

22 June 2020

Final report by the Complaints Commissioner**Complaint number FCA00725***The complaint*

1. On 30 March 2020 you asked me to investigate a complaint about the FCA. I have carefully reviewed the papers sent to me by you and the FCA. The FCA's Decision Letter is dated 18 October 2019, and you referred it to me more than the three months set out for referrals to my office in the Complaints Scheme (the Scheme). However, based on the reasons you have given me, I have accepted your complaint out of time.
2. My preliminary report was issued on 18 May 2020 and both you and the FCA have commented.

What the complaint is about

3. You complained to the FCA about its supervision of the Woodford Equity Fund and your loss of funds invested in 2014. I am very sorry to learn of the difficulties you have faced.
4. The FCA divided your complaint into four parts as follows:
 - a. Part One – *The FCA has failed to supervise Woodford and allowed there to be financial misconduct in the handling of the investment fund over the last 18 to 24 months.*
 - b. Part Two - *The FCA has failed to act quickly in getting Woodford to remit fees.*
 - c. Part Three – *You allege that the firm has mismanaged the fund and as a result there was a lack of increase in capital.*
 - d. Part Four - *You allege that Hargreaves Lansdown has failed to keep investors updated.*

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What the regulator decided

5. The FCA's Decision Letter of 18 October 2019 told you that the Complaints Team had decided to defer investigation of Parts One and Two of your complaint under paragraph 3.7 of the Scheme because *it is connected with, or arises from, some form of continuing action by the FCA.*
6. Parts Three and Four were not investigated on the grounds that they represent complaints about individual firms, which are not covered by the Scheme.

Why you are unhappy with the regulator's decision

7. You have set out your concerns about what you see as the FCA's failure to act on Woodford and related companies and have told me that *there are supposed to be very strict rules on how FCA registered companies conduct business but very clearly the FCA have failed miserably to control or watch Woodford and when I complained I was told to contact yourselves.* You have also expressed your dissatisfaction with the Complaints Team's response.

My analysis

Part One

8. First, it is important to say that the FCA has not declined to investigate your complaint about its supervision of Woodford. The FCA is right to say that your complaint is connected with some form of continuing action by the regulator. [Andrew Bailey's letter to Nicky Morgan of 18 June 2019](#) confirmed that an investigation has been opened into the events surrounding the suspension of the LF Woodford Equity Income Fund. Under paragraph 3.7 of the Scheme,

A complaint which is connected with, or which arises from, any form of continuing action by the regulators will not normally be investigated by either the regulators or the Complaints Commissioner until the complainant has exhausted the procedures and remedies under FSMA (or under other legislation which provides for access to the Scheme) which are relevant to that action. The complainant does not have to be the subject of continuing action by the regulators for this provision to be engaged. An investigation may start before those procedures are completed if, in the exceptional circumstances of the case, it would not be reasonable to expect the

complainant to await the conclusion of the regulators' action and that action would not be significantly harmed.

9. The language used in this paragraph is not particularly clear but the thinking behind it is that undertaking a complaints investigation at the same time as carrying out regulatory action (that is, an investigation which might lead to action against regulated individuals or firms) could have two adverse consequences: it could divert resources away from the regulatory investigation, and/or it could prejudice the regulatory action.
10. However, these consequences need to be weighed against the interests of complainants and the wider public interest – the paragraph I have quoted from the Scheme refers to exceptional circumstances in which a complaint may be considered before regulatory actions have been completed.
11. The FCA has confirmed that an investigation is active. It seems to me likely that that investigation will produce material which is relevant to the consideration of your complaint. I also consider that it would be unhelpful if the FCA Complaints Team were to undertake a parallel investigation into these matters. To that extent, I think that the FCA's deferral decision for Part One is reasonable.

Parts Two, Three and Four

12. The FCA initially deferred consideration of Part Two of your complaint but has now provided you with its decision. The Complaints Team's email dated 17 April 2020 says that this part of your complaint has not been upheld because, *as explained on page five of Andrew Bailey's letter to the Right Honourable Nicky Morgan MP, "there is no requirement on fund managers to reduce or waive entirely their investment management fees during suspensions"... the FCA has publicly suggested that Woodford Investment Management (WIM) should consider waiving its fees and Link Fund Solutions (LFS) informed investors that from the point of suspension, it would not deduct its fee for acting as the authorised fund manager for the Woodford Equity Income Fund (WEIF).* The FCA provided you with information about how to complain to LFS and subsequently to the Financial Ombudsman Service (FOS).
13. Parts Three and Four of your complaint were also not upheld because the Complaints Team considered them to be complaints about individual firms.

14. It may be helpful if I set out the basis on which this Complaints Scheme operates, which is that it is concerned with the actions or inactions of the FCA. I realise that your point is that you believe the FCA's actions or inactions have directly led to your loss, but I think it is important that you are aware that the Scheme is not a redress service for individual consumer complaints. The Financial Services and Markets Act 2000 explicitly provides for a consumer redress service separated from the FCA, which is the Financial Ombudsman Service or, where a financial firm has failed, the Financial Services Compensation Scheme. You may wish to investigate these options in respect of the loss of funds you invested with Woodford/Link.
15. The FCA's Decision Letter of 18 October 2019 should have advised you about these options, particularly since you had told the FCA that one outcome you sought was personal compensation for your loss. I note that some information about your options was provided in the Complaints Team's email of 17 April 2020 in relation to LFS. You have told me that you have already filed a complaint with the Financial Ombudsman, unfortunately delayed by COVID-19, and that FSCS is not accepting applications for Woodford because it remains trading and authorised by the FCA.
16. In relation to Hargreaves Lansdown, although I cannot advise you or recommend next steps, you may also be interested in exploring this option:
<https://www.leighday.co.uk/Product-safety-and-consumer-law/Consumer-law/Misselling-of-investment-advice/Hargreaves-Lansdown-group-claim. In response to my preliminary report you have told me that> obtaining legal redress is an expense you cannot afford and that 'after the event' compensation is not really the point.

The FCA's complaints process

17. I agree with you that there were deficiencies in the FCA's complaint process and response to you, as follows:
- a. On 22 August 2019 the Complaints Team wrote to you saying they would write to you in four weeks to summarise your complaint. However, this did not happen. The complaints investigator updated you on 23 September but no summary was provided. Although the Decision Letter of 18 October did

summarise your complaint, it did not explain why there had not been an earlier summary as promised. This is not the first time I have seen this in recent cases. A complaint summary is provided so that complainants can check that the FCA has correctly identified their complaint and can comment on this. It is unfair to complainants to omit this step as it means that they do not know what the FCA is investigating until they receive their decision letter.

- b. The Decision Letter said there is continuing action and you can write to the FCA when it is over if you want your complaint investigated. However, you will not be able to know when the action is over. The FCA should have offered to be more proactive in keeping you informed of progress and asking at a later date if you wish to pursue your complaint.
 - c. The Decision Letter also says that the FCA is limited to what you can be told due to confidentiality obligations set out in section 348 of the Financial Services and Markets Act (FSMA) 2000 and for policy reasons. It is unclear why this paragraph was included in the letter, since you had been told why your complaint was being deferred, and particularly since s348 applies only to what a firm tells the FCA.
 - d. On 23 September 2019, you called the FCA's Supervision Hub because at that point you had not had a four week update as promised. For some reason, the Complaints Team created a new complaint reference for this call and continued to correspond with you with this reference number until 27 November 2019. I consider that this was unhelpful and not customer focussed. Your call was clearly about the fact that you had not had a promised update on an existing complaint. It should have been a simple matter for this information to be passed to the complaints investigator or a supervisor for response. In fact you did receive an update on 23 September, to which you responded on 24 September, and it is clear that the FCA's continued correspondence with you using the new reference number was confusing and added to your frustration with the service you were receiving.
18. These shortcomings in the FCA's complaint process meant that you did not receive as helpful a response as you should have done. I am pleased to note that the Complaints Team's email of 17 April 2020 addresses paragraph 17 b

above and provides you with an update on Part One of your complaint. This says that Part One remains deferred because the FCA has yet to conclude its investigation but also advises you that the Complaints Team will provide you with an update on a six-monthly basis. This is in line with my recommendations on previous cases and I welcome the fact that this has now been implemented.

19. My view is that the complaint investigation should not be deferred until 'any ongoing action is finished'. If the FCA's investigation leads to a decision to act against individuals or firms, there is a significant risk that proceedings will take many months or years before they are concluded. I do not consider that it would be reasonable for you (and others) to have to wait for that long, unless there was a serious risk that completing the complaint would seriously jeopardise the regulatory action.

My decision

20. I have **partly upheld** your complaint because, although I am satisfied that the FCA was entitled to defer Part One of your complaint, and not to uphold Parts Two, Three and Four, its complaints process and Decision Letter had the deficiencies I have identified above (paragraph 17). I **recommend** that the FCA offers you an apology for these deficiencies and I am pleased to say that it has agreed to do so.

21. I also **recommend** that:

- a. The FCA should defer consideration of your complaint for six months from 17 April 2020 or the conclusion of its current investigation, whichever is the sooner;
- b. At that point, the deferral should be reconsidered and the complaint investigated unless either there is a real risk of prejudice to enforcement proceedings or because there is not yet sufficient information;
- c. The FCA should report the outcome of that consideration (and any subsequent six-monthly deferrals) to you and to me.
- d. The Complaints Team should deal with complaints about its service which arise in the course of a complaint in a simple and prompt manner, rather than creating a new complaint reference.

- e. The FCA should ensure that it sends its summary of the complaint to complainants within the time period promised.
- 22. I am pleased to say that the FCA has accepted all of my recommendations and you should shortly hear from them with an apology for the deficiencies identified.
- 23. I would like to conclude by acknowledging the severe distress that has been caused to you by your loss of funds and how let down you feel by the financial regulators. Although you have asked me to start from scratch and reconsider the entire case, I remain of the view that it is better for the FCA to investigate these matters in the first place, even though this means a deferral of your complaint. You will still have the option of referring your complaint to my office if you remain dissatisfied once the FCA has responded.
- 24. The FCA should progress matters as soon as possible on the lines I have indicated.

Antony Townsend
Complaints Commissioner
22 June 2020