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Woodford:
are there new lessons to learn?

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For those of us with long experience of this industry, we may be dismayed that the scenarios which arose in the Woodford Fund saga have occurred again. From the Peter Young affair through Arch Cru through to the Woodford issues, the same sort of issues have come up, just in slightly different guises.

May be the Woodford problems were exacerbated by use of the host ACD model and failings by Link – as indeed the FCA's Final Notice to Link seems to infer. So should we expect that most fund managers should mostly have addressed most of the issues which identified in the FCA's Final Notice ?

We suggest that all UK authorised fund managers should at least review their compliance with the fundamental points behind the issues, and also have regard to the potential effect of the Woodford case on the UK fund industry's reputation.

We can now review the conclusions of the FCA's work in respect of the Woodford Fund issues now they have published

- their Final Notice to Link Fund Solutions Limited in respect of the Woodford Equity Income Fund ("WEIF"),
- together with a Warning Notice Statement 24/3 issued in respect of each of Woodford Investment Management Limited ("WIM") and Neil Woodford himself setting out FCA proposals to take action in respect of conduct summarised in that statement.

What are the lessons to be learned? And are any of these new?

In this Briefing Paper, we look at Link's failings which have been identified by the FCA, the alleged failings by Woodford Investment Management and Neil Woodford himself, and offer some suggestions on potential solutions and lessons to be learned.

All fund managers should review the FCA's papers to see what other improvements, if any, they can make to mitigate the risks of similar issues arising.

Link's failings

Link was the host AIFM of WEIF, a sub-fund of Woodford Investment Fund, an open-ended UCITS authorised in May 2014. WIM was the appointed Investment Manager.

WEIF was a UCITS and so subject to the highest level of regulation as an UK authorised investment fund which is a UCITS including regarding all issues related to liquidity. Despite this: the FCA's findings in respect of Links conduct for WEIF were repeating issues which had been (hopefully) long addressed by most fund managers as follows:

- **The risk liquidity profile was unreasonable and inappropriate in the light of the unit redemption policy.**

  For example:

  - The thresholds which would trigger action if liquidity deteriorated were not set at acceptable levels.
  - The monitoring metrics were not reasonable and appropriate.

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- Even on the metrics they did use, Link, as early as 20 November 2017, noted that it needed to acknowledge that Woodford was in need of better management of its liquidity. By 1 September 2018, Link was referring in communications to WIM to the need to improve the overall liquidity profile of the Fund.
- Other liquidity metrics were not contemporaneously applied which, if they had been run, would have shown the liquidity of WEIF deteriorating and imprudent.
- WEIF was an outlier among comparator funds: it was the least liquid such comparable fund in a number of respects such as the proportion of WEIF's securities that could be liquidated within seven days deteriorated from 10% to 8%, which was significantly lower than the bottom ranked fund.

- **The metrics used to measure liquidity contemporaneously, including stress testing, were unreasonable and inappropriate.**

  Notably:

  - Link assumed a participation rate of 100% - assuming the entire volume of a security which was traded on a given day could be sold without affecting the price of that security – when applying certain of its liquidity metrics. This was/is optimistic. And it led to an unjustifiably positive assessment of the WEIF's liquidity.
  - As mentioned above, the thresholds were inappropriate in the light of the redemption policy – action would only be required when it was already too late.
  - The data used was derived from inappropriate data sources. The data it used reflected the total volume of shares advertised and not necessarily traded on one specific exchange and not, as should have been the case, the total volume of shares traded across all exchanges on which the security is quoted.
  - Inadequate stress testing was identified. It did not test for certain extreme and plausible scenarios. Had Link done so, it would have realised that WEIF lacked the liquidity to withstand such scenarios.

- **Link failed to supervise properly Woodford Investment Management, the appointed Investment Manager.**

  Whilst Link imposed liquidity limits in May 2018 as a backstop position to prevent the portfolio from deteriorating any further, those limits came to be treated (by Link and WIM) as an acceptable framework within which the WEIF was to be run, rather than urging the Fund to rebalance the portfolio away from the inappropriate and unreasonable liquidity profile.

  Further, in October 2018, Link approved a change in the liquidity monitoring framework - at WIM's - request, despite the fact that certain metrics which had identified breaches of liquidity thresholds were abandoned and that the new monitoring framework was less prudent – in that it did not identify the liquidity profile as breaching thresholds whereas the previous framework did, but the relevant thresholds were not adjusted downwards to take this into account.

- **Even though there is strict compliance with the eligible market provisions, in fact the assets concerned remained illiquid even after listing which increased the risks of liquidity issues arising.**

  WEIF held securities which were originally unquoted but later admitted to eligible markets but in fact there were no arm's length market dealings in certain of the securities.

  The Fund included some stocks listed on TISE – the Channel Island Stock Exchange. Only one trade was recorded for any of the TISE securities. These securities were valued by Link using fair value pricing at all stages, before and after their listing.

- **Link's failings materially contributed to the risk that suspension would be required and placed those investors who did not redeem prior to the point of suspension at a disadvantage.**

  In addition to the investment issues, the Fund was also subject to potential for large redemptions. And indeed it was a request from Kent County Council to redeem its holding in full that the decision was taken by Link to suspend dealings in the Funds. The Council was, at the time, the largest single investor in WEIF. They requested a redemption valued at £237 million which was 6.5% of NAV at the time.

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The first mover advantage for those redeeming earlier was exacerbated by the failure of Link to monitor adequately how redemptions were being met by WIM and to help prevent further deterioration of liquidity in the investment portfolio. More liquid assets were sold to meet redemptions exacerbating the decline in liquidity.

Link could have managed liquidity issues in a number of ways, including requiring assets to be sold down equally across the liquidity profile, referred to as "vertical slicing".

If the usual sanction process had been followed, there would have been a financial penalty of £50 million, or £35 million if settled, on Link for breaching for Principle 2 and Principle 6. However, Link had agreed to implement a Scheme under which restitution would be payable. This involves the disposal by Link of substantially all of its value and, because it includes an additional significant voluntary contribution from Link's ultimate parent, Link Administration Holdings Limited, this would result in payment of restitution above what would otherwise be available to Link. Consequently, on 11 April 2024, the FCA published a statement of Link's misconduct in the form of the Final Notice instead of imposing a financial penalty.

The remedy set out in the Scheme is not perfect. The FCA calculated a loss which was the additional amount which would have been paid to those who remained in WEIF at the time of suspension had the proceeds of the sale of assets from November 2018 to the time of suspension been divided equally between all investor rather than being used only to meet redemptions. The Scheme results in restitution of up to £230 million instead of this calculated sum of £ 298,403,919. This is why a high percentage of remediation could be publicised but of course it is not reflective of the actual losses incurred by investors, as substantial losses had already been built into the unit price by the time of November 2018.

Underlying causes of Link's failings

Before looking at possible solutions, it is worth looking at some of the issues involved more closely.

As ever, the FCA has focussed on the Principles rather than specific COLL rule breaches. The FCA concluded there were breaches of:

- Principle 2 – skill, care and diligence; and
- Principle 6 – fair treatment of customers.

In conclusion on liquidity, at paragraph 5.31 of the Final Notice, the FCA concludes that in breach of Principle 2, Link failed to exercise due care skill and diligence as ACD in its oversight of the liquidity profile of WEIF and, in breach of Principle 6, failed to pay due regard to the interests of its customers and treat them fairly. Link placed the interests of one group of unitholders – those redeeming between 1 November 2018 and 3 June 2019 – above the interests of another group of unitholders - those who remained - and failed to ensure that the unitholders of the Fund were treated fairly.

Underlying this finding, important issues to review include the following:

- **Are eligible markets inevitably liquid?**

  A key problem is the error of the longstanding unwritten assumption that a listing on an eligible market means that the securities concerned are liquid. In the case of the Channel Islands Stock Exchange (TISE) headquartered in Guernsey, it is simply not the case.

  The FCA Notice goes into some detail about the unquoted securities and the listings on TISE. Link was of the view that the TISE listings had no effect on WEIF's overall liquidity profile. All this process of listing did was reduce pressure on the 10% unquoted securities limit, increase the size of securities which were either unquoted or otherwise subject to fair value pricing, and the holding of further securities which, in terms of liquidity, had the same characteristics as the unquoted securities.

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Whilst an ACD might not usually be expected to be involved in an underlying assets corporate actions such as listing, an ACD is always required to give consideration to implications of fund issues such as liquidity profiles.

Woodford in effect resolved an immediate compliance issue on the 90/10 unapproved securities point by certain of the existing portfolio investments seeking a listing and so moving into the 90% bucket. But it did not remove the underlying issues for the Fund and its liquidity.

In this case, Link failed to give adequate consideration to the potential implications of WEIF's liquidity profile where the businesses in which WEIF had holdings decided to convert from unlisted status to becoming listed on an exchange. For example, an absolute moratorium on any further investments in fair value assets within the WEIF could have been required by Link: It failed to take that step and missed an opportunity to help prevent further deterioration in the WEIF's liquidity.

Even if there were strict compliance with the 90/10 limits on listed, and holdings of unlisted securities could be justified, there were still issues with liquidity management policies. Link's failings threatened the FCA's operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system. Links failings resulted in significant losses to investors and an adverse impact on confidence in the fund management sector.

It is a classic example of complying with the letter of the law (in relation to the 90/10 rule) but failing to comply with the spirit of regulation more generally.

- **Ensuring adequate liquidity management policies are in place**

  In its liquidity framework, Link used several different metrics:

  - liquidity buckets – grouping the Fund's assets by reference to the amount of time it would take to sell the assets, ranging from highly liquid to illiquid frequently unlisted securities where it would take longer. The methodology used varied over time.

- T+ metric. In addition, the T+ metrics measured the proportion of the Fund that was capable of being realised within a certain number of days, expressed as a percentage of NAV of the Fund.
- Redemption metric which measured the ability of the Fund's assets to meet its potential liabilities in circumstances such as a redemption shock. The methodology for this changed over time.

The FCA concluded that each of the metrics monitored by Link contemporaneously either showed a deterioration in liquidity or would have done so (or would have done so more accurately) had it been calculated appropriately. In particular, if Link had used a Participation Rate 25% and Linear Allocation, the WEIF would have breached thresholds in respect of the liquidity (in April and May 2018 and continuously from July 2018).

The FCA concluded that Link's use of a 100% Participation Rate for WEIF in respect of the Liquidity buckets metric an extreme and unrealistic metric. Link's assertion that it was compensated for by use of its supposedly balancing Full Allocation metric was incorrect as a matter of statistical analysis. The FCA's conclusion is that, had Link used a Participation Rate of 25% for the Liquidity Bucket Metrics (and assumed they had also altered the Full Allocation Metric to a Linear Allocation metric), thereby mirroring its methodology for the T+ and Redemption Metrics, the thresholds that Link contemporaneously set against this metric would have been breached from July 2018.

Further, had Link used a Participation Rate of 20% for the Liquidity Bucket Metrics (and assumed it had also altered the Full Allocation Metric to a Linear Allocation Metric), thereby mirroring its methodology for all other funds for which it acted as ACD at the time, the thresholds that Link contemporaneously set against this metric would have been breached from January 2018. In the Section 166 Skilled Person Report from 19 October 2018 in relation to various issues regarding the activities of Link, it was noted that the participation rate normal market practice would be 20-30% participation being typically assumed.

Despite warnings contained in the skilled person's report of 19 October 2018 concerning the use of a 100% participation rate, and a recommendation that Link revisit this, no changes were made.

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This indicates Link's consideration of issues but lack of follow through in implementing necessary changes.

- **Failures in discussions between AFM and an appointed Investment Manager**

  Link should not have permitted the relevant Liquidity Metrics to be amended such that three relevant Metrics which had to date been part of the monitoring programme, and which were identifying, and were likely to continue to identify, breaches of what had been relevant triggers and limits, were altered or removed, with the result that the Liquidity Metrics purported to show that relevant triggers and limits were not, and were not likely to be, breached.

  This was particularly so in the light of the deteriorating performance and liquidity of the WEIF which clearly established that such a relaxation of prudency requirements was inappropriate. In particular, Link should not have permitted what became the leading measure of liquidity, i.e. the 4-Bucket Liquidity Model, to be calculated by reference to unrealistic metrics, i.e. a 100% Participation Rate and a Full Allocation Method, which it did not apply to its other Contemporaneous Liquidity Metrics for the WEIF.

  The FCA has concluded that Link did not effectively communicate the deteriorating liquidity problems to WIM and, insofar as it did, it did not ensure they were acted upon – and also presided over changes to the liquidity monetary framework which were adopted without proper justification. In certain instances, Link and WIM appear to have had different understandings of what had been agreed in certain meetings.

  This highlights the basic need for clear records of meetings and actions – and follow up on these where necessary as between a fund management company and an appointed investment manager (whether a host arrangement or an in-house one).

- **Inadequate planning for a suspension**

  Link appeared to fail to appreciate the urgency of the situation or to consider the possibility of suspension until the Kent County Council redemption request appeared. Had suspension occurred earlier, it might have provided better outcomes for investors and the outcomes resulting from the suspension which did occur. Link's failure proactively to consider and plan for the possibility of suspension was a significant failing on its part.

  This type of issue might be more likely to arise in a hosted fund arrangement but the need for liquidity management policies to cover the possibility of redemption requests applies to all. And the need for such work to consider the nature of platform holdings, given the widespread distribution through platforms now and the variety of platforms in existence, needs some detailed consideration.

- **Inadequate information provided to investors and the FCA**

  In a similar way to failure to consider suspension, Link's failure to understand the significance of the liquidity problems meant that Link also failed proactively and appropriately to manage what information should be provided to unitholders and putative investors about the increased risks caused by holding large levels of illiquid assets. This therefore meant that Link missed opportunities to appropriately update investors, and the FCA's supervisors, in any informed way about the increased risks.

  It may be argued by fund managers that the FCA expect firms to tell investors too much too soon – which could actually exacerbate the position for the majority perhaps of remaining investors in some circumstances. But the general point that investors may have felt mislead as to the nature of the WEIF remains valid. And certainly the point that Link failed proactively to manage the information and communication with the FCA might well be justified.

- **Overall, a failure to treat different categories of investors fairly**

  In this instance, Link treated investors who redeemed more favourably than the remaining investors. Link was reliant upon WIM to update it on individual investors and their intentions, including Kent County Council. Link was insufficiently proactive in understanding the likelihood of redemptions.

  The need to treat incoming, outgoing and remaining investors fairly has been a fundamental tenet of unit dealing since the original unit trust days. This fundamental principle remains valid regardless of the nature of the structure and should equally be applied in relation to the OEIC structures now typically utilised.

Much of the COLL valuation and pricing provisions are designed to ensure that there is appropriate regulation regarding dealings in units, with the objective of ensuring fair treatment of each of the three categories of investors – and in particular not unfairly favouring one category over the other two categories.

Implicit in the COLL Rules is the need to balance the interests of incoming, outgoing and remaining investors. However, the level of specific regulation now contained within the COLL Rules perhaps leads some in the industry now just to read the COLL Rules, which means that they are likely to miss the point. They focus on specific regulation rather than the point of the regulation. One should always look for the point behind regulation!

Woodford's failings

Warning Notice Statement 24/3 indicates that on 19 February 2024 the FCA has given each of Woodford Investment Management Limited (WIM) and Neil Woodford himself a warning notice proposing to take action in respect of conduct summarised in the statement. It alleges that:

- WIM breached Principle 2 (due skill, care and diligence) of the FCA's Principles for Businesses by failing to act with due skill, care and diligence in the conduct of its business. The FCA considers that WIM:
  - failed to maintain an appropriate liquidity profile for WEIF and made unreasonable and inappropriate investment decisions in the face of ongoing redemptions and net outflows;
  - failed to implement a liquidity risk framework effectively and applied unreasonable and inappropriate metrics and methodologies to measure liquidity;
  - failed to respond appropriately to the ongoing deterioration of the Fund's liquidity; and
  - failed to pay due regard to warning signs about the Fund's liquidity, including concerns raised by Link as its ACD.
- Mr Woodford, who held CF1 (Director) and CF30 (Customer) controlled functions, has breached :
  - Statements of Principle 2 (due skill, care and diligence in carrying out accountable functions) and
  - Statements of Principle 6 (due skill, care and diligence in managing the business of the firm)

  of the FCA's Statements of Principle for Approved Persons when carrying out his controlled functions in relation to WIM during the Relevant Period.

  The FCA considers that Mr Woodford

  - held a defective and unreasonably narrow understanding of his responsibilities for managing the Fund's liquidity risks;
  - failed to pay due regard to the need to ensure a reasonable and appropriate liquidity profile for the Fund when making investment decisions in the face of ongoing redemptions and net outflows;
  - failed to take adequate steps to satisfy himself that the liquidity framework applied to the Fund was appropriate; and
  - did not exercise adequate oversight in respect of certain delegated aspects of his responsibilities and interactions between WIM and Link in which Link raised concerns about WEIF's liquidity.

The failings by WIM and Mr Woodford himself, including the investment decisions, materially increased the risk of and/or resulted in the Fund's liquidity profile and its associated liquidity framework becoming unreasonable and inappropriate. It also increased the risk that the Fund would need to be suspended and thereby place those investors who did not redeem prior to the point of suspension at a disadvantage.

The outcome of this further action by the FCA should throw further light on the delineation between a Fund Manager's role and an appointed Investment Manager's role – and indeed some areas of overlap.

The basics are simple – a delegation by the AFM of the discretionary investment management role for a Fund's investment portfolio but the details of how an AFM adequately fulfils its responsibilities as AFM – with all the fund operational responsibilities – does involve an AFM

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having a good understanding of the underlying investment portfolio management and consequences of issues arising from that investment management.

We would submit that the two roles of the Authorised Fund Manager and an appointed Investment Manager are not mutually exclusive. Each risks relying upon the other in areas where there is a close connection or some element of interdependency.

Action points

It may be too easy to dismiss the Woodford saga as a repetition of old issues which were Link and Woodford specific rather than applicable to fund managers more generally.

Pending the FCA's further work in respect of WIM and Woodford, there are various issues which all fund managers can review with a view to improving the position for their authorised fund manager entities – and the position with managing relationships with their appointed Investment Managers.

Some clear and high level points emerge which are not solely related to compliance with specific COLL rules.

- **Comply with the spirit of regulation**

  Our principle message is that compliance with the letter of regulation is no substitute for complying with the spirit of regulation.

  Even if strictly something might be compliant, a firm may still be failing to comply with the spirit of regulation and so likely breaching the FCA's Principles, and so acting inappropriately.

- **Scope for improving liquidity management policies**

  AFMs will no doubt have sought to comply with the existing rules for liquidity management policies but might liquidity metrics be capable of being improved?

  At the time Woodford issues were first publicised at the time of the suspension of WEIF, some CIOs said that the Woodford scenario for WEIF could never happen in their fund ranges but in fact policies have changed markedly over recent years. All fund managers should now have detailed liquidity management policies in place looking at a number of scenarios and comprehensive stress testing.

  Some liquidity management concerns do not really derive from a CIO's office remit: it requires the AFM to look at the Fund's overall liquidity characteristics. With the changes in distribution over recent years, the likelihood of large holdings by a single investor, e.g. wealth managers, has increased. Liquidity management risks might derive from the level of investment by certain investors which leads to a large redemption possibility.

  So liquidity management policies should be reviewed regularly to check if they are still doing their job, and this exercise requires an Investment Manager and AFM to combine their input and skills to ensure that the AFM can fulfil its responsibilities to maintain adequate liquidity risk management policies.

- **Look again at eligible markets criteria**

  In looking at the COLL compliance issues, it is not sufficient simply to look at strict compliance, e.g. monitoring compliance with the 10% limit on unapproved securities – including unlisted securities. One has to look at the entire picture and consider what is the true position of relatively illiquid securities which happen to qualify to be within the 90% approved securities bucket.

  The view in Luxembourg and Dublin of looking at the 10% as the trash bucket is not helpful – it has never really been that designed to catch anything that is not in the 90% bucket. It has its own terms. But the issue in the Woodford scenario concerned something which fully qualified to be in the 10% bucket and, once it sought a technical listing, could move to be within the 90% bucket. It might be advisable for the FCA to look again at what is allowed in the 10% bucket or, more to the point, the 90% bucket. The key issue here to reconsider is whether the UK should look again at the approved and unapproved securities categories – with a particular eye on actual liquidity.

  Given the issues yet again with use of TISE listed securities, may be the point here with listing is to go back to what it used to be originally which is that the listing involved the potential for dealings and so a price on the market – if this cannot be met then the securities should not be treated as securities admitted to eligible markets.

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Should the eligible markets terms be amended in COLL? One change to consider should be to focus on requirements for the 90% bucket and to ensure that, for these sorts of funds which are designed to be daily dealing, 90% of the assets are indeed liquid. So one should focus on the eligible markets definition and ensure that those markets will indeed lead to trading in those securities and so provide liquidity.

Before any review of the COLL Rules, fund managers could anticipate this by the way in which they operate their funds and set the eligible markets in their prospectus documents and so preclude the possibility of the Woodford Fund issues arising such as in respect of TISE listed securities.

- **Achieve clarity on the respective responsibilities of an AFM and Investment Manager**

The Woodford case demonstrates the need for there to be a clear understanding of the respective roles of the Authorised Fund Manager ("AFM") and an appointed investment manager – whether it is a host AFM and third party investment manager model or where it is an inhouse one with two group companies performing these roles. **To date, there has probably been an overemphasis on the role of the investment manager where there is any sort of investment issue involved whereas in fact some of the responsibilities sit with the AFM.**

Despite claims by some commentators to the contrary, the functions of an AFM are clear. It is how they should exercise those functions which might be the subject of some debate, and the extent to which AFM's must go to fulfil their responsibilities. And even if responsibility is delegated, the AFM retains responsibility to monitor and supervise that delegation.

So, for Link, it is clear that managing liquidity risk was a key function of an AFM. Even where the AFM delegates investment management, the AFM remains responsible for setting the liquidity management policies and for ensuring that liquidity is managed appropriately. This is not in doubt, the question is how it should fulfil this obligation.

For all fund managers, there is a constant need to review governance arrangements for AFM and investment manager entities and their relevant committees to ensure that there is an appropriate balance of power, with decisions in respect of each firm's responsibilities be taken by that firm. Where there is overlap, such as this case clearly highlights in respect of liquidity linking with investment management, each must fulfil its own roles and there must be good communication between the two entities so as to ensure an overall outcome having regard to the best interests of investors.

Although from September 2018 onwards, Link repeatedly said to WIM that there was a need to improve the overall liquidity profile, Link failed to ensure that the necessary actions were taken.

Whether within a hosted fund arrangement or one with an inhouse AFM, the same issues arise of the AFM making sure that necessary actions are taken.

- **Ensure the AFM understands its funds' investment portfolios**

Understanding the investment portfolio composition is a prerequisite for the AFM being able to do its job.

In particular, for some hosted models, there might be a temptation for the investment objectives and policies to be set at the outset and then it is left to the investment manager to run the portfolio, with standard triggers for compliance with specific limits in COLL 5 for the investment restrictions then expected to be sufficient on an ongoing basis. The Woodford scenario demonstrates clearly this is not sufficient.

An AFM must seek to understand the overall composition of a portfolio and to have a clear understanding of it so that it can then manage the fund operational aspects: valuation, pricing and dealing and liquidity management.

Whether a hosted fund operation or an in-house one, it is incumbent on boards of AFMs to ensure that they have a good understanding of how the investment mandate for each of their funds is run.

As a fund's portfolio develops, there will always be issues to review, not just in liquidity management but to consider whether the investment objectives and policies set out in the Prospectus for investors remain valid:

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- Imposition of investment manager policies. For example excluded investments, or a responsible investing approach – or net zero targets - can have significant implications and may not all initially have been disclosed to investors.
- If the nature of the assets held are not of the type expected, it may be that the investment objectives and policies of the funds should be reviewed.
- More widely, and particular pursuant to implementation of Consumer Duty, it is incumbent on fund managers to make clear to investors the nature of the investments of a fund in which they are invested in the interests of clear communication. In the Woodford case, investors thought they were investing in a mainstream listed securities portfolio – not one with a substantial holding of unapproved stocks or approved securities with technical listings which exceeded the 10% assumption for such which is typically understood.

On an ongoing basis, AFMs should review with their appointed investment managers the way in which funds are managed. Whilst the assessment of value exercises have now helpfully led to such a review on an annual basis, this exercise should actually be undertaken on a regular basis as part of review of the investment manager's performance – and as changes to the investment manager's policies might arise or investment circumstances change.

- **Positively seek to treat investors fairly**

There is a clear need to look, from first principles, at treating the three categories of investors fairly – incoming, outgoing and remaining investors.

One cannot look at compliance with specific COLL Rules without looking at the purpose of some of them – for example on redemption policies. One is not just considering complying with the COLL rule but whether there is fair treatment of customers under Principle 6 – and of course now the Consumer Duty issues too.

The treating customers fairly (TCF) initiatives perhaps have become too generally viewed – and now the Consumer Duty is of course an all-encompassing obligation. The task here though is much more to look at the nature of investment funds and each category of a fund's investors.

This issue was considered at length in various old debates, for example on the introduction of single pricing, and it arises again in relation to the issue and redemption of units, and in the instance of the Woodford saga, focussing on the redemptions position.

The task is for authorised fund managers is to look specifically at the various categories of investor and ensure that there is a balancing of the interests between the three categories of incoming, outgoing and remaining investors – and most likely, in the case of a conflict of interest, focussing on remaining investors.

Whilst various UK authorised fund managers may, at first glance, be dismissive of the publication of the Final Notice to Link in respect of the Woodford Equity Income Fund this month, we think it would benefit all to review some fundamental issues.

Issues to consider include not just whether liquidity management policies can be improved but, more widely:

- **seeking to look at the principles behind regulation;**
- **achieving clarity on the respective responsibilities of the AFM and the Investment Manager;**
- **checking that the AFM has a full understanding of each Fund's investment portfolio and monitors it; and**
- **ensuring the AFM is truly achieving fair treatment of investors.**

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