

Woodford: What's Next - and Why Parliament Must Listen

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Mark Bishop, 27 September 2022

Overview

The big questions:

- What happened (and how much was lost)?
- Who's to blame (obvious suspects, the real culprits)?
- How might the victims get redress (NB: opinion only, NOT legal advice...)? PLUS
- What changes are needed to ensure nothing like this ever happens again?
- = **How you can make things right - for yourself, and society**

How much was lost?

- Equity Income Fund alone:
 - £3.7bn in Fund when suspended
 - Since then, further losses on realisations
 - Perhaps four years to fully realise investments - loss of income, capital growth
 - Almost 50 percent fall since peak - those still in at the end not the only victims
- Plus:
 - Woodford Patient Capital Trust
 - (Woodford Income Focus Fund)
- Not just capital: loss of income, growth vs sector peers, benchmark/s
- My estimate: £5bn+, though much of this may not be litigable

Who's to blame (obvious suspects)?

- Woodford Investment Management:
 - 'Style drift': cash-consuming early-stage businesses; liquidity mismatch (open-ended structure)
 - Lack of governance/constraints (NEDs, compliance)
 - Breaches of liquidity, gearing limits
 - Connected party transactions: Peter Dubens, Anton Bilton vehicles; director/shadow director trades; Capita shareholding
 - WEIF/WPCT asset swap
- Capita Financial Managers/Link Fund Solutions (ACD):
 - Failed to restrain Woodford
 - Failure to replace asset manager
- Hargreaves Lansdown:
 - Best buy list
- Northern Trust Global Services Plc (depository)
 - Responsible for valuations, overseeing ACD

Who's *really* to blame?

- FSA/FCA:
 - Failed to sanction Neil Woodford for 'style drift' at Invesco
 - Accelerated authorisation of WIM to help Woodford
 - Authorised Craig Newman despite Invesco terminating him for gross misconduct
 - Authorised WIM NEDs who were both conflicted and not directors of WIM, conflicted WPCT ones
 - Failed to identify, prevent or penalise connected party transactions
 - Failed to protect consumers from Capita Financial Managers/Link Fund Solutions:
 - Arch cru
 - Connaught
 - Actually recommended/required WIM to use the firm as ACD
 - CET member Chris Martin who investigated Connaught became WIM Compliance Manager
 - Routinely allows firms to breach threshold conditions (balance sheet, PI cover)

Litigation, enforcement action: the challenges

- Woodford Investment Management
 - FCA Enforcement investigation ongoing; could in theory lead to redress
 - Company has negative worth; not trading so no value; unknown PI cover (less legal costs)
- Link Fund Solutions/Group
 - FCA made sale conditional on £306m retention; OKd sale of six other subsidiaries. Fallen through?
 - LFS' NAV ~£50m, facing FCA fine of £50m*. Pre-tax profit ~£4-7m a year; worth far <£306m...
 - There *may* be some PI cover, though it may have been allowed to 'self insure'
 - FCA announcement: 'This... figure reflects the FCA's... view of LFS's failings in **managing the liquidity** of the WEIF. It does not reflect any amount which may be **owed to anyone else, including members of the fund, as a result of potential wrongdoing by other parties. FCA-determined redress is based on misconduct [not] losses caused by fluctuations in the... value or price of investments**'
- Northern Trust Global Holdings plc - corporate entity no longer exists...
- Hargreaves Lansdown
 - Market cap ~£4bn, but only minority of investors affected, and case speculative

Other options for redress

- Financial Ombudsman/Financial Services Compensation Scheme (explain!)
 - FOS will suspend complaints until FCA Enforcement investigation concludes - SO WAIT!
 - FSCS will *probably* stand behind FOS awards
 - Should stand behind FCA restitution orders/s404 redress schemes
 - Not convinced it would do same for court awards - but am not a lawyer...
 - Limit £85k, for qualifying investors. Will 'double dipping' be allowed? Dialogue with '3Fs' needed...
- Financial Conduct Authority
 - Easy to demonstrate responsibility (regulated product, authorised firms, regulatory failure)
 - Exempt from civil liability barring two carve-outs: human rights breach; bad faith
 - Complaints Scheme? "Ex gratia compensation payments due to... regulatory failures on the part of the FCA will, in practice, never be available to complainants" (Q42 reply)
- Government
 - Scale of redress bill: huge (vs LCF, itself a one-off event)
 - Independent review needed - FCA will resist until all Enforcement work concludes
 - Not a silver bullet! FCA/HMT hold all the strings, and this case could spell FCA's downfall

How to make things right - for yourself, and society

- Fate is on our side - serially so!
- Compelling proof there's a need to upweight consumer rights:
 - [Panorama](#)
 - [New PM](#)
 - [Call for Evidence about the FCA](#)
- [Financial Services and Markets Bill](#): once in a generation opportunity to reset UK financial services regulation
- Should pass into law by late Spring 2023
- Key purpose: onshoring of EU powers
- Opportunities to amend
 - New rights and protections
 - Focus on righting acknowledged historical wrongs/anomalies

Amendment 1: 'If you (regulators) screw up, you pay up'

- The FCA has enjoyed immunity from civil liability* since FSMA 2000
- Complaints Scheme doesn't work - regulators set the rules, appoint the Complaints Commissioner, set her budget, and ignore her findings
- She says: "*Ex gratia compensation payments due to... regulatory failures on the part of the FCA will, in practice, never be available to complainants*"
- Proposed amendment:
 - Mandate that Complaints Scheme covers regulatory failure losses
 - Make Complaints Commissioner findings binding on regulators
 - End immunity, disapply Limitation Act for first six years
 - Backstop where FCA unable/unwilling to secure redress from firms
- Gives Woodford victims not one but two routes to redress from FCA (today, none)

Amendment 2: 'What's source for the goose...'

- Consumers have campaigned for a duty of care since FSMA 2000
- Would be owed by 'authorised persons' (firms/managers) to 'consumers'
- Parliament obliged FCA to consult, implement rules, last year
- FCA instead introduced inferior Consumer Duty
 - Exemptions (handover to unauthorised firms, no contractual link, historic injustices, exit fees etc.)
 - No private right of action
- Proposed amendment:
 - Statutory duty of care owed by authorised persons to consumers

Amendment 3: 'Sunlight is the best disinfectant'

- FCA is currently answerable to three industry panels, one consumer one
- FSMB as drafted would change this to five, or even six, to one
- Consumer Panel is FCA-appointed, mustn't criticise without forewarning
- The FCA's operational objectives (consumer protection, competition, market integrity) impact hugely on consumers, yet voices are seldom heard
- Consumer-led oversight body, as in Australia, much needed
- Proposed amendment:
 - Introduce statutory Financial Regulator's Supervision Council ('FRSC')

Role of the FRSC

- Hiring and firing:
 - Jointly with the Treasury: FCA Chair and Chief Executive (now HMT)
 - Solely: two FCA NEDs (formerly NCC, now BEIS); directors of Financial Ombudsman Service; Members/Chair of Consumer Panel (FCA); the Complaints Commissioner ('the regulators' [FCA])
- Reviews:
 - Annually of the FCA and the regulatory regime (currently, not done)
 - Periodically of FCA treatment of whistleblowers/their evidence (same)
 - Commission/oversee independent ones after regulatory failures (FCA)
- Oversee Complaints Scheme rules, budgets, payments (FCA/nobody)

How to make things right - what you should do NOW!

- Join [The Woodford Campaign Group](#) on Facebook
- Really important - share info, agree campaigning strategy, lobby
- Know more investors? Get them to join too!
- Write to your MP
- Three versions:
 - (Blackmore investors)
 - (Other campaigners and stakeholders)
 - Victims of other regulatory failure cases
- TTF [has produced](#) template letters, instructions
- Key messages:
 - Support our amendments to the FSMB
 - Drafts available on the link above
 - Let us know what response you get

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