

## **The complaint**

Miss D complains that Hargreaves Lansdown Asset Management Limited's (HL) marketing of the Woodford Equity Income Fund (WEIF) was not fair, clear and not misleading because it overplayed the benefits of the fund and didn't explain that it would be invested in non-liquid assets. She complains that the risk rating it gave the fund was not accurate and it misled investors on the risk the fund would be exposed to.

## **What happened**

The investment relevant to Miss D'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.

## **Miss D’s dealings in the WEIF**

Miss D invested in the WEIF through HL on 10 November 2016 and remained invested until its suspension.

## **Miss D’s complaint to HL and its response**

In May 2024 Miss D raised her complaint about HL’s marketing of the fund via the service. She said:

*“My further complaint is that the marketing of the fund did not meet the FCA marketing rules of fair, clear and not misleading – it has over played the benefits and did not explain that the fund would be invested in non liquid assets – the risk rating they gave the fund was therefore not accurate. So they mislead invest[ors] on the risk the fund would be exposed to. This was recently confirmed in the recent enforcement action by the [Financial Conduct Authority (“the FCA”)]*

*[...] HL marketing for the fund was based on misleading information. The FCA found that the fund liquidity profile was unreasonable and inappropriate in light of the redemption policy in the fund prospectus which allowed redemptions within 4 days. It also stated that the fund contain[ed] unquoted shares when the fund was launched. None of this was contained in the marketing and increased the risk profile of the fund. I am seeking a refund of my investment of £4,000”.*

HL looked into her complaint but said it had been made too late – and it would only look at the marketing material it issued after May 2018, this being within 6 years of her complaint in May 2024. HL also went on to explain it provided an execution only service to Miss D and so it didn’t provide advice on the suitability of her investment.

HL accepted that it was obliged to ensure the information included in communications to investors was clear, fair and not misleading, but felt its opinions expressed on the WEIF were accurately communicated and based upon research.

On the point of the unquoted/illiquid holdings exceeding the 10% limit, HL explained that it had assessed the WEIF on an ongoing basis, including contacting WIM in November 2017 regarding the unquoted holdings level. HL clarified that it didn't have concerns over this limit being breached at the time and it was ensured that WIM would monitor the situation to prevent the 10% limit being exceeded.

HL said that it's now known that the WEIF breached the 10% limit in 2018, but it only became aware of this after the fund was suspended in 2019 - as explained in the FCA's letter to the Treasury Select Committee in June 2019. HL said WIM and Link didn't inform it of the breaches at the time and the limits were only exceeded on a temporary basis. HL also said that when it received month end reports the breach had already been 'fixed' and so it had no way of identifying the issue sooner.

Miss D remained unhappy and referred her complaint to this service. One of our investigators agreed that part of Miss D's complaint had been raised too late. In summary, he said that Miss D knew or should've known she had cause for complaint when she received HL's update in June 2019 about the suspension of the WEIF. However, he agreed that Miss D could complain about HL's marketing of the WEIF from May 2018 onwards (six years before she raised her complaint).

### **Miss D's complaint to this service**

Miss D didn't agree and so her complaint was referred to decision. One of our ombudsmen issued a decision on whether our service could consider Miss D's complaint in November 2014. The ombudsman found that Miss D's complaint was partially out of time. They explained that our service must consider the Dispute Resolution Rules ("DISP") when deciding whether our service has the jurisdiction to consider a complaint. They explained that the relevant rule was DISP 2.8 which explains that when a business doesn't agree, and it doesn't here, we can't consider a complaint if it's made more than:

- six years after the event complained of; or if later
- three years from when the consumer knew or should reasonably have known they had cause to complain;
- except when the delay in making the complaint was due to exceptional circumstances.

Unless "the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received".

The deciding ombudsman explained that as the sale of Miss D's investment occurred over six years since she raised her complaint, they considered when she knew or ought to have known she had reason to complain about the sale. They felt that Miss D ought to have known she had cause to complain having received HL's update regarding the suspension of the WEIF on 20 June 2019. This is because her complaint is that she wasn't told, in earlier material, that the fund had illiquid assets or that it had breached the relevant limit, and this update told her this information. The deciding ombudsman acknowledged that Miss D says she wasn't obliged to read that update but explained that they had seen sufficient evidence that it was sent to her, and they were satisfied she had received it. They also said that given the title of the update and the fact that it concerned an investment of hers that had just been

suspended, they were satisfied that it's more likely than not she would've read it. As such, they felt Miss D hadn't raised her complaint within three years of receiving this.

The deciding ombudsman also considered Miss D's comments around her exceptional circumstances due to the death of her grandmother and moving her son to university. The deciding ombudsman provided an example given by the regulator of what might constitute an exceptional circumstance under DISP 2.8.4:

*"An example of exceptional circumstances might be where the complainant has been or is incapacitated".*

The deciding ombudsman acknowledged that they had no doubt that making a complaint about HL's marketing of the WEIF was far from a priority for Miss D during that difficult time, but explained that they weren't persuaded the circumstances she outlined amounted to "exceptional circumstances" under DISP 2.8.4.

One of our investigators then considered the merits of Miss D's complaint. In summary, they said they hadn't found any evidence to suggest HL issued unfair, unclear or misleading communications or marketing in regard to the WEIF to her post May 2018.

Miss D didn't accept the investigator's view. In summary, she said the Treating Customers Fairly part of the FCA's Handbook is relevant and said it's irrelevant whether or not HL was concerned about the breach, the fact that HL didn't inform her of the breach shows HL acted unfairly. She said that by not making her aware, she couldn't make an informed decision as to whether to continue with her investment in the fund.

As Miss D remained unhappy, the complaint has been passed to me to decide.

### **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 Miss D's strength of feeling on the complaint and why she considers HL is responsible for the losses she has suffered 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.

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).”*

### **The scope of my findings**

I've reconsidered our service's jurisdiction in this complaint, and I agree that I can only look into events that happened post May 2018 (six years prior to Miss D raising her complaint) for the same reasons given by the deciding ombudsman, as I've set out above. As such, I can only consider HL's communications from May 2018 onwards.

Furthermore, I note that the WEIF was suspended on 3 June 2019 and remained that way until winding down commenced on 15 October 2019. This means that any marketing conducted by HL from 3 June 2019 onwards couldn't have had a bearing on Miss D's decision to remain invested in the fund. This is because she was unable to withdraw from the fund beyond this point.

Therefore, my decision will focus only on whether the communication provided by HL between May 2018 and 3 June 2019 was clear, fair and not misleading.

### **My findings**

The rules I've set out above show the obligations that HL was required to adhere to when making communications to investors like Miss D. HL was required to ensure its communications with investors 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.

The arrangement between Miss D and HL was one of an execution-only service, so ultimately it was for Miss D to decide whether to keep her investment in the WEIF, taking into account all the information available about the fund, including HL's communications. So the question for me to consider is whether Miss D had enough information to make her own investment decisions between May 2018 up until the fund was suspended on 3 June 2019.

I think it's important to note that the majority of the communication provided by HL regarding the WEIF was given to investors in prior years to those that are within the scope of this complaint. The WEIF was promoted less frequently by HL during 2018 and was subject to less communication from HL generally. However, I have fully considered the communication

provided during this time and I will summarise those which I think are most relevant to this complaint.

I note that the June 2018 Wealth Report commentary said, *“The fund has evolved markedly over the past 18 months.”* I think this shows HL made efforts to make investors aware that the fund had changed.

There was only one *“most popular”* list entry for this year (that I am aware of) – the *“most popular ISA funds October”* - which was published on 13 November 2018. This included commentary on the WEIF as follows:

*“Neil Woodford became well known for beating the market over several decades. He’s been in the headlines for some recent disappointing performance though. This isn’t the first time Woodford’s come under scrutiny, but he’s subsequently gone on to beat the market. That’s not to say he’ll do it again. But it’s a reminder that managers who go through rough patches can come good in the end.”*

*We prefer to focus on a manager’s long-term track record which in the case of Woodford has been excellent, albeit recently poor. He invests very differently from many other managers. His investments include smaller companies and those not listed on the stock market. Both of these add risk.*

*By being different from the market, it gives him the best chance of beating it over the longer term. But it also means there will be times when he falls behind. As ever, a long-term approach is best to ride out those times.”*

The commentary above shows that Woodford was facing some challenging circumstances and that the recent performance had been disappointing. So I think Miss D knew at that point that the fund was facing some challenging times, and she also knew that this was in part because of Woodford’s investment approach. Miss D knew from the prospectus of the fund that it had the ability to invest in unquoted shares and that it was an all-equity fund. So, taking all this information into account, I’m persuaded she was in a position to make her own decision about whether to stay invested in the fund, and hope for a recovery in the future, or to sell the fund and realise a financial loss.

The November 2018 Wealth Report commentary was as follows:

*“Neil Woodford combines companies that pay high levels of income with smaller companies that offer more growth potential. Many investors have a gloomy forecast for the UK economy, but he’s optimistic. He’s invested in unloved domestic UK companies, including house builders and real estate companies. He thinks they offer a lot of value.*

*He isn’t so upbeat on the world economy, so he’s avoided companies more reliant on overseas trade, such as commodity-related companies. Woodford has found recent times some of the most challenging he’s faced. He largely puts that down to his style of investing being unpopular with many investors at the moment. He’s confident the tide will turn in his favour though, as it has previously in his long career.”*

In my view, these communications are broadly consistent with the available evidence on HL’s view of the WEIF (and Neil Woodford as a fund manager) and the available information about the WEIF generally at the time. HL’s view remained, ultimately, that it should support the fund as it was of the view that it would come good over the longer term. Again, it was for Miss D to decide whether she agreed or not.

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 around the continued investment in unquoted stock. 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 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.

I'm satisfied that this update gave a clear and fair assessment of the current state of the WEIF in January 2019 as HL understood it. I note the update made several references to the fund performing poorly and it explained why. It also explained what HL thought might happen in the future and, importantly, caveats that HL could be wrong and that there were no guarantees. I acknowledge that HL continued to support the fund in its update, but it's important to note that the issue of the unquoted holding breach wasn't yet known to it at this time.

This update once again made Miss D aware that the fund was continuing to experience poor performance and that it was "*an uncomfortable time to hold the fund*". So I'm satisfied Miss D was in a position to make her own decision about whether to stay invested in the fund despite these concerns expressed by HL.

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 misplaced. 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 explained this to investors in the March update. 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.

I think this update made it clear to Miss D that there were risks in remaining invested in the WEIF, that the performance had now been disappointing for some time and that HL had

found it necessary to address the weighting of unquoted stock. So I'm persuaded Miss D had sufficient information to make an informed decision as to whether to remain invested in the fund, despite these concerns. I also think HL was entitled to tell investors in this update 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. It was then for Miss D to decide whether she agreed with HL's belief in the funds recovery or not.

Overall, it's clear that there were periods between May 2018 and June 2019 when HL raised concerns with Woodford, for example around the level of unquoted stock in the WEIF. HL explained these concerns in its public updates or Wealth Lists – and 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 Miss D to decide for herself, 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 her.

I understand that following the suspension of the WEIF on 3 June 2019, the WEIF was removed from HL's Wealth List marketing. From the evidence provided, I'm satisfied that 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 investors 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 were 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.

It's clear to me that Miss D feels strongly that HL didn't make her aware of the 10% limit having been breached until after the fund had been suspended. But I don't think HL has acted unfairly in respect of this. I say this as, having reviewed the FCA's letter to the Treasury Select Committee in relation to the WEIF on 18 June 2019, I note that the two breaches of the 10% unquoted/illiquid holdings occurred in February/March 2018. As such, these breaches occurred outside of the scope of this complaint (prior to May 2018). Despite this, I'm conscious that HL has said that it wasn't made aware of these breaches until the FCA's letter was issued. This is because the breaches were temporary, and HL only received month-end reports during this period. I understand that by the time these were received, the issues had been rectified without a trace and WIM and Link failed to inform HL that these had occurred. I'm satisfied that HL repeatedly informed investors that the fund was performing poorly and that it had holdings in illiquid and unquoted stock, which could expose investors to more risk. But I've seen no evidence to support that HL knew that the levels exceeded the 10% limit and note that HL was urging Woodford to remedy/monitor the situation.

I appreciate my conclusions will be disappointing to Miss D 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 Miss D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 28 April 2025.

Ben Waite  
**Ombudsman**