

# Leigh Day's reflections on the Mello/ ShareSoc webinar on Woodford on Tuesday 9<sup>th</sup> March 2021 and our responses to attendees' questions



For anyone who missed the event, you can watch it online here:  
<https://www.youtube.com/watch?v=fJkfyOGF5v0>. The timings are:

4 minutes	Ed Croft, CEO Stockopedia, Background analysis
31 minutes	David Ricketts, Author of "When the Fund Stops", explains recent developments
51 minutes	Three investors tell their personal stories
1 hour 11 minutes	Cliff Weight, ShareSoc, explains why ShareSoc endorsed the Leigh Day Claim
<b>1 hour 18 minutes</b>	<b>Boz Michalowska, Leigh Day and Derreck Dale QC, Fountain Court Chambers explain the Leigh Day Claim against Link</b>
1 hour 57 minutes	Cliff Weight, ShareSoc, discusses regulatory reform
2 hours 06 minutes	Mark Northway chairs the panel Q&A

Leigh Day would like to thank ShareSoc and Mello for organising the event, as well as the other members of the panel for their insightful contributions, and the investors in the Woodford Equity Income Fund who shared their stories. A huge thank you also to all of those who attended the webinar, for your interesting and relevant questions, and for all the positive feedback on the event.

There were so many questions at the webinar that we were not able to address all of these at the time. We have been through all of the questions which were not answered during the webinar, and have grouped these into themes, and have tried to answer all of the questions and address each theme insofar as we are able to.

Please note however that our responses below are for information purposes only and should not be relied on as legal advice. If you have any further questions about the Leigh Day claim on behalf of investors in WEIF which are not addressed below, or if you would like to discuss any of our responses with us, please feel free to contact the Leigh Day legal team at [woodfordclaims@leighday.co.uk](mailto:woodfordclaims@leighday.co.uk).

The themes we have identified are:

- A. The Financial Ombudsman Service**
- B. The Group Action Leigh Day is bringing against Link and questions about Leigh Day's terms**

- C. The differences between the legal cases that various law firms are bringing and choosing which law firm to instruct**
- D. Questions about potential claims against Hargreaves Lansdown**
- E. Questions about the group claim against Link**
- F. Questions relating to Woodford's actions**

## **A. The Financial Ombudsman Service**

1. I found that approaching the financial ombudsman (FOS) is far too complicated. I ended up giving up. Like one of your case studies, I wasn't sure who to 'pin' the blame on when completing the forms. There should be a simpler, more transparent way to approach them, particularly for such a widespread case.

### *About the Financial Ombudsman Service*

As an individual, you have the option of making a complaint to the Financial Ombudsman Service ("FOS") about a financial business you have had dealings with. This is a free service. It is up to you who to make a complaint about.

If the FOS agree that you have been treated unfairly, they can ask the business concerned to pay you compensation.

Details of the FOS and the time limits that apply in respect of the FOS can be found at <https://www.financial-ombudsman.org.uk/>

### *Difficulties using the FOS*

We appreciate that this service can be difficult to use. Unfortunately, there is no easy way around this.

The issues relating to a financial claim can be complex and an applicant may want to seek some assistance in preparing their complaint, in order to have the best prospects of receiving some compensation. However, should an applicant pay a lawyer to assist them with their complaint to the FOS, those costs may not be recoverable from the opponent on the successful conclusion of the claim.

### *An alternative to using the FOS – joining a group action*

One alternative to making a complaint to the FOS is to instruct a law firm to bring a claim on your behalf through the courts. The group claim being brought by Leigh Day is one such option.

The legal claim brought by Leigh Day is being taken forward under a Conditional Fee Agreement (CFA) more commonly known as a "no-win-no-fee" agreement which means that if there is a successful outcome, claimants will only be required to contribute a maximum of 30% inclusive of VAT of their winnings towards the costs of the litigation.

If the group action is not successful, the claimants would not have to pay their lawyers under a no win no fee agreement but would be liable for the defendants' costs. Leigh Day have however obtained After the Event (ATE) insurance to protect claimants against having to pay the defendant's costs in the event that the claim is unsuccessful.

There is currently no provision within the FOS' rules for bringing claims by way of a group. In this regard, we are of the view that Group Action proceedings would be more effective than pursuing individual claims via the FOS, not least because of:

- a) The court disclosure rules which will give the claimants access to documents held by the defendants;
- b) The opportunity to hold trials of preliminary issues to decide key questions of fact and law; and
- c) The opportunity to benefit from the assistance of solicitors, barristers, and economists, the costs of which are shared between all the named claimants.

**B. The group action Leigh Day is bringing against Link and questions about Leigh Day's terms**

- 2. Why do Leigh Day believe pursuing a claim against Link has a greater chance of success over a claim against Woodford or Hargreaves?

Link Fund Solutions Limited (“**Link**”) was the authorised corporate director of LF Investment Fund. LF Investment Fund is the entity which issued shares in the Woodford Equity Income Fund (“WEIF”). This meant that Link was the one which was legally responsible for the management of WEIF. The authorised corporate director is directly responsible and accountable to the FCA and the investors for the management of the fund. Its role is an essential one in protecting the best interests of every investor in the fund.

The rules of the Financial Conduct Authority (“FCA”) require funds, such as WEIF, to follow investment restrictions that are designed to protect investors. Among other things, the FCA rules:

- (i) Provide that funds may invest in securities only to the extent that they do not compromise the ability for investors to redeem shares; and
- (ii) Prevent funds of this type from holding more than 10% of its portfolio in unlisted companies.

These rules are designed to prevent funds of this type from investing in securities which would be difficult to sell and might therefore prevent investors from withdrawing their money from the fund.

Compliance with these rules is all the more important where shares are redeemable on any open trading day, which was the case with WEIF.

Our case, in short, is that WEIF's excessive levels of illiquid or difficult-to-sell investments, the extent of which was particularly unusual when compared with comparable funds, significantly impaired liquidity.

The suspension of WEIF was eventually triggered by redemption requests which the fund was unable to meet.

The FCA has indicated that the key causes of WEIF's suspension included:

- i. a liquidity mismatch - A structural liquidity mismatch can occur in an Open-Ended Investment Company, or OEIC, when the frequency at which units can be redeemed is greater than the frequency at which the fund manager may be able to liquidate the assets of the fund; and
- ii. a reluctance by Link to offer a more assertive challenge to Woodford.

The problems with the fund's illiquidity and Link's failure to comply with the FCA rules will be, in our view, central to any claim in relation to the failure of the WEIF. Any claim – against Hargreaves Lansdown or Link - will need to show that there were problems with the fund, which have caused investors losses.

In order to bring a claim against Hargreaves Lansdown, in addition to proving that there were problems with the fund, it would also be necessary to establish that, from a legal perspective, Hargreaves Lansdown breached its own obligations.

The opinion of the legal team is therefore that the best recourse for timely redress is to pursue the claim against Link at this stage. This claim has strong legal foundations and is based on objectively verifiable facts as to what the liquidity profile and risk was within WEIF at all material times up until suspension. There is therefore a clear route to success and the case can be advanced with minimal distractions or factual disagreements. We consider that it has the best prospects of resulting in a timely resolution for investors in a cost-effective manner.

(See below about a potential claim against Woodford.)

3. If the case against Link fails, is that where it ends or will Leigh Day then pursue the fund managers or financial advisors that advised investors to invest in the Woodford Fund? I'm happy to go after Link or Woodford but not my FA and wouldn't support any case against them.

Clients for the claim Leigh Day is taking forward against Link have the benefit of after-the-event insurance and are backed by legal third-party funding. Leigh Day has not sought or proposed a claim against IFAs and has no funding arrangements in place for such a claim.

4. If a client is not signed up to your case and you win, are those clients who are not signed up likely to get compensation if the court finds in your favour anyway?

A claimant's ability to pursue a claim through the courts depends on the claim still being within its statutory limitation date. There are time limits that apply to certain legal claims and you will need to bring a claim within the time limit that applies for your case.

For example, the claim against Link is a claim for breach of statutory duty in which the cause of action accrues when damage is suffered. The time period within which court proceedings must be issued is therefore six years running from that date. In relation to breaches of the rule that prevent WEIF from holding investments that will compromise Link's ability to redeem shares, our expert analysis indicates that the breaches are likely to have started to occur from 2016 and damage could arguably be said to have occurred from that date. We therefore consider that to be on the safe side proceedings should be issued no later than January 2022. This will ensure that any claimants in those proceedings can bring claims for all of their losses in connection with the investment.

In addition, we may be claiming that there were breaches of rules relating to the valuation of the investments held by, and the units in, the WEIF. The time limit for issuing proceedings in relation to these breaches may not be exactly the same as for the claim in respect of breaches of the liquidity rules. However, as the relevant valuation breaches are considered likely to have occurred in broadly the same period (i.e. from 2016 onwards), we believe that proceedings for these claims must also be issued no

later than January 2022.

The above are examples only and you will need to bring a claim within the time limit for your case to avoid your claim being time barred. It is advisable for you to use the earliest date that applies.

To bring a claim in time, you need to file a claim form with the court and pay the court the applicable fee.

It is not anticipated that the claim will have concluded prior to expiration of the limitation period. This means that for people who do not bring court proceedings, there is a chance that they will miss out on the chance to claim compensation.

5. Are there any circumstances where Leigh Day could end up sending me a bill e.g., if the case is lost and the insurance fails? – I have lost enough through Woodford and can't afford additional fees!
6. Leigh Day's CFA makes it clear that the claimants are responsible for paying any legal costs awarded to the other side should the claim be rejected. ATE insurance is supposed to cover this but what if the costs awarded exceed the £5m insurance limit or the insurance company fails despite its A-rating? Does the risk of massive downside costs if the case is lost outweigh the potential benefit for small investors?
7. What happens if claim is lost and damages/ costs are awarded to other parties? Will I have to pay anything?
8. Are you satisfied that the insurance that Leigh Day have secured ensures that there is no risk of those Woodford investors joining the Leigh Day claim incurring any personal financial costs if the case is lost?

The legal claim Leigh Day is taking forwards is on a no-win-no-fee basis. Those who sign-up can cancel free of charge during the 14-day cooling off period after registration; however, there may be charges if they seek to cancel after that as work on their case may have already started.

If the case is successful, then up to 30% of a claimant's winnings can go towards the costs of the litigation.

If Leigh Day has to cancel the agreement with a client because, for example, the client misled Leigh Day then there could also be cost implications in such a case.

Leigh Day are able to take the claim forward because we have a fully executed after the event insurance (ATE) policy in place from insurers, who are A rated by top rating agencies, to protect claimants in respect of their liability towards the defendants' costs if the claim is unsuccessful.

The amount of cover necessary has been determined after considering the costs of the claim and claimants likely share of costs.

We believe that we have sufficient insurance cover to protect our clients. There may be unforeseen circumstances that we have not been able to cater for, but we have done everything we can to minimise any risk exposure. We also expect the court to manage the costs of the litigation, so that we will know as

the case progresses to trial what the defendant's costs are likely to be and if necessary, we will apply for further ATE cover.

Should you provide false information, as a result of which it is necessary to discontinue your claim, the ATE insurance may not cover you in respect of the defendant's costs.

You may also not be covered by the ATE insurance if we issue proceedings on your behalf and you thereafter decide, against our advice, to discontinue your claim prior to the conclusion of the case.

Finally, we have been asked what happens if the insurance fails. The Insurers providing this policy are covered by the Financial Services Compensation Scheme ("FSCS"). An insured entity may be entitled to compensation from the scheme if the Insurer cannot meet its obligations. This is subject to conditions, limits and requirements set out by the Prudential Regulation Authority (PRA) [in their rulebook](#). Please visit <https://www.fscs.org.uk/what-we-cover/insurance/>. However, we consider that it is very unlikely that this situation would arise.

9. Do your claimant clients include investors who sold out in, say, 2019 before suspension having made losses, or only investors who still held their investments at the time of suspension/winding up?

The claim Leigh Day is currently taking forward is on behalf of those investors who had some shares locked in the fund at suspension.

10. On the ShareSoc website under Eligibility to join the Leigh Day Group Claim, it states "If you invested in a fund which in turn invested in WEIF (e.g., the HL Multi-Manager Income & Growth Fund) ...". Clarification please if I invested in units in a LF Equity Income in a SIPP or ISA through Hargreaves Lansdown can Leigh Day help me?

If you are a holder of WEIF shares, then you are eligible to bring a claim irrespective of whether the investment was held in a pension or tax efficient account.

11. What happens if LD are successful in this group claim if an investor who has not joined in the group legal action wants to lodge an individual claim afterwards either against Link or via FOS?

A claimant's ability to pursue a claim through the courts depends on the claim still being within its limitation date. Those who have not signed-up can seek to pursue their own claims provided they are within their limitation period, which will vary depending on the legal arguments being advanced.

Time limits also apply for raising a complaint with the FOS, and in this regard, investors should review the FOS' website.

FOS cannot consider a complaint if it is referred to it: more than 6 months after the date of the final response from the defendant or, more than 6 years after the cause of action arose or, if later, 3 years from the date on which you became aware that you had cause to complain. See here: <https://www.financial-ombudsman.org.uk/consumers/expect/time-limits>

It is not anticipated that the court case would have concluded prior to the expiration of the limitation date (see above).

12. What would be the latest date to join the Leigh day claim?

Claimants would need to issue proceedings before the expiration of the limitation dates (see above). A group register has not yet been opened and a cut-off date for joining the group action has not yet been set. Leigh Day currently anticipate it will be possible to join the claim for the coming months. However, this may be subject to change, and investors who are not joining the claim now may wish to contact Leigh Day regularly to stay apprised of developments.

13. When do Leigh Day expect to be able to send the questionnaire to individual investors?

We are building an online data-collection questionnaire, so as to ensure data is collected as efficiently as possible. Because of the likely volume of trades some individuals may have it has been a complex exercise, however the questionnaire is almost ready for roll out and is currently being tested.

14. Why were only 4000 names included in the letter mentioned and not the full 7000 names as mentioned in the presentation?

A letter before action (LBA) was sent to Clifford Chance, Link's solicitors on the 5<sup>th</sup> of March, appended to that letter was a list of 4000 of our clients. So as to manage the lists as efficiently as possible and ensure we can carry out identity checks prior to inclusion on the LBA, lists of claimants are being sent in batches and further updated lists of claimants will be sent to Clifford Chance on a regular basis.

15. Can Leigh Day share their timeline over the next 6 months?

In accordance with civil procedure rules, Link has three months to respond to the LBA. If Link, having considered the representations made, are not willing, at this stage, to engage in meaningful discussions regarding settlement of our clients' claims, court proceedings will be issued on behalf of all our clients, starting the formal court timetable.

16. In a settlement of the claim, it is often agreed that each party bears its own costs. How would that be dealt with by the insurance?

If the case is settled because Link offers to pay the claimants a settlement sum, then there is no risk to claimants of having to pay the costs of Link and therefore the insurance policy would not need to be used. This is because, if the claim settles in the claimants' favour or proceeds to trial and is successful, the claimants' costs will usually be met by the defendant.

In the event a settlement is reached whereby each party bears its own costs, recovery of the claimants' legal costs, disbursements, funder's fees and insurance premium will be limited to the 30% deduction from our clients' compensation.

17. If you had shares in WEIF in your pension scheme that your financial advisor manages, can you join the claim?

If you are a holder of WEIF shares, then you are eligible to bring a claim irrespective of whether the investment was made through a pension wrapper or by your IFA.

18. I was invested in the Woodford Equity Income Fund via my Scottish Widows Pension fund supermarket. Can I still join the Leigh Day claim? Thanks

Please feel free to contact the legal team about this at [woodfordclaims@leighday.co.uk](mailto:woodfordclaims@leighday.co.uk).

19. Can you share with us a copy of Leigh Day's Counsel's Opinion?

We are afraid not; the Opinion includes analysis of the legal team's research, and it is important to keep this information confidential.

20. Does the funding in place only cover the High Court action, not any subsequent appeal?

The Conditional Fee Agreement with our clients covers:

- Any appeal made on our advice.
- Any appeal made by an opponent which we advise clients to defend.
- Any proceedings taken to enforce a judgment, order or agreement.

The third-party funding has been budgeted to take the claim through to trial and does not include any subsequent appeal. Should the claim be unsuccessful, and the prospects of a successful appeal are strong we will have the opportunity to extend the funding and after the event insurance accordingly. Equally if we are having to defend an appeal, the funding and ATE are likely to be extended.

21. Is the Woodford Income Focus fund included in any actions against Link/H.L.?

Not at this time. Our investigations have so far focused on WEIF as it was this fund that was affected by liquidity issues that caused the fund's suspension and winding-up. If later it transpires that there are good grounds to bring claims on behalf of investors in the Woodford Patient Capital Trust or Woodford Income Focus Fund, we will communicate this.

22. Should Leigh Day succeed in claiming compensation, please indicate a quantum of return and who will have to pay?

The claim is being brought against Link. The value of the claim will be subject to expert analysis; however, it is envisaged that it will be greater than the difference between the amount of the original investment and amount received through the capital distributions that have taken place as part of WEIF's winding-up as we will also seek to recover the return on investment that investors were entitled to expect.

23. If a large sum of compensation is awarded following Leigh Day's action how deep are Link's pockets? Could they not go into liquidation and avoid paying compensation?

The defendant Link is a subsidiary of Link Administration Holdings Limited. In November 2017, Link Group purchased Capita Assets Services ("CAS") for £909 million. CAS operated in four major business segments, and in the fund solutions segment, CAS was the leading authorised fund manager in the UK. The acquisition provided Link Group with immediate scale in the UK, Jersey and Ireland and a growth

platform in Europe.

The main entity in the UK arm of the fund solutions business is the defendant Link, which on 30 June 2019 operated 98 UCITS and 81 alternative investment funds, whose respective assets under management were £38,284 million and £34,426 million. Link appears to also be involved in the administration of other funds for which it is not the operator.

However, during its 2019 financial year, Link only had revenue of £36 million, income of £7 million and net assets of £39 million. On this basis, Link may not by itself be able to pay the entirety of the sum of the damages of all the claimants in the group.

Leigh Day considers that it is likely that Link will have in place an insurance policy to protect it from claims such as this. If Link is not protected by suitable insurance, its parent company may assist with paying compensation. However, should either Link or their insurers or parent be unable to meet an award of damages against it, be in default or go into liquidation, claimants can apply to the Financial Services Compensation Scheme ("FSCS") for compensation.

The FSCS can pay compensation when a firm in default owes an eligible claimant a civil liability in connection with regulated activity. Therefore, FSCS eligibility requires (among other things) that Link must first be in default in the circumstances that claimants obtain judgment against Link and an award of damages.

The level of compensation recoverable via the FSCS is however limited to £85,000.

#### 24. What is the *broad* timescale of the class action?

Although it is difficult to anticipate the timescale with any accuracy, if the matter progresses to trial, Leigh Day hope that the trial will be concluded within about three years.

#### 25. My husband and I each invested heavily in 2014. He died in February 2020 and after probate all his investments were allocated to me. Will I be able to claim for both investments as they are now in my name?

If you act as the representative for the estate of a deceased person (e.g., under a Grant of Probate), then you will be able to bring the claim as the representative and the sign-up form will request the relevant information. After you have signed up, we will request the necessary supporting documents.

If the investments have passed to you following the distribution of a deceased's estate, you will be able to bring a claim in your own name.

#### 26. What effect does the FCA not having reported on the matter have on the weight of the Leigh Day claim?

The Leigh Day claim is being advanced irrespective of the work of the FCA.

27. As the case against Link proceeds will it be possible to include other defendants (Woodford, Hargreaves for example) in the case at a later stage if evidence comes to light indicating that it would be appropriate?

Yes, these scenarios are possible if the legal team conclude that including Hargreaves Lansdown or Woodford as defendants is necessary and will not delay or unnecessarily increase the costs of the litigation.

28. If link were to make an offer to compensate ourselves for some but not all of the losses, would we be consulted before any potential offer is accepted.

All claimants will be kept up to date with all developments in the case. In large group actions where we may act for thousands of claimants in the same matter it is very difficult to obtain instructions from all claimants in an efficient and timely manner. This impacts on the smooth management of the litigation. It is therefore necessary to appoint a claimant committee made of representative claimants in the group action who can act and speak on behalf of all our clients in the group. The committee will make decisions and provide instructions on behalf of everyone in accordance with the Group Management Agreement. All claimants will be notified of the committee's instructions, particularly in respect of a settlement and all clients will have the opportunity to discuss their claims and any settlement proposals with the legal team and give their instructions.

29. I received written advice in May 2018 from HL, in the context of my anticipated retirement, confirming the composition and fund selection I held with them, which included WEIF. I have signed up with Leigh Day and have not so far approached HL. Would I be better to join a claim against HL if I cannot do so with Leigh Day?

You may have a potential claim against Hargreaves Lansdown or other Independent Financial Advisor in respect of investment advice given if that advice did not match your risk profile. We are not currently pursuing claims in respect of individual investment advice or claims against IFAs.

**C. The differences between the legal cases that various law firms are bringing and choosing which law firm to instruct**

30. Leigh Day's case is against Link. However, there is another group action being brought by another firm against HL. Could I join both? If not, is it possible that one succeeds and the other fails? As a small investor how am I supposed to know which one to join? Also, why are Leigh Day insisting that I withdraw my FOS complaint in order to join their group action?
31. Slater and Gordon are bringing a claim against Hargreaves Lansdown which I am also signed up for. Can I still do this as it is a different claim against a different body or do I need to relinquish this claim in order to join Leigh Day's claim?

Our approach is to not accept a client for the claim against Link if the individual has instructed another law firm to seek compensation against a platform in connection with the same WEIF shares. Ultimately, you cannot be compensated twice for the same loss, which means that if you accept a settlement via the FOS or are successful in your claim against a platform whilst also having ongoing proceedings against Link you would have to bring to an end your claim against Link and vice versa.

Once proceedings are issued you will be at risk of having to pay the defendant's costs if your claim is discontinued. If you discontinue your claim in these circumstances, the After the Event insurance may not cover your liability in respect of these adverse costs.

You also cannot instruct two different sets of lawyers to pursue proceedings against the same defendant in respect of the same matter. Not only is it against SRA rules to take on your instructions if you have already instructed another law firm, but it will also result in you incurring unnecessary costs.

In the circumstances, we will not be able to act on your behalf if you have instructed other solicitors or have an ongoing complaint in the FOS against a platform with respect to your WEIF shares. You may, however, choose to instruct us if the FOS process against your platform is unsuccessful, subject to your claim being within the limitation period to issue proceedings. You may also instruct us if you choose to withdraw from the FOS process.

32. Will each law firm make different approaches, or will the reward be the same? So, for us the only real difference is the fee structure? With numerous companies pursuing claims for their clients is there a benefit in being with a company that brings any legal proceedings first (with the risk of Link running out of money)

Also, will all companies' cases be brought against Link in court independently? i.e. with there be a possibility of numerous court cases spread over time?

33. Will the various law firms and their QCs help each other in a group claim?

34. How does the Leigh Day legal case tie in with the legal cases brought by the other 4 firms of solicitors? Are they all heard at once in the courts? Is there any difference in the chance of success between different solicitors' cases? Are the resources pooled or there a lot of duplication in the development of the cases?

Where claims give rise to common or related issues of fact or law against a common defendant, an application for Group Litigation Order may be made whereby the court will manage all the claims as a group, appointing lead solicitors and a steering committee to conduct the litigation.

All claimants will accordingly be added to a group register of claimants irrespective of which firm they instruct so that the claims can be managed together by the court. Claimants resources will thus be pooled and costs and risks shared.

The decision of the court and the court judgment will be delivered together at the same time following one single trial and will be binding on all the claimants on the group register.

Leigh Day consider that it is likely that claimants in claims being advanced against Link by different law firms, based on the same/similar issues, would be subject to such a Group Litigation Order and joined together.

Further, Leigh Day consider it is in the interest of all those affected for the law firms to collaborate in order to pool resources and present the strongest case possible in a united way. Leigh Day has already reached out to other law firms in an effort to collaborate.

Claimants should be aware that if they instruct firms other than Leigh day, those firms will need to make sure they have sufficient insurance and funding in place to contribute to the disbursements and meet adverse costs for their clients.

35. Will you share pros and cons of the different law firms? Is there any connection with Leigh Day?

Those interested in instructing a law firm for a claim against Link should undertake their own research, which may include speaking to the legal teams; reviewing the firms' terms of engagement; fee structures; whether they have ATE and deciding which firm they consider is the best one for them.

Leigh Day is acting for clients on a no-win-no-fee basis with fees capped at 30% (including VAT) of any compensation received and most importantly has after the event insurance in place to protect claimants in the event the claim is unsuccessful. Claims should not progress in the absence of ATE.

The team at Leigh Day is working with expert economists and counsel Derrick Dale QC of Fountain Court and Teniola Onabanjo of 3 Verulam Buildings. The work of the legal team resulted in a 53-page letter before action that was sent to Link's solicitors.

Leigh Day are specialists in large scale complex group actions and are ranked as tier 1 by the top legal directories.

We are not a claims farmer or claims management company.

36. If we've signed up with another legal firm, can we change now to Leigh Day?

37. Can you provide guidance re: other legal firms with rather aggressive sign-up procedures - is it permissible to be registered with more than 1 group action, and if not, is there any way to cancel a previous registration/instruction?

If you have already formally instructed another firm by entering into a formal funding agreement with them, you cannot instruct an additional law firm in respect of the same matter.

You are, however, entitled to terminate your contract with any law firm, within 14 days of entering into that agreement, without penalty. In these circumstances, if you still wish to instruct Leigh Day, you will need to notify the other firm within the 14-day period to avoid any charges being applied. You are still entitled to terminate the contract outside of the 14-day period, but the other law firm may charge you for the work that they have done on your individual case.

#### **D. Potential claims against Hargreaves Lansdown**

See above in the section about the Leigh Day claim for an explanation of why we are currently focusing on Link rather than Hargreaves Lansdown as the defendant of a claim on behalf of investors. We have set out our responses to any further questions on this subject below.

38. Why is the WEIF claim not against HL as well against Link? When will we know if a case will be brought against Hargreaves Lansdown given that 78% of the participants in this webinar invested

via that platform?

39. What liability / role did Mark Dampier at HL play. My understanding was that he was busy selling down the fund while HL still was recommending it?
40. To what extent are HL responsible for not changing tack on their recommendations/information provided during the latter period of this saga?
41. When performance was dropping off, I looked at HL's rating and it was still in the Wealth 100 (?) and an article saying they'd analysed the fund and felt it still safe, so I did not sell. Is there an action possible against HL, or should we completely ignore their ratings and analysis?
42. I am of the opinion that HL were negligent in continuing to promote Woodford Funds as a whole. In my personal discussions with them post the freezing of the fund, they are very defensive and maybe expecting an action against them. Would this benefit those who have signed up with Leigh Day?
43. Accepted that HL are essentially a trading platform, but by the nature of their actions - do you consider they were actively promoting the Woodford funds?
44. Surely, as a simple investor, the Company if it 'promotes' a fund to be made up of a certain structure of Companies, if it changes that, surely there is a legal obligation on it to advise each Customer accordingly? Equally, that is my gripe with HL - they should have shown more due diligence and concern for their Customers.
45. Hargreaves Lansdown states that it takes care of its clients and uses its investment experts to ensure their recommendations are always current and solid. When problems arise, e.g. Woodford leaving IP, HL issues a notice to its clients. Why did HL keep Woodford in its recommended Wealth 150 list and even when things were looking risky, withdrawals by Jupiter and others, did HL never remove Woodford from its Wealth recommendations? As a private investor I rely heavily on expert advice so HL has badly let me down and do they have a responsibility to their clients for misleading them?
46. Is there any concern of insider trading at HL, where Directors of HL sold a large number of their HL shares 3 weeks prior to the fund being suspended? The HL share price fell 5% after the Woodford fund closed, which would be the equivalent of close to £9m on those shares sold.
47. Why has action been taken against Link rather than Hargreaves Lansdown - Keeping the Woodford funds on their wealth list was the main reason why many HL investors have now suffered losses. Clearly HL were too heavily involved but surely they were wrong in not removing it from their list - Like your speaker I too have had no luck in grumbling to HL so what, if any, action is being planned against HL?
48. I purchased all the Woodford funds via Hargreaves. I rather think that I was encouraged to purchase these funds via an e mail from Hargreaves. Otherwise, I cannot think why I bought them because I was so busy at the time I would not have known about the launch. Do any of your other Hargreaves clients have any memory of these emails?

49. Well said Cliff - HL should have been more proactive with their updates on the fund. The research that has been shown tonight is massively at odds with the so-called research that HL were doing & publishing even though they had a 'hotline' to Woodford. They massively [messed up] by doing a poor job and should be held to account!

We appreciate that many investors feel let down by Hargreaves Lansdown. The role of Platform providers and the conduct of Hargreaves Lansdown in particular is a matter of concern. We are continuing to investigate bringing a claim against the platform.

We have undertaken detailed analysis and review of the documentation that is publicly available, and the representations made by Hargreaves Lansdown, Neil Woodford and Link, as well as the various potential causes of action.

We consider that a reasonable user of the Vantage Service would have understood that by including the WEIF in the Wealth List, Hargreaves Lansdown was saying that in its considered opinion, the WEIF was a well-managed fund with the potential to outperform other similar funds over the longer term. Hargreaves' stance was that Neil Woodford was a "contrarian" investment manager. He had had periods of underperformance in 1999 but "*bounc[ed] back strongly*" in 2003 and also "*rall[ied] strongly*" in 2016 after underperforming in 2009. Hargreaves' stance is that they believed he would bounce back again.

In order to bring a claim against Hargreaves Lansdown on behalf of Vantage customers, amongst other matters, it would be necessary to establish not only that the WEIF and Link had breached liquidity rules but also that the facts stated by Hargreaves Lansdown were untrue or that it did not believe or did not have reasonable grounds to consider the opinions it expressed via the Wealth Lists (namely that the WEIF had the potential to perform better than non-Wealth List funds,) were true, that it believed that the fund would not "come good" in the long term and that the situation at WEIF was out of control. This could only be determined by reviewing the documentation held by Hargreaves Lansdown which is not publicly available.

By contrast, we consider that to establish liability against Link, it is sufficient to show that Link's failure to comply with the FCA regulations and failure to protect investors' interests led to the suspension of the fund and consequent loss. The opinion of the legal team is therefore that the best recourse for timely redress is to pursue the claim against Link at this stage. This claim has strong legal foundations and is based on objectively verifiable facts as to what the liquidity profile and risk was within WEIF at all material times up until suspension. This represents a clear route to success and the case can be advanced with minimal distractions or factual disagreements. We consider that it has the best prospects of resulting in a timely resolution for investors.

Bringing a claim against Hargreaves Lansdown would require claimants to overcome additional and arguably unnecessary and costly hurdles and therefore we do not believe that a separate claim against Hargreaves Lansdown would be capable of swift resolution.

As at the date of writing, we are not aware of any law firm that has obtained ATE insurance in respect of a group action on behalf of investors against Hargreaves Lansdown.

For the sake of completeness, we should add that we do not consider there to be a risk of the time running out to bring such claims until sometime after the limitation period in respect of claims against Link expires.

By focusing on the claims against Link for the time being, this does not rule out the possibility of bringing claims against Hargreaves Lansdown at a later date.

50. I invested in the LF equity fund via Hargreaves Lansdown in June 2014. Is Leigh Day taking this into account as I understand there is a 6 year limitation period in order to bring proceedings against Link/ Hargreaves Lansdown.

The claim we are taking forward against Link is for breach of the FCA's rules, and therefore the six-year time limit for issuing court proceedings starts from when the rules were breached not from the date of investment.

51. Excellent helpful and reassuring presentation and think LD are correct to pursue Link, however, surely Hargreaves and Woodford have to also be held to account and owe compensation for their negligence. We are with LD pursuing Link, but surely we are owed something from the other parties too?? Our investment was purely based on Hargreaves recommendations and we have lost a lot. Thank you.

We appreciate that many investors feel let down by Hargreaves Lansdown, however as previously stated a claimant cannot recover twice for the same loss. On the current evidence we do not consider that it is necessary to bring claims against both Hargreaves Lansdown and Link when the claim against Link can stand on its own.

Proceedings against Link and Hargreaves Lansdown, whilst connected in the sense that they relate to the same underlying loss, raise very different factual and legal issues. The case against Link is free standing and not dependent on bringing a claim against Hargreaves Lansdown. Bringing a claim against both Link and Hargreaves Lansdown as joint defendants would result in the claimants having to fight two sets of defendant legal teams in respect of two sets of facts and more extensive legal arguments. Even if the court were to hear such claims together, this would greatly increase costs, and potentially reduce the amount which each claimant may ultimately recover. We however keep investigating the case against Hargreaves Lansdown and will keep the prospect of such a claim under review.

52. I had initially invested in the equity income through Hargreaves Lansdown but in Sep 2016 I transferred all my ISA investments over to fidelity. As part of the transfer I had to sell the Woodford equity income fund as it was held as a different class in Fidelity. I ended up investing those proceeds in Woodford equity through Fidelity! Foolish I guess in hindsight! If Hargreaves accepts some liability in future do I have a claim

If you had funds trapped in the WEIF at the time of suspension, you will be eligible to bring a claim irrespective of which fund you invested in.

53. Am I still entitled to compensation when Hargreaves have already paid back some of what was originally invested? After all I accepted that costs may go down as well as up.

For investors who have some shares trapped in the fund, Link is winding up the fund and returning money from the sale of assets back to investors. There have been four capital distributions so far, and for investors who used an investment platform such as Hargreaves Lansdown the money from the distributions should be returned to your account on the platform.

The value of damages for a claim against Link is to be assessed by reference to the performance of a fund that would have been compliant with the FCA's rules. Among other things, this would consider how much was originally invested and how much investors receive back through the capital distributions during the fund's winding-up.

54. The barrister suggests that the process against Link is the most viable with the option of following procedures against HL. If the investment is via a fund of funds and cannot participate in the Link action what are the options of a future action in which we could participate against either Link or HL? And how does this affect claims with the FOS.

Other law firms may be considering claims against advisers who under a discretionary mandate invested client money in WEIF or a fund of funds with exposure to WEIF. Another option would be to approach the financial ombudsman. We regret that we are currently unable to offer representation to all those affected.

#### **E. Further Questions relating to Link's actions**

55. I get the impression that Link sold the fund's assets poorly. Did they and what options are there for investigation?

Since its suspension, WEIF has experienced the following:

- i. 15 October 2019: A negative adjustment of £116 million to its NAV arising from the sale of assets at a price lower than the market value at the point of suspension; and
- ii. 19 August 2020: A negative adjustment of £91.1 million to its NAV reflecting the impact of the sale of certain assets to Acacia Research Corporation and further liquidity adjustments to a number of assets.

We argue that the substantial nature of the valuation adjustments and sales of assets below value, during the fund's winding-up period, has aggravated the damage already caused to investors.

56. As a result of large scale redemptions, was any attempt made to prevent further redemptions to allow a rebalancing of the fund as other OEICs have done?

Since fund managers can decide the dealing frequency of OEICs, within certain limits, investors generally expect to be able to invest or withdraw at that frequency. The fund manager may occasionally use tools to limit the amount that can be withdrawn from the fund at one time but cannot arbitrarily decide to change the dealing frequency or make it more difficult for investors to sell.

57. Was it not against Link's fiduciary responsibilities when they transferred assets to Patient Capital at NAV and received shares in Patient Capital which traded below NAV? This resulted in an instant financial loss!!
58. Was the switch between the Patient Capital Fund and the WEIF of illiquid assets legal? I would have assumed that it broke prudence-based regulations which were designed to protect investors. If so, or anyway, surely Woodford himself and the board of the Patient Capital Investment Trust should be liable for allowing a fraudulent transaction to take place. Woodford's own behaviour at the final

AGM of the WPCT was evasive, dismissive and arrogant - usually the signs of intentional culpability denial.

The claim against Link we are taking forward also considers the transfer of unquoted securities from WEIF to WPCT, which appear to have taken place on at least two occasions.

59. Were Link called to appear before the Parliamentary committee like HL were?

We are not aware that Link did give such evidence.

**F. Questions relating to Woodford's actions**

60. What would have been the performance if Woodford had held his original portfolio?

This will be a question for expert evidence. We understand that the FTSE All Share Total Return Index returned 29% in the period WEIF was trading. This was a benchmark that Woodford used for WEIF.

61. Why do Leigh Day believe pursuing a claim against Link has a greater chance of success over a claim against Woodford or Hargreaves?

(See above in relation to a potential claim against Hargreaves Lansdown.)

As a result of the way the WEIF was structured, legally, Woodford Investment Management ("**Woodford**") did not have any direct obligations towards investors.

This is because according to the FCA's rules, Link, as the authorised corporate director, was legally responsible to investors. Link entered into a contractual agreement with Woodford which meant that in practical terms Link delegated the investment management function of WEIF to Woodford. However, the rules provide that Link cannot delegate its responsibility to investors.

It would be up to Link to decide whether it considers Woodford has breached its contract with Link, and to pursue a claim there.

**G. Other questions**

62. The QC stated that the failure had a fairly long "genesis". Does this mean there is also a parallel path to claim against an IFA if that meant the investment was no longer appropriate to the risk profile of the client?

63. My investment was supervised by a Financial Adviser. To what extent were they responsible for monitoring the WEIF risk (etc) profile? They did not advise selling at any point. Should I be claiming against them too.

64. We are pensioners and have significant exposure to WEIF. All our exposure is via a financial advisor who had full discretionary powers. There is no debate as to the suitability of the fund used by the advisor which was its most conservative. However, from the tipping point in 2018 the advisor took

no action to withdraw WEIF from our investments despite their being overwhelming knowledge that WEIF no longer constituted a suitable component of a conservative fund.

The claim we are taking forward against Link is based on the way Link managed the fund's liquidity, which it was required to do under the FCA's rules. Whether an individual received suitable investment advice from an adviser is not part of the claim we are taking forward against Link and would be specific to the individual circumstances of the individual investor; this is not something that we have investigated.

65. All the talk so far has focused on Link but we understand as our exposure is via a nominee we have no basis for a claim in the current Leigh Day action. So how do we get recourse?

Please feel free to contact the legal team about this on [woodfordclaims@leighday.co.uk](mailto:woodfordclaims@leighday.co.uk)