

The complaint

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

What happened

In 2017 Mr K sought advice from HLAS along with his wife Mrs K – who has also complained and her complaint has been 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 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 (WIM) 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 Mr K and Mrs K complained to HLAS. It didn’t uphold the complaint. It provided a final response jointly to Mr and Mrs K. HLAS 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 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.

Mr K and Mrs 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 in isolation but found that that the overall portfolio wasn’t suitable. He said that whilst Mr K (and Mrs K) needed to invest in equities to achieve their objective, they weren’t looking for anything speculative or particularly volatile as they had limited knowledge and experience and

intended using the money in retirement. He concluded that too high a proportion of the portfolio was invested in niche or complex investments.

HLAS didn't agree with the investigator and provided a detailed response to which the investigator responded explaining why he wasn't going to change his opinion. The matter was then referred to me for review and decision and I issued a provisional decision as I was of the view that the complaint shouldn't be upheld, 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 and the investigator as I have referenced above, I am only considering Mr 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 I will at times refer to both Mr K and Mrs K in my findings.

I note that the complaint made by Mr K was in relation only to the advice to invest in the WEIF, which he said it had misled him 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 Mr 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 Mr 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 Mr 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 Mr K's knowledge and experience, his financial situation, and his 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 Mr K's investment objectives; he could bear the relevant financial risks; the investment was consistent with his investment objectives; he had the necessary experience and knowledge to understand the risks.

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

I have considered the information HLAS provided to Mr K at the time of advice. HLAS provided Mr 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 Mr K and Mrs K dated 2 June 2017 which set 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 Mr K about Neil Woodford or the fund at the time of advice.

In making that finding I have taken account of Mr 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.

Mr 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. Mr K's (and Mrs 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 Mr K and Mrs 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 is 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 Mr K and Mrs 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 Mr K and Mrs 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 was not that the portfolio was too heavily invested in equities – and so it is clear, I am not of the view that the portfolio was overall too weighted in equities - rather that too much of the portfolio had specific risks resulting from investment in emerging, foreign, or niche markets and that Mr 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 – which was diversified by way of asset class, geography, size of company, and industry - was in accordance with Mr K's objective of long term capital growth and the risk he was both willing and able to take. Mr K wasn't dependent on the money invested for his retirement - it being referred to as potential future bonus (my emphasis) retirement fund – so in my view he was in a position to accept the risks of the portfolio.

I take into account that Mr K was an inexperienced investor with little previous experience of investing. However, I am not satisfied he wouldn't have 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. I note the suitability report refers to him being comfortable with that and I have no reason to think this wasn't the case or that in saying that Mr K had failed to grasp the risk of the recommended portfolio.

I acknowledge that Mr K's direct previous investment experience – I have put on one side his pension portfolios although he will have seen these fluctuate in value over time – was limited to a FTSE 100 index tracker fund. However, it is more likely than not he would have understood that investments in different companies carried different risks – so he 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. Put simply, I am not satisfied that Mr K's limited investment experience meant he didn't understand the risks of the recommended portfolio.

I am mindful that Mr 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 further information they wanted me to consider before making my final decision. HLAS didn't provide a response. Mrs K responded in her complaint and I have taken her response as being in relation to both her complaint and that of Mr K.

- 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 she hasn't provided new evidence or arguments that would lead me to change the findings in my provisional decision - which form part of the findings in this final decision unless I state to the contrary - or the conclusion I reached.

I will briefly address the main points that have been made in response to my provisional decision.

It is argued that the word 'bonus' has been taken out of context by both the adviser and me in the course of my findings, in that the bonus was that they got more from the house sale than expected and whilst they didn't need this in the short term, this doesn't mean the money wasn't needed.

However, regardless of this I don't accept that this means Mr K wasn't willing and able to invest in higher risk investments at the time of advice. It hasn't been argued that his objective wasn't capital growth, nor has it been suggested that he wasn't willing to invest for a period of ten plus years, as set out in the suitability report. Given the objective and period over which he was willing to invest, the investment of a substantial part of the monies from the house sale in equities was in my view suitable. In saying that I accept there was an increased risk from investments in emerging markets or niche industries but I am not persuaded that the inclusion of such investment in the portfolio made it unsuitable.

I have considered what has been said about it not being explained that a fund could simply implode – obviously a reference to what happened to the WEIF. However, it, isn't reasonable

to have expected HLAS to have anticipated this happening 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 they 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 was 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 Mr K to accept or reject my decision before 6 March 2025.

Philip Gibbons
Ombudsman