

The complaint

Mr R complains that Wellington Court Financial Services Limited advised him to transfer his personal pension into a Self-Invested Personal Pension (SIPP) and left it uninvested in cash.

What happened

Mr R says he was cold called in 2015 by an unregulated introducer and advised his existing personal pension was underperforming, with better returns available elsewhere.

Mr R completed an application form for the ORBIS SIPP with Guinness Mahon Trust Corporation (GMTC) on 9 July 2015. According to the form, Mr R had an intended retirement age of 65 and was expecting to transfer around £51,000 from the provider.

At the time of the transfer Mr R's told us he was aged 47 years old, working as an HGV driver earning around £30,000, with no investment experience and a low to medium attitude to risk.

In August 2015, £51,406 was transferred in from the pension provider and the evidence shows fees were paid to Wellington Court for IFA fees via the SIPP. The funds remained in cash and were not invested.

In April 2016, the SIPP provider received a letter of authority from a new advisory firm and a total of £50,699 was transferred out of the SIPP on 22 November 2016.

Mr R complained about the transfer in May 2019, however Wellington Court didn't respond then. Once the case came to us, it's stated that they had no record of Mr R and that he wasn't their customer.

An ombudsman first considered whether this was a case we could consider – as Wellington Court argued that it wasn't. She decided that there was enough evidence to say that Mr R was a customer of Wellington Court.

Our investigator then issued a view on the merits of the case, he found that whilst there was little evidence of advice being given in the typical format, Wellington Court was responsible for the transfer of Mr R's pension. Documentation was received by the SIPP provider on Wellington Court headed paper but most importantly bank records showed payments from the SIPP provider to Wellington Court relating to Mr R's plan with it.

Wellington Court's position remains that Mr R was never a customer of its so it cannot provide evidence to defend itself. It was asked to provide its bank statements from the time when Mr R's IFA fees were paid but it hasn't done so.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

Firstly, for the avoidance of doubt, I agree with the conclusions reached by our ombudsman that Mr R was a customer of Wellington Court's. I also agree with the investigator's view that the complaint should be upheld.

This case has been considered on its own merits but I'm aware of a significant number of other complaints about Wellington Court which have very similar features to Mr R's case. In respect to Mr R's case, and this pattern of evidence is repeated across numerous cases, there is clear evidence showing payment to Wellington Court from the SIPP provider for IFA fees relating to Mr R's pension. Wellington Court has been unable to explain why it has been receiving these fees for clients it says it has no knowledge of, or contact with.

Whilst I'm deciding here on what's fair and reasonable in the particular circumstances of Mr R's case, we have presented Wellington Court with in-depth views and decisions setting out the evidence we have of its involvement in these transfers. And it hasn't provided evidence or arguments that satisfy me that it shouldn't be held responsible.

It looks like Mr R was approached by someone – most likely an unregulated introducer – and as a result of those conversations, became interested in transferring his pension to the Orbis SIPP. Unlike many other transfers to the Orbis SIPP, Mr R's funds weren't invested in a German Property scheme – although Mr R made mention of it in his complaint. As a result, Mr R's funds remained in cash until he transferred his pension to another provider following advice from another firm in 2016.

Wellington Court says it has never had any direct, or indirect, dealings with Mr R and the evidence linking Wellington Court to Mr R is fraudulent. It says the covering letter from Wellington Court to GMTCC to open the SIPP was faked and didn't come from Wellington Court. It points to the unprofessional look of the letter, as well as the fact that the letter was signed on *behalf of* the adviser in question – Mr P – rather than by Mr P himself and the person who signed that letter is untraceable because their signature is indecipherable. With regards to the application checklist, it points to an incorrect FCA reference number being written on the form and the adviser, Mr P, misspelling (and then correcting) his name. It also says Mr P worked in a marketing/administrative, rather than advisory, capacity and did not have regulatory permissions to advise on pensions.

As Mr R's transferred monies remained in cash, he has lost out from missed investment returns as well as from the fees he paid to transfer and his SIPP charges. He complained to Wellington Court because its name appeared on the transfer paperwork which said, amongst other things, that Wellington Court had provided advice.

Wellington Court has made the same arguments across many cases, and we have set out our findings on why we find it implausible, a number of times. For completeness and in relation to Mr R's case – I'll set this out again below.

Evidence previously set out to Wellington Court across various cases

It looks like GMTCC wanted the involvement of an independent financial adviser (IFA) before accepting a transfer because in its "Important Risk Notices", it said the SIPP was "ordinarily" offered through an IFA regulated by the FCA. It appears the paperwork described above was evidence enough for GMTCC to have accepted the transfer as coming through an IFA. As a result, the transfer went ahead, and the 1% initial advice fee was taken from the transfer value and paid to Wellington Court.

My view is that Wellington Court was engaged in advisory business involving the transfer of

pensions (Mr R's included) to the Orbis SIPP and that Wellington Court's actions are not consistent with its allegations that it has been the victim of fraud.

Wellington Court has recently said that it did not know that 1% was calculated, deducted from GMTC's client and paid to it, saying that GMTC's accounting system was controlled by it and not Wellington Court. But the fees appeared on Wellington Court's bank statement as IFA Fees. The payments were all made to the same bank account. And the amounts are significant – at least £87,000 in a period of just six months. I don't see how these payments could have been overlooked, which suggests to me that they weren't overlooked but were, instead, recognised payments in relation to work it had completed. If they were genuinely unexpected, I would have expected Wellington Court to have investigated the receipt of such substantial advice fees.

I've also reviewed Wellington Court's financial statements for the period under review and these show a significant increase in income in 2015 in comparison with the previous year (where income was minimal). Given the numbers, it's reasonable to say the increase in income was driven largely by the fees from GMTC. So Wellington Court would have to have overlooked large payments both at the time and later on when preparing its accounts. But I don't think that is likely.

I appreciate Wellington Court has (in other cases) pointed to the consultancy work it did with GMTC. It has most recently said that all payments received from GMTC were for administrative consultancy work carried out by Mr P and nothing else.

I'm not persuaded the fees were expected as payment for the consultancy work carried out for GMTC by Mr P. I say this because there's a clear audit trail that shows the payments weren't for consultancy work but were instead 1% advice fees for particular policies that had been transferred.

It seems to me that when Wellington Court started to receive complaints about its alleged role in a number of transfers to GMTC, it could have investigated what had happened more thoroughly. Instead, based on its responses to the complainants involved, and to us, Wellington Court appears to have done little more than say it hasn't heard of the consumers in question (Mr R included) and that it has been a victim of fraud. I would be more willing to give greater weight to those allegations – which are serious after all – if Wellington Court had, for instance, contacted the police. But, based on the available evidence, it hasn't done this.

It also strikes me that in order to commit the fraud that Wellington Court has alleged, GMTC would have been reliant on Wellington Court not noticing a series of uninvited, but substantial, payments into its bank account over an extended period and on those people that transferred (of which there many dozens) not questioning Wellington Court at any point. I don't think it likely that GMTC would have taken its chances in this way unless, of course, it had some sort of understanding with Wellington Court – in which case Wellington Court's involvement is still key to what happened.

I have considered Wellington Court's allegation that the transfers and investments were orchestrated by unregulated introducers with GMTC's knowledge, and that this is supported by testimony of customers that they did not speak to Mr P or any representative of Wellington Court. But it is not uncommon for an introducer to drive the process of transferring a pension with the intention of investing in a particular scheme. And introducers often carry out the majority of the fact-finding directly with the customer before involving a regulated adviser to complete the process. In some instances, customers will not meet with or speak to the firm providing the advice. So, I don't think that those customers who say they

didn't speak to a representative of Wellington Court, or who were unaware of its involvement, is particularly unusual here. As I have said above, in order to proceed with the transfer, GMTC needed to have confidence that advice had been given to Mr R. And the paperwork submitted, such as the adviser remuneration form, confirmed Mr R had appointed Wellington Court to provide him with advice. So, I think the transfer proceeded on the basis that Wellington Court had advised Mr R to do so.

It looks like the transfers to the Orbis SIPP were initiated by introducers who sourced potential clients and did much of the work in terms of getting clients into a position to transfer. And then in order to progress the transfer, GMTC required the involvement of an advisory firm. Wellington Court fulfilled that role. But there's a lack of paperwork to show what, if anything, Wellington Court did in return for its advice fee. I don't know if this was due to an oversight on its part – that is, it didn't fully understand what it should have done given the regulations in place at the time – or whether it knew its actions were negligent. Either way, it seems Wellington Court's involvement was little more than "window dressing", providing a veneer of advice to satisfy GMTC in return for a 1% fee on a large number of transfers.

Evidence specific to Mr R's case

There isn't any detailed documentary evidence to show what Mr R's financial needs and circumstances were at the time. Nevertheless, I'm satisfied the transaction wasn't suitable for Mr R. I say this because Mr R transferred from a personal pension which was invested and transferred to a SIPP that ended up invested in cash.

Although it appears Mr R was open to transferring his pension to another provider, there's nothing to show why a SIPP was the right product for him. Based on what I know about Mr R, who had very little investment knowledge or experience, I don't think he wanted or needed access to non-standard investments. And I don't think he had the necessary investment knowledge to self-manage his pension or select his own investments. And, more importantly, I don't think it was appropriate for Mr R to have moved to the Orbis SIPP only to end up invested in 100% cash.

So, in the circumstances, I don't think the advice he received from Wellington Court was suitable for him and as a result I think he has likely suffered a loss to his pension.

On balance I think without Wellington Courts involvement Mr R would've left his pension with his previous pension provider.

Mr R transferred his pension away from the Orbis SIPP in 2016, through another adviser. This means that when putting things right for Mr R, Wellington Court is only required to compensate him for loss he experienced up to the point he transferred his pension away from the Orbis SIPP on 22 November 2016.

My approach to compensation, set out below, reflects this.

Putting things right

My aim is that Mr R should be put as closely as possible into the position he would probably now be in if it hadn't been for Wellington Court's actions. I don't think Mr R would've transferred his personal pension to the Orbis SIPP. It's not possible to say *precisely* what Mr R would otherwise have done, but I'm satisfied that what I've set out below is fair and reasonable given Mr R's circumstances.

To compensate Mr R fairly, Wellington Court must:

- Compare the performance of Mr R's investment with that of the benchmark shown. If the *fair value* is greater than the *actual value*, there is a loss and compensation is payable. If the *actual value* is greater than the *fair value*, no compensation is payable. Wellington Court should add interest as set out below.
- If there is a loss, Wellington Court should pay into Mr R's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- Wellington Court should pay Mr R £250 for the disruption to his retirement planning.
- If Wellington Court is unable to pay the compensation into Mr R's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid.
- The *notional* allowance should be calculated using Mr R's actual or expected marginal rate of tax at his selected retirement age. Unless either party provides evidence to the contrary, compensation should be based on Mr R being a basic rate taxpayer.
- Income tax may be payable on any interest paid. If Wellington Court deducts income tax from the interest, it should tell Mr R how much has been taken off. Wellington Court should give Mr R a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
The Orbis SIPP	transferred	Mr R's previous personal pension arrangement	date of transfer from previous personal pension arrangement	date transferred out of Orbis SIPP	8% simple per year on any loss from the end date to the date of settlement.

Actual value

This means the actual amount paid from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any withdrawal, income or other distribution out of the investment should be deducted from the *fair value* calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Wellington Court totals all those payments and deducts that figure at the end instead of deducting periodically.

Why is this remedy suitable?

I've chosen this method of compensation because:

- I think had it not been the involvement of Wellington Court, Mr R would've remained invested in his existing personal pension.
- The additional interest is for being deprived of the use of any compensation money since the end date.

My final decision

I uphold Mr R's complaint against Wellington Court Financial Services Limited and direct it to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 23 April 2022.

Simon Hollingshead
Ombudsman