

The complaint

Mrs K complains that Hargreaves Lansdown Advisory Service (“HLAS”) advised her to invest in the Woodford Equity Income Fund (“WEIF”) when it had grave concerns about the fund internally and that it knowingly misled her about the fund.

What happened

In 2017 Mrs K sought advice from HLAS along with her husband Mr K – who has also complained and his complaint is now being dealt with separately - as to investing the proceeds from a house sale. They met with the adviser on 27 March 2017 and 10 April 2017 and the adviser set out his advice to them both in a suitability report dated 2 June 2017 in which he advised that they invest a total of £275,000. He advised they each invest £137,500 in a portfolio of funds with £35,240 in an ISA and the balance of £102,260 invested in a General Investment Account.

One of the funds recommended by the adviser was the WEIF, at the time an equity income fund managed by Neil Woodford through Woodford Investment Management, in the main invested in UK equities. It made up around 10% of the recommended portfolio of funds. Following suspension of the fund in June 2019 Mrs K and Mr K complained to HLAS about the advice to invest in the WEIF. It didn’t uphold the complaint. It provided a final response jointly to Mrs K and Mr K in which it made the following key points:

- Having reviewed the advice it was suitable and in line with Mr K’s and Mrs K’s objectives and attitude to risk.
- Having received the one-off advice it was agreed that Mr K and Mrs K would take responsibility for managing their own accounts and making any changes they felt were necessary and there was no agreement for annual reviews.
- Its Investment Research Team selected the WEIF as one of the funds for Mr K’s and Mrs K’s portfolios based on Neil Woodford’s proven track record as a talented stock picker.
- Its conviction in the long term prospects of the WEIF remained despite the fund experiencing a difficult period of performance.
- It provided various communications to clients over the lifetime of the fund discussing various issues with the fund in order to keep clients up to date.
- It was not made aware that the WEIF had twice briefly breached UCITS rules as to investing no more than 10% of the fund in unquoted stock.

Mrs K and Mr K didn’t accept the final response from HLAS and referred their complaint to our service. It was considered by one of our investigators who thought the complaint should be upheld. The investigator said that it wouldn’t be fair to look at the WEIF or any one fund in isolation. However he found that the overall portfolio wasn’t suitable. Although he found that they would have to invest in equities to achieve their objectives, he said they weren’t looking

for anything speculative or particularly volatile as they had limited knowledge and experience and intended using the money in retirement and concluded that too high a proportion of the portfolio was invested in niche or complex investments.

HLAS didn't agree with the investigator and so the matter was referred to me for review and decision. I issued a provisional decision the findings from which are set out below.

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

In doing so, I've taken into account relevant law and regulations; relevant regulators' rules guidance and standards; codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time. But I think it's important to note that while I take all those factors into account, in line with our rules, I'm primarily deciding what I consider to be fair and reasonable in all the circumstances of the case.

It is for me to decide what weight to give evidence a party relies on and where there is a dispute about the facts my findings are made on a balance of probabilities – what I think is more likely than not.

The purpose of my decision isn't to address every point raised and if I don't refer to something it isn't because I've ignored it but because I'm satisfied I don't need to do so to reach what I think is the right outcome. Our rules allow me to do this, and it simply reflects the informal nature of this service as a free alternative to the courts.

Although the complaint was made jointly and dealt with as such by HLAS, I am only considering Mrs K's complaint here. However, given the advice was provided to them at the same time and the information they provided to the adviser was in relation to their overall financial situation and both HLAS in its final response and the investigator in his view has referred to both Mrs K and Mr K I will at times be referring to both of them within my findings.

I note that the complaint made by Mrs K was in relation only to the advice to invest in the WEIF, which she has argued HLAS misled her about. I will make brief findings as to that particular issue first but given it was one of 15 funds in the portfolio that the adviser recommended to Mrs K I have gone on to consider whether the recommended portfolio as a whole was suitable.

As I have said above, when making a fair and reasonable determination I will take into account relevant rules of the regulator, the Financial Conduct Authority (FCA). These are set out in the Handbook of the FCA and include High Level Principles that are set out under PRIN 2.1.1R as well as more specific rules set out under the Conduct of Business Sourcebook (COBS).

The first main issue I need to address in this complaint is whether Mrs K was provided with misleading information. 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" – and COBS 4.2.1(1)R - which states that a firm must ensure a communication or a financial promotion is fair, clear, and not misleading - are particularly relevant considerations in determining whether HLAS did anything wrong when providing information to Mrs K.

The second issue I need to address is whether the advice provided by HLAS was suitable. The rules set out under COBS 9.2 are particularly relevant to my consideration of that issue.

COBS 9.2.1R required HLAS to obtain information about Mrs K's knowledge and

experience, her financial situation, and her investment objectives to enable it to make the recommendation it did. COBS 9.2.2R sets out the necessary information HLAS needed in order for it to have a reasonable basis for believing its recommendation; met Mrs K's investment objectives; she could bear the relevant financial risks; the investment was consistent with her investment objectives; she had the necessary experience and knowledge to understand the risks.

Did HLAS provide misleading information to Mrs K about the WEIF?

I have considered the information HLAS provided to Mrs K at the time of advice. HLAS provided Mrs K with the KID for the fund. It wasn't responsible for the contents of this but in any event I don't consider that there was anything misleading in the information provided in that document.

HLAS did comment on the fund in the suitability report it sent to Mrs K and Mr K dated 2 June 2017 which set out its recommendations. It made brief reference to Neil Woodford – referring to him as “one of the most successful, experienced and well known fund managers in the UK” - and to the fund containing many well-established businesses but that he will also look for “tomorrows dividend winners.” I am satisfied that there was nothing unfair, unclear, or misleading in what the report stated or in any other communications HLAS made to Mrs K about Neil Woodford or the fund at the time of advice.

In making that finding I have taken account of Mrs K's argument that Hargreaves Lansdown already had grave concerns about the fund at the time of advice, but I have seen nothing to support this.

Mrs K has referred to the ‘special relationship’ between Hargreaves Lansdown and Neil Woodford and the ongoing inclusion of the WEIF on its ‘Wealth List’ – a publication that set out what it considered were the best funds. However, HLAS had no responsibility for the information provided in the Wealth List and this has been dealt with separately, as the investigator explained.

Was the recommended portfolio suitable?

I have considered the information that the adviser obtained from Mr K and Mrs K when he met with them and the advice then provided based on that information. The suitability report sets out the relevant information that was obtained by the adviser. Mrs K's (and Mr K's) principal objective is identified as being:

“To invest the sum received from the recent sale of your property into a portfolio designed to deliver capital growth over the long term. You have earmarked £275,000 for this. It was capital that was not expected or needed so you would like to use it for long term savings and a potential future bonus retirement fund.”

The report refers to Mrs K and Mr K being relatively inexperienced investors with their only experience to date of investing in the stock market being the purchase of a HSBC FTSE 100 tracker fund. In terms of capacity to deal with potential losses, the report stated they had sufficient capacity as they had a large surplus of income – around half their overall income – that could cover investment losses and an emergency fund of around £50,000 from their current account balance and cash ISAs, along with a surplus of £25,000 from the house sale which wasn't being invested.

The report identifies that they are comfortable accepting volatility and whilst they didn't have direct experience of equities falling in value, they had exposure to other assets falling in value in the past – this appears to have been a reference to a previous drop in value in the

property that they had sold. The report refers to them being comfortable with volatility as they could afford to leave the investment for the next 10 plus years.

The report identifies that their ideal portfolio asset mix as 20-30% in fixed interest with 80 – 90% in equities and that they were comfortable with this having discussed different asset classes - with the adviser using the 2008 financial crisis as an example and explaining that the suggested asset mix would have led to a 30% drop in value at that time. The report refers to Mrs K and Mr K being comfortable with taking that risk for the additional growth potential as “you really only see this money as a bonus.”

As the investigator identified, given Mrs K and Mr K wanted capital growth, investing in a portfolio predominantly consisting of equities was on the face of it suitable and on the information available they had the capacity to withstand losses that might arise through such investment.

The issue raised by the investigator in his opinion and the basis of his finding that the recommended portfolio was unsuitable wasn't that the portfolio was too heavily invested in equities, rather that too much of the portfolio had specific risks resulting from investment in emerging, foreign, or niche markets and that Mrs K wouldn't have understood the risks of such investments.

I have come to a different conclusion to the investigator on this. Having considered this carefully I am satisfied that the recommended portfolio was in accordance with Mrs K's objective of long term capital growth and the risk she was both willing and able to take. Mrs K wasn't dependent on the money invested for her retirement - it being referred to as potential future bonus (my emphasis) retirement fund – so in my view she was in a position to accept the risks of the portfolio. In the circumstances I am satisfied that the portfolio was appropriately diversified by way of asset class, geography, size of company, industry, and liquidity given the objective of long term capital growth.

In making that finding I have taken into account that Mrs K was an inexperienced investor with little previous experience of investing. However, that of itself didn't make the recommended portfolio unsuitable or mean that she was incapable of understanding the risks of the portfolio. I am satisfied she would've understood the adviser's warning that the recommended portfolio would have led to a fall of 30% if it had been in place at the time of the 2008 financial crisis. The suitability report refers to her being comfortable with that and I have no reason to think this wasn't the case or that Mrs K said this without having grasped the risk of the recommended portfolio.

Whilst Mrs K's direct previous investment experience was limited to a FTSE 100 index tracker fund, it is more likely than not she would have understood that investments in different companies carried different risks – so she would more likely than not have understood that investment in small cap companies, emerging markets and niche industries would be riskier than investments in large companies in established markets and industries such as FTSE 100 companies.

Put simply, I am not satisfied on the evidence provided in this complaint that Mrs K's limited investment experience meant the recommended portfolio was unsuitable or that she didn't understand the risks of the recommended portfolio.

I am mindful that Mrs K's complaint was specifically about the WEIF but I have seen no evidence that would lead me to find that it shouldn't have been included as part of a diversified portfolio the objective for which was capital growth over the long term.”

I gave both parties the opportunity of responding and providing any further information they

wanted me to consider before making my final decision. HLAS didn't provide any response but Mrs K responded disagreeing with my provisional findings. In summary she made the following points:

- The word 'bonus' has been cherry picked out of context in the report by HLAS and by the ombudsman to justify the conclusions that she and Mr K were in a position to accept the risks of the portfolio.
- The reference to the money being a bonus was to the amount of money from the house sale was unexpected and although not needed in the short term this doesn't mean it wasn't needed.
- They could not afford to make higher risk investments and always intended the money would be used as a retirement fund.
- By concentrating on the wording used as to it being a bonus and it not being expected or needed and ignoring other statements such as 'to keep pace with inflation' skews the suggested appetite for risk.
- To keep pace with inflation isn't the hallmark of investors willing to gamble for gains with their investments and they weren't looking for anything particularly speculative or volatile as noted by the investigator.
- The reference to them not needing or intending to rely on this money for retirement has also been taken out of context in that they didn't have an immediate need for the money so could afford to plan a longer-term investment.
- She had only just started paying into her pension in her new role.
- They understood the value of investments could go down as well as up, but it was never explained that a fund could simply implode in a matter of days and that investors would be unable to withdraw their money or recover losses over the longer term.
- It wasn't possible to recover the losses (from the WEIF) by remaining invested in it, as the investment advice stated you should do when an investment lost value.
- HLAS said that it started to distribute a number of communications discussing various issues and concerns with the WEIF following talks with Neil Woodford 'for some time'. This wasn't reflected in the initial investment advice or the phased period of initial investment which went into 2018.
- They agree with the investigator that given the concerns the weight of investment in the WEIF was too large.
- There is too much emphasis on them not seeking ongoing advice given it was agreed they would need a period of time to learn. Hence, they were looking for lower risk and investment in funds that were managed by 'successful, experienced and well-known fund managers' and for the funds were all from 'leading well respected fund managers selected by Hargreaves Lansdown for their superior performance.'
- It is clear from the report that they would receive information from Hargreaves Lansdown to help them make future decisions but this is only useful if it is fair and transparent with its concerns as well as their admiration for the manager.

- A large piece of information they relied on was the Wealth 150 list which the WEIF remained on until it ceased trading. It seems contradictory that they would have gone against the 'gold standard' of the Wealth 150.
- In the investment advice it states that Hargreaves Lansdown will discard products that aren't appropriate 'perhaps due to complexity, lack of transparency, unjustifiable levels of risk or poor performance prospects'. However the WEIF wasn't discarded despite the concerns raised about the exposure to small cap and unquoted companies.
- Although it is mentioned that there was nothing misleading in the report their complaint has always been what was omitted and that communications were contradictory – which is difficult to navigate for someone with no real investment experience.

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.

In doing so, I've taken into account relevant law and regulations; relevant regulators' rules guidance and standards; codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time. But I think it's important to note that while I take all those factors into account, in line with our rules, I'm primarily deciding what I consider to be fair and reasonable in all the circumstances of the case.

It is for me to decide what weight to give evidence a party relies on and where there is a dispute about the facts my findings are made on a balance of probabilities – what I think is more likely than not.

The purpose of my decision isn't to address every point raised and if I don't refer to something it isn't because I've ignored it but because I'm satisfied that I don't need to do so to reach what I think is the right outcome. Our rules allow me to do this, and it simply reflects the informal nature of this service as a free alternative to the courts.

I have considered everything that Mrs K has said in response to my provisional decision but in large part she has repeated arguments previously made and already considered by me. In the circumstances nothing she has said leads me to think I should change the findings I set out - which form part of the findings in this final decision unless I state to the contrary - or the conclusion I came to that this complaint shouldn't be upheld.

I am not persuaded this complaint should be upheld because on the information available to me I am satisfied that HLAS complied with its regulatory obligations. In particular I am satisfied that it provided fair, clear, and not misleading information to Mrs K and that the recommendations it made to her, including the recommendation to invest in the WEIF, were suitable based on her objective of capital growth and the period over which she was happy to invest for of ten years plus and her overall circumstances at the time.

I will briefly address the points made by Mrs K in her response to my provisional decision.

Mrs K argues that the word 'bonus' was taken out of context by the adviser and then by me in my provisional decision in that the bonus was that she and Mr K got more from the house sale than expected. She has said that whilst the money invested wasn't needed in the short term it was needed as part of their retirement fund.

However, whilst I accept that she and Mr K may have intended that the money would form part of their retirement pot in the future, her argument that she and Mr K couldn't then afford to invest in higher risk investments at the time of advice isn't supported by the evidence in my view.

Mrs K hasn't argued that her objective wasn't capital growth nor that she wasn't happy to invest for a period of ten plus years, as set out in the suitability report. And given her objective and the period over which she was willing to invest, and that the money wasn't needed in the short term, the investment of a substantial part of the monies from the house sale in equities was in my view suitable. I accept that there was an increased risk from investments in equities in emerging markets or niche industries but am not persuaded that this meant the overall portfolio wasn't suitable for Mrs K.

Mrs K has said that she understood that the value of investments could go down as well as up but that it wasn't explained that a fund could simply implode. This is obviously a reference to the WEIF but what happened to that fund wasn't something that it is reasonable to have expected HLAS to have anticipated and warned against at the time of advice - or subsequently.

Mrs K has said that the communications about concerns with the WEIF following discussions with Neil Woodford weren't reflected in the advice or the phased period over which she invested. However, I wouldn't have expected HLAS's advice to change because of discussions between Hargreaves Lansdown and Neil Woodford or WIM when there was no change to its positive view of the fund.

Mrs K has referred to the WEIF remaining on the 'Wealth 150' list. This argument about the content of the Wealth List is one that Mrs K made previously and was considered by me in my provisional decision and, as I made clear, HLAS wasn't responsible for the content of the list so any issue about its contents isn't something I need to address in this complaint.

However, I think it is appropriate to point out that from the evidence I have seen Hargreaves Lansdown remained confident in Neil Woodford and the long term, prospects of the fund, despite the issues it was discussing with him and WIM over this period. And the fact that the WEIF continued to be identified in the Wealth List up until the fund was suspended was consistent with that belief.

Mrs K has said that the fund wasn't discarded by Hargreaves Lansdown despite the exposure to small cap and unquoted stock but these issues of themselves didn't mean that it had to ditch the fund, or that it did something wrong because it didn't do so given its ongoing faith in Neil Woodford and the fund.

I am not satisfied that there were any significant omissions from the suitability report or that there were any major contradictions within it, as Mrs K has argued is the case.

My final decision

I don't uphold this complaint for the reasons I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 14 February 2025.

Philip Gibbons
Ombudsman