DRN-3098447

The complaint

Mr H has complained about the transfer of three personal pensions to a self-invested personal pension ("SIPP") in 2015. His transfer proceeds were invested in a property development scheme that has since failed. He holds Wellington Court Financial Services Limited responsible for his losses.

What happened

A brief summary of the circumstances leading to this complaint, and my initial conclusions, were set out in my provisional decision.

In short, in 2015 Mr H transferred the benefits he had in three personal pensions to "The Orbis SIPP" administered by Guinness Mahon Trust Corporation Limited ("GMTC"). The proceeds of Mr H's transfer were invested in Dolphin Capital, a German property development scheme that has since failed. The investment now looks to have little value. Mr H says Wellington Court is responsible for his losses.

Mr H complained to Wellington Court in 2018. In response, Wellington Court said Mr H has never been its customer so it has no case to answer. It says any paperwork linking Mr H to Wellington Court is fraudulent. Mr H referred his complaint to us.

In August 2021, I issued a provisional decision in which I outlined in detail the evidence that was available to me. I repeat what I said here:

Review of evidence as described in my provisional decision

1. Documents provided by Mr H and GMTC

   The following were provided by Mr H and GMTC:

   I. An undated letter to GMTC, sent on Wellington Court headed paper, applying to the Orbis SIPP on Mr H's behalf. The letter said it was enclosing an application for the SIPP and an invoice. The letter is signed on the behalf of Mr P from Wellington Court. The signature is indecipherable.

   II. The Orbis SIPP "New Application Checklist". This was a series of tick boxes of the various documents (such as a SIPP application form and transfer discharge form) that the adviser had to check had been provided for the transfer to proceed. Like the covering letter, this was signed on the behalf of Mr P from Wellington Court rather than by Mr P himself. The signature is indecipherable but looks to be the same as the one on the covering letter. Under the signature, Mr P's name has been printed by hand. Mr P's first name was spelt incorrectly at first but was then corrected. An incorrect Financial Conduct Authority (FCA) reference number was also provided – the number used was actually Wellington Court's Irish company registration number. The checklist was signed on 9 July 2015. It was date-stamped as being received by the PAN Group (administrators and trustees) on 14 July 2015.

III. The Orbis SIPP application form, signed by Mr H on 2 July 2015.

IV. An "Adviser Remuneration Form". This set out the advice fee that Mr H had agreed to pay Wellington Court. It said the following:

"I have appointed [Mr P] of Wellington Court Financial Services Ltd ("the Company") to provide me with advice in relation to The Orbis SIPP (''the SIPP'') and any related investment advice in respect of assets held within the SIPP

	Initial Fee	*Renewal Fee*	*Fixed Fee (£)*
Transfers into the Scheme	1% to a maximum of £800 plus VAT	*NIL*	*NIL*
Single Premium	*NIL*	*NIL*	*NIL*
Regular Premium	*NIL*	*NIL*	*NIL*

I confirm my agreement to these charges and authorise Guinness Mahon Trust Corporation to debit the fees from the SIPP Bank Account and pay them on my behalf, this agreement replaces any existing agreement"

Mr H signed the form but didn't date it.

V. A Dolphin Capital loan note application form signed, but not dated, by Mr H. The investment amount was recorded as £50,000.

2. Mr H's recollections

Mr H said he was off work shortly before the transfer, He says he received a cold call about his pension arrangements and met with someone (possibly an introducer) at least twice. He says he thought he was just amalgamating his pensions and that they would just "sit there" and grow.

3. Information from Mr H's previous pension providers

Mr H's previous schemes provided information as part of the transfer and in relation to our investigations. This information shows that, amongst other things, Mr H was previously largely invested in a with profits fund and that he likely dealt with an unregulated introducer in relation to his transfer.

4. Documents from Wellington Court

I'll come on to what Wellington Court has said in response to Mr H's complaint later in my decision. But it's worth pointing out at this stage that it hasn't provided any documents in relation to Mr H's transfer because it says it didn't advise Mr H and that Mr H has never been a client of Wellington Court.

Wellington Court has, however, said that it did some consultancy work on behalf of GMTC in relation to the transfer of pensions into the Orbis SIPP. It says the work was limited to checking files to ensure there were no transfers of safeguarded benefits into the SIPP because GMTC didn't want to receive that type of transfer.

We asked Wellington Court to provide us with a copy of the consultancy agreement it had with GMTC and further details about its work – for instance the fees it earned – but it hasn't done so. It did, however, provide notes of a meeting it had with the regulator,

the FCA, in 2016 in which Wellington Court's work with GMTC was discussed. [In my provisional decision I quoted from these notes. I haven't done so here because it isn't essential to the outcome of the case.]

5. Payment to Wellington Court in relation to Mr H

Mr H transferred two pensions from one provider on 12 August 2015. The transfer values for these pensions were £47,575.45 and £3,810.11. He transferred £2,463.07 from a different provider on 14 August. A 1% fee on the total amount transferred (along the lines of the "initial fee" in the Adviser Remuneration Form described above) would equal £538.48. According to his SIPP transaction statement, this exact amount was taken from Mr H's transfer value on 18 August. It was recorded on his SIPP statement as a "Wellington I FA fee". I can see the £538.48 was paid from the SIPP deposit account (with Metro Bank) to the GMTC client account (with NatWest Bank) on 18 August. This amount was included with 11 other 1% fees for other individuals and the total amount, which came to £4,624.87, was then paid from the GMTC client account to Wellington Court's bank account (with HSBC) on 18 August. The £4,624.87 appeared on Wellington Court's bank statement as "GM IFA FEES".

6. Evidence from similar cases

I am aware of a significant number of other complaints about Wellington Court which have very similar features to Mr H's case. Whilst I'm deciding here on what's fair and reasonable in the particular circumstances of Mr H's case, for context I think it's reasonable to consider the evidence from these other cases alongside the evidence that has been collected in relation to Mr H's case. Specifically:

I. GMTC has provided screen-shots showing the entries made into an "advisers portal" for some transfers. The portal records the details of the individual transferring (name, address, details of transferring scheme and so on) as well as the adviser's name – Mr P – and the name of an introducer.

II. An Orbis SIPP "Important Risk Notices" document was part of the paperwork for most transfers. This was a nine-page document that outlined the various risks of the SIPP.

III. Paperwork from other complaints show a number of introducer firms were involved in these transfers.

IV. The recollections of the complainants in other cases haven't been particularly detailed.

V. Other payments to Wellington Court

Information provided by GMTC in relation to other complaints shows that 1% payments along the same lines as Mr H's were made to the same Wellington Court bank account in relation to many other individuals, including (but not necessarily limited to) the following:

- £9,239.74 on 30 March 2015 in relation to thirty-two transferred policies (for 22 individuals – some individuals transferred more than one policy). The payment reference that was to appear on Wellington Court's statement was "GM ADVISER FEES".

- £8,588.76 on 24 April 2015 (the number of policies and individuals this payment relates to isn't clear). The payment reference that was to appear on Wellington Court's statement was "OR ADVISER FEES".

- £9,503.33 on 20 May 2015 in relation to 31 transferred policies (for 19 individuals). The payment reference that was to appear on Wellington Court's statement was "ORBIS SIPP FEES".

- £8,881.16 on 16 June 2015 in relation to 24 transferred policies (for 21 individuals). The payment reference that was to appear on Wellington Court's statement was "GM IFA FEES".

- £11,423.77 on 26 June 2015 in relation to 25 transferred policies (for 17 individuals). The payment reference that was to appear on Wellington Court's statement was "GM ADVISER FEES".

- £7,731.07 on 15 July 2015 in relation to 23 transferred policies (for 18 individuals). The payment reference that was to appear on Wellington Court's statement was "ORBIS CLIENT FEES".

- £4,762.19 on 27 July 2015 in relation to 14 transferred policies (for 12 individuals). The payment reference that was to appear on Wellington Court's statement was "GM IFA FEE".

- £3,091.06 on 5 August 2015 in relation to 8 transferred policies (for eight individuals). The payment reference that was to appear on Wellington Court's statement was "GM IFA FEES".

- £4,624.87 on 18 August in relation to 12 transferred policies (the number of individuals this relates to isn't clear but includes Mr H's fee). The payment reference that was to appear (and did appear) on Wellington Court's statement was "GM IFA FEES".

- £6,573.32 on 25 August 2015 in relation to 14 transferred policies (the number of individuals this relates to isn't clear). The payment reference that was to appear (and did appear) on Wellington Court's statement was "GM IFA FEES".

- £12,672.03 on 7 October 2015 in relation to 46 transferred policies (for 31 individuals). The payment reference that was to appear on Wellington Court's statement was "GM IFA FEES".

The above is based on information provided in Mr H's case and other similar cases. It's not necessarily comprehensive. A quick review shows that there are no entries for September 2015 for instance. So I think it's fair to say the above shows that *at least* £87,000 was paid from GMTC to the one Wellington Court bank account in relation to over 200 transferred policies in a six month period. It's entirely possible that payments were happening before and after this six month period too.

For completeness, it should be noted that we have the records for the payments being made from GMTC but we don't have the records for all those payments being received by Wellington Court other than for the £6,573.32 payment on 25 August and the £4,624.87 payment on 18 August. This is because Wellington Court has only provided us with heavily redacted bank statements. I see no plausible reason

why GMTC's payments wouldn't have all reached Wellington Court and I'll proceed on that basis.

What did I conclude in my provisional decision?

In my provisional decision, I acknowledged that there were a number of question marks in relation to Wellington Court's involvement in the transfers. Most notably there is the absence of evidence to show there was any direct contact between Mr H (and others like him) and Wellington Court, a lack of the usual paperwork one would expect to find if advice had been given (a fact-find, suitability report and so on), unexplained errors in the paperwork that did exist and no letters or emails between GMTC and Wellington Court in relation to the transfer of Mr H's pension (and other pensions).

However, I went on to conclude that Wellington Court had been paid a 1% advisory fee in relation to Mr H's transfer and many other transfers. I came to this conclusion because the documentary evidence showed Mr H (and others like him) agreed to pay a 1% advisory fee in relation to the Orbis SIPP, and the investments intended to be held in the SIPP. I thought the documentary evidence persuasively showed that the 1% fees were then paid to Wellington Court. These fees were, in aggregate, substantial. Because Wellington Court didn't query them at the time, and didn't provide a persuasive argument for why it didn't query them at the time, I concluded that the fees weren't fraudulent – as Wellington Court had argued – but were in line with what it was expecting for its involvement in the transfers in question. I therefore provisionally concluded that Wellington Court was engaged in advisory business relating to the transfer of pensions – including Mr H's pension – to the Orbis SIPP.

I went on to provisionally conclude that Mr H's complaint was in the jurisdiction of the Financial Ombudsman Service. I was satisfied that Mr H was an eligible complainant, the activities in question were carried on from an establishment in the UK, Wellington Court is a regulated business and Mr H brought his complaint within the relevant time limits. I was also satisfied that the activities complained about fall within our jurisdiction because they relate to acts or omissions in carrying on the regulated activities of advising on and arranging pensions and investments.

With regards to the merits of Mr H's complaint, I noted Wellington Court doesn't appear to have done anything in return for the 1% advice fee it was paid in relation to Mr H's transfer. I didn't comment on whether this was deliberate on Wellington Court's part – that is, it knew it had to provide advice but chose not to; or whether it was an oversight on its part – that is, it didn't realise it should have provided advice. I didn't make a finding on this because the key point was whether the transfer was suitable. And on this point I was satisfied the transaction wasn't suitable because Mr H ended up investing in a way that was beyond his risk tolerance.

I provisionally upheld Mr H's complaint and set out what I thought Wellington Court should do to put things right.

I invited both parties to respond. Mr H had no further comments. Wellington Court made a number of comments, which I address below.

What did Wellington Court say in response?

Wellington Court's response contained, in aggregate, over 50 bullet points. Its arguments weren't specific to Mr H's case but were intended to apply to a number of similar cases. Because a number of its comments overlap, I think it's reasonable to group and summarise Wellington Court's response as follows:

1. The Financial Ombudsman Service hasn't undertaken a thorough investigation into the complaint and the provisional decision includes findings that are unwarranted and not based on the evidence. The Financial Ombudsman Service is biased and is trying to frame Wellington Court.

2. Evidence hasn't been shared; a full disclosure would be required in court.

3. There are no grounds for complaint because the complainants have never been clients of Wellington Court. Any transfer paperwork that refers to Wellington Court is fraudulent and paperwork that looks to have originated from Wellington Court has been cloned. Complainants' testimony does little to prove Wellington Court's involvement and Wellington Court has testimony from at least one client that says it didn't advise him and had no role in arranging his pension. No evidence has been provided of any direct contact between Wellington Court and the complainants or Dolphin Capital (where many complainants invested).

4. The adviser on the paperwork – Mr P from Wellington Court – was not a registered advisor and therefore couldn't give advice on the transfers in question.

5. GMTC accepted business directly from individuals and from unauthorised advisers and introducers.

6. GMTC, and its associates, were running a scam. The FCA should have known this and advised Wellington Court and the Financial Ombudsman Service of this at the time. GMTC and others are now involved in a "mammoth" cover-up of what happened.

7. Wellington Court isn't responsible for the operational failures of GMTC or its regulatory supervision. It is being held liable because it is the "last man standing". It may be the victim of a "turf war" going on between various regulatory agencies. It has been singled out for being an Irish company.

8. The Financial Ombudsman Service has failed to recognise the obligations of GMTC, in particular in relation to undertaking due diligence on the underlying assets held in its SIPPs.

9. Because the complainants weren't clients of Wellington Court, it can't comment on their previous pension arrangements, or their attitude to risk and needs.

10. Wellington Court's advisory involvement with GMTC was limited to three clients, the files for which have previously been given to the FCA. It makes little sense that Wellington Court has files for these three clients yet doesn't have files for other clients that it supposedly advised.

11. Wellington Court wouldn't have risked its reputation and licence by supporting unregulated activities.

12. The claims management companies ("CMCs") that represent many complainants are bringing unwarranted complaints for commercial gain and are being encouraged by the Financial Ombudsman Service to do so. The Financial Ombudsman Service has failed to report fraudulent activities of CMCs and their clients to the police.

13. To resolve matters, Wellington Court has proposed the following:

    - A conference call with the Financial Ombudsman Service.

- An investigation to be conducted by Wellington Court on the Financial Ombudsman Service's behalf, for an agreed fee.

14. Wellington Court reserves the right to take legal action against the Financial Ombudsman Service and any other parties.

Wellington Court has also provided telephone notes and emails which, in its view, support its position that the complainants can't recollect, and therefore couldn't have been clients of, Wellington Court.

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.

For the avoidance of doubt, this means I've considered everything Wellington Court has said, although I will limit my findings to those areas that I now consider to be relevant to the outcome of the complaint and the process by which that outcome has been reached.

Interpreting the evidence

My starting point here, as it was in my provisional decision, is the evidence that points to Wellington Court being paid advisory fees in 2015 in relation to a number of transfers to the Orbis SIPP (including Mr H's transfer). I outlined this evidence in my provisional decision. I've repeated it in the "review of evidence" section above. To recap, the evidence was four-fold.

First, Mr H and many others signed an "Adviser Remuneration Form" which appointed Mr P of Wellington Court to provide advice in relation to The Orbis SIPP and any related investments held in that SIPP. The fee for that advice was recorded as being 1%.

Second, Mr H's SIPP statement shows that a 1% "Wellington IFA fee" was taken from his three transfers on 18 August 2015. This fee (for £538.48) was then paid from the SIPP deposit account to the GMTC client account on the same day. The £538.48 was included with 11 other 1% fees for other individuals transferring to the Orbis SIPP and the total amount, which came to £4,624.87, was then paid from the GMTC client account to Wellington Court's bank account on 18 August 2015. The £4,624.87 appeared on Wellington Court's bank statement as "GM IFA FEES".

Third, 1% fees along the same lines were paid from GMTC to the same Wellington Court bank account in relation to a large number of other transfers to the Orbis SIPP over a six month period in 2015. Payments of at least £87,000 relating to at least 200 policies were paid in this period. The payment references were "GM IFA FEES" or something equally clear.

Fourth, Wellington Court didn't at any point query the above payments despite them being substantial and all clearly coming from the same source – GMTC.

My view was, and remains, that this evidence is critical to the outcome of the complaint. It shows that many individuals – Mr H included – agreed to pay Wellington Court 1% of their transfer value for advice on the Orbis SIPP and their proposed investments. And it persuasively shows that Wellington Court received 1% payments in relation to those transfers. Wellington Court didn't query why it was receiving these fees. And it's difficult to see how Wellington Court could have overlooked the payments – they are simply too large to *not* notice. It would also have had to have overlooked the payments when preparing its

financial accounts which also strikes me as being unlikely given the impact the fees had on its income in this period. So it's reasonable to conclude from this that the fees were in line with what Wellington Court had been expecting from GMTC for its role in the transfers. Tying all this together, I'm satisfied Wellington Court was paid a 1% advice fee for the transfer of Mr H's pension and many others like it.

Wellington Court hasn't questioned the "money trail" outlined in my provisional decision and repeated in points 5 and 6(v) of my "review of evidence" section above. And it didn't satisfactorily explain why it received payments of at least £87,000 from GMTC over a six month period. In fact, it didn't directly address the issue at all in response to my provisional decision which is a significant omission given how central it is to the complaint's outcome.

It's worth noting, however, that in response to an earlier assessment by our investigator Wellington Court accepted that it did receive the £4,624.87 payment from GMTC on 18 August, which was the payment that included Mr H's advisory fee of £538.48. But it said the payment was in "no way" for Mr H's SIPP. It says the £4,6424.87 payment was for consultancy services that it provided to GMTC and in relation to four "genuine satisfied clients to GM".

In my provisional decision, I explained why I thought this was unlikely. I said:

First, Wellington Court hasn't provided us with any corroborating evidence in relation to the fees it earned from its consultancy work – the exact amounts it was paid, its contract with GMTC and so on. In fact, there's no paperwork whatsoever in relation to its consultancy work. The events in question aren't that long ago so I think the lack of paperwork can only weaken Wellington Court's case. This is especially so given the FCA's enquiries into Wellington Court's work for GMTC in 2016. I think it would have been prudent of Wellington Court to have kept at least some documents in relation to the nature of its consultancy work with GMTC once the FCA had shown interest in this area.

Second, Wellington Court hasn't provided us with any corroborating evidence in relation to the work it did for the four "genuine satisfied" clients it refers to. It hasn't even specified the nature of the work it did for these four clients or how much it earned for this work.

Third, and most tellingly, there's an audit trail that contradicts Wellington Court's version of events. That audit trail…persuasively links the £4,624.87 payment that Wellington Court received to the transfer of 12 policies to the Orbis SIPP (Mr H's transfer included) and the 1% advisory fee those SIPP transfers attracted.

Given all the above, I'm satisfied the £4,624.87 was for advisory services in relation to Mr H, and others, and not for a combination of consultancy work, and other unspecified work for four individuals, as Wellington Court has argued.

Wellington Court hasn't addressed these points and, as I say, hasn't directly commented on the "money trail" that leads from the transfer of Mr H's pension to Wellington Court's bank account. With this in mind, and having reviewed the case once again, I see no reason to depart from my provisional findings on this matter.

Wellington Court says responsibility lies with GMTC and its associates (specifically unregulated firms). It says it is "obvious" that GMTC, and its associates, were running a scam and are now involved in a cover-up. It says any paperwork that links Wellington Court to the transfers is fraudulent, including any paperwork that looks to have originated from Wellington Court – which it says has been cloned. And it says GMTC being in administration should "speak for itself."

In response, I come back to what I've said previously which is that Wellington Court received substantial payments from GMTC in relation to a large number of transfers. If Wellington Court had been the victim of fraudulent activity, I would have expected it to have queried these payments at the time given they were substantial and, in Wellington Court's view, unexpected. The source of those payments was clear too – GMTC – so I don't see any practical reason why it wouldn't have been able to raise the issue with GMTC (or even the police). The fact that it didn't do so leads me to conclude the payments weren't fraudulent but were, instead, in line with what Wellington Court was expecting to be paid for its involvement in the transfers.

Wellington Court also points out that there's no evidence of there being any direct contact between it and the complainants. To support its case, it points to the recollections of the complainants, many of whom say they cannot remember dealing with Wellington Court. It also refers to one of its clients who says Wellington Court had no involvement in his pension with GMTC.

I covered this in my provisional decision, where I acknowledged that there wasn't any paperwork sent to Wellington Court in relation to Mr H's transfer, or any other transfer as far I was aware. And I made the point that based on their recollections, complainants likely dealt primarily with unregulated introducers. So I can understand why Mr H, and others, can't recall much, if anything, about Wellington Court.

However, this doesn't preclude the possibility of Wellington Court's involvement in the transfers. GMTC wanted the involvement of an independent financial adviser (IFA) before accepting any transfers as evidenced by its "Important Risk Notices" document. The paperwork described above was evidence enough for GMTC to have accepted a transfer as coming through an IFA – Wellington Court. As a result, the transfers went ahead and the 1% initial advice fee was taken from each transfer value – Mr H's included – and paid to (and accepted by) Wellington Court. So whatever the extent of Wellington Court's contact with Mr H, it was still nonetheless engaged in an advisory capacity in relation to his transfer and investment – and the transfer of many other pensions too. The absence of any of the usual paperwork one would expect from an advice process, and the absence of substantive testimony about meetings with Wellington Court, doesn't change any of this. It just means Wellington Court didn't properly advise Mr H, and others, despite being paid to do so.

I agree with Wellington Court when it says some of the transfer paperwork looks unusual. For instance, the letter that was sent to GMTC enclosing Mr H's transfer papers was undated and signed on the behalf of Mr P from Wellington Court rather than by Mr P himself. The signature on that letter is indecipherable. Likewise, the Orbis SIPP "New Application Checklist" was signed on Mr P's behalf rather than by Mr P himself. The signature is again indecipherable (but looks to be the same as the one on the covering letter). Under the signature, Mr P's first name was spelt incorrectly at first but was then corrected. And an incorrect FCA reference number was also provided.

So, as I said in my provisional decision, there are question marks here. However, as I also went on to say in my provisional decision, my role is to make findings of fact based on the available evidence in order to establish whether this is a complaint the Financial Ombudsman Service can consider against Wellington Court and, if so, whether it's fair and reasonable to uphold that complaint. My role isn't to speculate beyond that. Taking all the above into consideration, I see no reason to change my findings of fact, which were – and remain – as follows:

- Wellington Court was engaged in advisory business relating to the transfer of pensions to the Orbis SIPP. This includes the transfer of Mr H's pension.

- The £4,624.87 payment Wellington Court received on 18 August 2015 was for advisory services in relation to the transfer of Mr H's pension, and other pensions, to the Orbis SIPP. The payment wasn't for a combination of consultancy work Wellington Court did for GMTC and its provision of services to four other clients.

- Wellington Court's actions are not consistent with it being the victim of fraudulent activity.

Wellington Court's other comments

Wellington Court says GMTC failed to undertake due diligence of the SIPP's intended investments and questions whether the Financial Ombudsman Service and the FCA have investigated GMTC. However, my remit here is to consider Mr H's complaint against Wellington Court. I won't, therefore, be making any findings on GMTC's due diligence. Similarly, it is for Wellington Court, rather than the Financial Ombudsman Service, to report individuals and organisations to the police if it thinks doing so is warranted.

Wellington Court has said it is willing to help us get to "the bottom of the claims" for a fee. But, as I'm sure Wellington Court will appreciate, we are an impartial dispute resolution service. Delegating an investigation to the respondent of the complaint would go against that impartiality. Besides, Wellington Court has already had the opportunity to provide all the evidence and arguments it thinks are relevant.

Wellington Court also asked for a meeting with us in order to resolve this matter. Under the Dispute Resolution ("DISP") Rules, either party can request a hearing. It is for the ombudsman to consider whether the issues raised in such a request are material enough to warrant a hearing.

Having read the case in its entirety once again, I haven't seen anything that makes me think a hearing is required. I've outlined the evidence I've relied upon in coming to my decision. And I'm satisfied there's nothing in that evidence that would necessitate me speaking to either party in order to better understand that evidence. Much of the evidence is paper based and, to my mind, incontrovertible (pension and bank statements showing money flowing from GMTC to Wellington Court for instance). The paperwork that is more debateable – the transfer paperwork – has been debated extensively and I see no persuasive reason why a hearing would add significant insight to that debate. I also note that Wellington Court hasn't actually provided any specific reasons for why a fair decision can only be reached following a hearing. In the circumstances, and after considering all the available evidence and the relevant DISP rules, I'm satisfied I can fairly determine this complaint without a hearing.

Wellington Court has also said evidence hasn't been shared. It doesn't say exactly what hasn't been shared which makes responding difficult. But I'm satisfied Wellington Court has seen the transfer paperwork for numerous complainants, Mr H's included. Indeed, its case relies heavily on its views about the legitimacy of that paperwork. I'm also satisfied Wellington Court has seen copies of SIPP statements showing the 1% "Wellington IFA fee" being deducted from a number of transfer values. In my provisional decision, I recorded in detail the evidence that showed £4,624.87 was paid into Wellington Court's bank account. This fee included Mr H's 1% advice fee. This had previously been pointed out by our investigator, who provided Wellington Court with the evidence she was relying on. Wellington Court accepted that it had received the £4,624.87 payment. It even provided a bank statement to show as much but argued the payment was for something else entirely – an argument I addressed previously. I also recorded in detail the evidence that showed similar payments relating to other transfers being made to Wellington Court over a six month period. Wellington Court hasn't questioned any of these payments or even directly referred to them in its response despite their importance to the complaint.

I also pointed out that because Wellington Court didn't provide complete bank statements for the period under review, I only had evidence of it receiving some of the payments in question. But I said I thought it was reasonable – given the available evidence – to assume all the payments would been received by Wellington Court. I invited Wellington Court to provide a more comprehensive set of bank statements if it disagreed with this assumption. It didn't do so.

Given all the above, I'm satisfied Wellington Court has been made aware of, and had the opportunity to respond to, all the evidence I've relied upon in coming to my decision.

Jurisdiction

In my provisional decision, I explained why I thought Mr H's complaint was in the jurisdiction of the Financial Ombudsman Service. I said:

Jurisdiction – in respect of the activities of Wellington Court

The Financial Ombudsman Service can consider a complaint under its compulsory jurisdiction if that complaint relates to an act or omission by a firm in the carrying on of one or more listed activities, including regulated activities (DISP2.3.1R).

Advising someone to set up a SIPP and to transfer rights in existing personal pensions to that SIPP is a regulated activity. For the reasons given above. I'm satisfied there was an advisory relationship between Wellington Court and Mr H. There is a lack of documentation to show what, if anything, Wellington Court did in relation to giving advice to Mr H. Potentially it didn't do anything (whether that was deliberate or an oversight isn't for me to speculate on). It doesn't make a difference to my jurisdiction over this complaint because if there were omissions in the provision of its advice, that doesn't mean the activity becomes any less regulated as a result.

In addition, under Article 25(1) of The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the RAO), making arrangements for another person to buy and sell a specified investment is a regulated activity. The FCA's Perimeter Guidance Manual (PERG) says the following about Article 25(1):

"The activity of arranging (bringing about) deals in investments is aimed at arrangements that would have the direct effect that a particular transaction is concluded (that is, arrangements that bring it about)."

I consider it unlikely that Mr H would have transferred and invested in Dolphin Capital if it hadn't been for Wellington Court's involvement. GMTC required the involvement of an advisory firm before it would accept a transfer. Mr H signed up for advice on the transfer and investment. He paid for that advice too. So I consider it unlikely that he would have proceeded if Wellington Court had indicated he shouldn't do so. I'm satisfied, therefore, that Wellington Court's actions had the direct effect of bringing about Mr H's transfer and investment. In short, what Wellington Court did here constitutes making arrangements under Article 25(1) of the RAO.

Taking everything into account, I'm satisfied the activities complained about fall within our jurisdiction. They relate to acts or omissions in carrying on the regulated activities of advising on and arranging pensions and investments.

Jurisdiction – was Mr H an eligible complainant?

DISP 2.7 covers what is required for someone to be an eligible complainant. Broadly speaking, there are two requirements that need to be met, relating to the entity bringing the complaint (DISP 2.7.3) and the relationship between that entity and the business being complained about (DISP 2.7.6).

I'm satisfied that Mr H meets the requirements of DISP 2.7.3 because he is a "consumer" (which is defined as an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession).

With regards the second requirement, Mr H's complaint must also arise from matters relevant to a relationship with the business he is complaining about (referred to as the "respondent" in the rules). DISP 2.7.6 sets out 17 different types of relationship. The first of these is the relevant one for the purposes of Mr H's complaint:

"To be an eligible complainant a person must also have a complaint which arises from matters relevant to one or more of the following relationships with the respondent:

(1) the complainant is (or was) a customer, payment service user or electronic money holder of the respondent"

Clearly, for the reasons given previously, Wellington Court doesn't think Mr H was its customer. I disagree.

Mr H signed a document agreeing to Wellington Court to provide him with advice and to pay Wellington Court 1% for that advice. That 1% fee was duly taken from his SIPP and recorded as a "Wellington I FA fee" on his SIPP statement. I've seen nothing to show Mr H queried the fee when it was taken so I think it's evident he wasn't, at that point, concerned about paying advice fees to Wellington Court. Clearly there doesn't appear to be any documents showing what, if anything, Wellington Court did in return for that advice fee. But Mr H doesn't strike me as being a particularly experienced investor so he wouldn't necessarily have known what to expect. So I think he would therefore have reasonably considered himself a customer of Wellington Court. And from Wellington Court's perspective, it's difficult to argue Mr H wasn't its customer given it knowingly accepted the 1% payment in relation to Mr H and the transfer wouldn't have happened if it hadn't been for its involvement.

In short, Mr H signed up for advice. He paid for advice. Wellington Court was sent, and accepted, payment for that advice. And that advice – or appearance of advice – was critical to Mr H transferring and investing in the way he did. So all things considered. I'm satisfied there was a customer relationship here.

I should point out at this point that I have seen similar cases where the advisory firm has had a relationship with another business (the introducer firm for instance) which involved it checking some aspects of a person's transfer paperwork. In such a situation, it's likely that there is a business-to-business relationship (between the advisory firm and the introducer firm) rather than a direct relationship between the person transferring and the advisory firm. This has implications for the eligibility of the person bringing the complaint under DISP 2.7.6 because the complainant doesn't appear to have been a customer of the respondent.

This argument doesn't appear to apply here. Yes, Wellington Court may well have undertaken some consultancy work for GMTC. But, as outlined above, it hasn't provided enough evidence to establish what the exact nature of its relationship with GMTC was. And, for the reasons given above, there was a relationship between the complainant, Mr H, and Wellington Court anyway regardless of any consultancy arrangement that may have been in

place.

There are a number of other jurisdiction tests that must also be met before I can consider the merits of a complaint. Broadly speaking, these are that the complaint must be made against a regulated business, about an activity carried on from an establishment in the UK, and be brought within the time limits set out in the rules. The activities in question were carried on from an establishment in the UK. Wellington Court is a regulated business. And Mr H brought his complaint to us within the relevant time limits.

With all the above in mind, I'm satisfied that this is a complaint I can consider.

Wellington Court hasn't provided any specific arguments in relation to jurisdiction except for its broader arguments about Mr H never being a client of Wellington Court. I've dealt with those broader arguments and how they related to jurisdiction in my provisional decision. I've addressed those arguments once again in my comments above and my conclusions haven't changed. So, in the absence of any specific arguments about jurisdiction, I see no reason to change my provisional findings in this area.

The merits of Mr H's complaint

In my provisional decision, I concluded that Mr H's complaint should be upheld. I said:

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.

The above means there isn't any detailed documentary evidence to show what Mr H's financial needs and circumstances were at the time. Nevertheless, I'm satisfied the transaction wasn't suitable for Mr H. I say this because Dolphin Capital was a non-mainstream, high risk, unregulated investment. Mr H says he had a low attitude to risk and limited investment experience. So he doesn't appear to have had the degree of investment knowledge or risk appetite such an investment would have required. And it also looks like he allocated most of his pension savings to the one investment which strikes me as being an unsuitable strategy even for the most knowledgeable, and least risk averse, investors. It's also not apparent to me from the available evidence why Mr H would have needed to amalgamate his pensions in a SIPP, especially given the costs involved in doing so. All things considered, therefore, I don't think the transfer was suitable.

That said, it looks like Mr H was comfortable with some equity exposure because most of previous pension investments were invested in a with-profits fund which had some exposure to this asset class. And clearly Mr H had some interest in reviewing his investment strategy because that seems to have been behind his decision to consider a transfer. My approach to compensation, which is set out below, reflects the likelihood of Mr H being a relatively cautious investor who nevertheless wanted at least some exposure to riskier assets.

It follows from the above that I intend to uphold Mr H's complaint. If I do uphold Mr H's complaint, Wellington Court will have to put things right for him by following the approach outlined below.

Wellington Court hasn't provided any specific arguments in relation to what I've said except for its broader arguments about Mr H never being a client of Wellington Court. I addressed these issues in my provisional decision. I revisited the same issues earlier in this final decision and my conclusions haven't changed. I also haven't been provided with any arguments or evidence from either party that makes me think my assumptions regarding Mr H's needs and circumstances at the time of the transfer were incorrect It follows from this that I remain satisfied with the approach I took with regards to the merits of Mr H's complaint and the best approach to take to compensate him.

Putting things right

What should Wellington Court do?

My aim is that Mr H 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 take the view that Mr H would have invested differently. It's not possible to say *precisely* what he would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mr H's circumstances and objectives when he invested.

To compensate Mr H fairly, Wellington Court must:

- Compare the performance of Mr H'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 H'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.

  If Wellington Court is unable to pay the compensation into Mr H'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 H's actual or expected marginal rate of tax at his selected retirement age.

  For example, if Mr H is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr H would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

Income tax may be payable on any interest paid. If Wellington Court deducts income tax from the interest, it should tell Mr H how much has been taken off. Wellington Court should give Mr H 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	still exists	for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	date of investment	date of my final decision	8% simple per year from date of final decision to date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance)

Actual value

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

It may be difficult to find the *actual value* of the investment. So, the *actual value* should be assumed to be nil to arrive at fair compensation. Wellington Court should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider. This amount should be deducted from the compensation and the balance paid as I set out above.

If Wellington Court is unable to purchase the investment the *actual value* should be assumed to be nil for the purpose of calculation. Wellington Court may require that Mr H provides an undertaking to pay Wellington Court any amount he may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Wellington Court will need to meet any costs in drawing up the undertaking.

Fair value

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

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Wellington Court should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal, income or other distribution out of the investment should be deducted from the *fair value* 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.

SIPP Fees

The SIPP only exists because of Wellington Court's actions. But to close the SIPP and prevent further fees from being incurred, the illiquid investment needs to be removed. If Wellington Court can't do this, Mr H is faced with future SIPP fees. I think it is fair to assume five years' of future SIPP fees. So, if Wellington Court can't buy the investment, it should pay an amount equal to five years of SIPP fees based on the current full tariff. This is in addition to the compensation calculated using a nil value for the investment.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr H wanted capital growth with a small risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr H's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr H into that position. It does not mean that Mr H would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr H could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold Mr H's complaint. To settle the complaint, Wellington Court Financial Services Limited should pay the amount calculated as set out above.

Wellington Court Financial Services Limited should provide details of its calculation to Mr H in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 19 November 2021.
Christian Wood
Ombudsman