA and a Self-Invested Personal Pension (SIPP). She says it failed to inform her of the concerns it had about the management of the fund and instead provided reassurances about the future performance that led to her continuing to invest. She believes it is responsible for the losses she has suffered.

## **What happened**

The investment relevant to Mrs O's complaint is the units she 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.

## **Mrs O’s dealings in the WEIF**

Mrs O first invested in the WEIF in 2015 after receiving advice from HL. She purchased units in the fund as part of a portfolio of investments to be held in her ISA and SIPP, and also commenced purchasing regular monthly units in the fund. She held units in the WEIF at the point of suspension. She has received some capital distribution payments but has still lost part of her invested capital.

## **Mrs O’s complaint to HL and its response**

In August 2019, after the suspension of the WEIF, Mrs O made a complaint to HL about its promotion of the fund.

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

- It reviewed the original advice provided to Mrs O to invest the WEIF, and found it was suitable and in line with her objectives and attitude to risk. And said the inclusion of the WEIF within the recommendations was aligned to the desired asset allocation.
- 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.
- Since the advice, information was provided to clients about the problems with

Woodford. This includes communication about the exposure to unquoted stocks and how it urged Woodford to reduce this exposure.

Mrs O responded as she didn't feel HL had answered the complaint she raised. She said her complaint doesn't centre on the advice, but rather the subsequent acts and omissions of HL in relation to the WEIF and its continued status on the Wealth List and the effect this had on her investment decisions.

In January 2020, HL provided a second response to the complaint. In summary it said the Wealth 50 is a rigorously constructed list of funds, and formal assessments are used to determine the inclusion and removal of funds from the list. This is decided by members of the investment research team who are overseen and challenged by the investment committee. Based on its research, it believed that, in the long term the WEIF had the potential to outperform its benchmark.

Mrs O 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, she concluded that HL's communications met its regulatory obligations and were clear, fair and not misleading.

Mrs O didn't agree and asked for an ombudsman's decision. In summary she said:

- The actions taken by HL to continue to include the WEIF on the Wealth List exerted a significant and determining influence on her decision to retain her investments. Reliance was placed on the information provided by HL on the basis of the extensive research it had undertaken to identify what are considered to be the best funds to invest in. HL's continued inclusion of the WEIF in the Wealth List should be examined along with the implicit recommendation that the future prospects were objective and justifiable.
- In 2018 and 2019, she was concerned about the performance of the WEIF, but as her investments were intended to be long-term, she was assured by HL's expressions of confidence in Neil Woodford, and ultimately in HL's conclusion that the WEIF remained on the Wealth List.
- HL owed a duty of care to its customers regarding the implicit recommendation and assurance concerning the WEIF by retaining it on the Wealth List. The losses suffered are as a result of the failure by HL to discharge its duty of care to its customers to the required standard.
- In December 2016, HL communicated to investors regarding the fund not being a typical equity income fund and only suitable for those able to withstand the additional risk and volatility that comes from investing in smaller and unquoted companies. There is no indication that HL explained this comment by indicating what it considered a typical equity income fund to be nor what the particular form of the additional risk or the nature of the volatility that it believed resulted from WIM's strategy of investing in smaller and unquoted companies. It is difficult to reconcile this with the decision to retain the WEIF on the Wealth List.
- The consequences that HL considered that would follow from a decision to remove the WEIF from the Wealth List should be set to show they were taken into account and justify why the fund remained on the Wealth List. If HL had concerns that the

removal could trigger a volume of requests for redemption that the WEIF would have difficulty meeting, this would be a consequence that influenced or caused HL to decide to retain the WEIF on the Wealth List.

- There is a conflict of interest represented by HL being the most significant holder of units in the WEIF and the consequences for HL in its position as an investor in the WEIF that would follow from a decision to remove the fund from the Wealth List. The retention of the WEIF on the Wealth List would not have been compatible with significant sales by HL of its holdings. The retention of the WEIF on the Wealth List would have had the effect of limiting the level of withdrawals and the value of the holdings held by HL Multi-Manager Funds in the WEIF.

### **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 O's strength of feeling on the complaint and why she considers HL is responsible for the impact on her retirement plans due to her investment in the WEIF. However, for the reasons I set out below, I'm not persuaded she 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 note she has made significant submissions to support her arguments. I also acknowledge she has requested answers to several points she has raised. I want to reassure her that I have reviewed everything she has said. And I hope she won't think I am being discourteous but I will not be addressing all of the points she has made in detail. While I will not be addressing every single point Mrs O has made, I have fully considered them and am satisfied that my findings below address the substance of the arguments that she has put forward.

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 original advice Mrs O received in 2015 to invest in the WEIF as part of this complaint. My findings and considerations are focussed 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 Mrs O. HL was required 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 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. Although before Mrs O invested, the communications at launch in 2014 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 Mrs O was still making further contributions to 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 Mrs O 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 to allow to decide whether further information or advice was needed to help them to make decisions on their investments.

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 Mrs O to decide whether she wanted to stay invested (and continue to make contributions) based on the risks and the features of the WEIF which HL was describing to 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 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.

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.

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.

Mrs O has been clear that the continued inclusion of the WEIF on the Wealth List was the key factor in her remaining invested. I've considered all the points she has raised about this and the points made are the consequences of HLs actions in this respect. 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.

Mrs O has suggested there was a conflict of interest due to HLs involvement with the fund, including the exposure to it in the Multi-Manager funds. 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 concerns about its own interest and reputation. 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 Mrs O and I understand why she feels HL ought to be responsible for the situation she finds herself in respect of the investments she made. But I'm satisfied that any losses she has experienced were not caused by something HL did or didn't do or because it misled her 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 Mrs O's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 10 October 2024.

Daniel Little  
**Ombudsman**