

## **The complaint**

Mr S complains about the advice he says he received in 2015 to transfer a personal pension to a self-invested personal pension (“SIPP”). His transfer proceeds were invested in Dolphin Capital, a German property development scheme that has since failed. He says the advice to transfer wasn’t suitable because the proposed investment was too high risk for him. He holds Wellington Court Financial Services Limited responsible.

## **What happened**

In 2015, Mr S transferred the benefits he had in a personal pension to “The Orbis SIPP” administered by Guinness Mahon Trust Corporation Limited (“GMTC”). He says he was advised to transfer by Wellington Court.

Mr S complained to Wellington Court in 2019. He said, in brief, that Wellington Court’s advice had been negligent because the Dolphin Capital investment was too high risk for him. The investment now looks to have little value. Mr S says Wellington Court is responsible for his loss. In response, Wellington Court said Mr S has never been its customer, so it has no case to answer. It says any paperwork linking Mr S to Wellington Court is fraudulent.

Mr S referred his complaint to us. Our investigator said that an advice fee was taken from Mr S’s SIPP and paid to Wellington Court. He thought this was enough evidence to show Wellington Court was responsible for Mr S’s transfer and, therefore, that this was a complaint that we could look at.

As Wellington Court maintains it has never dealt with Mr S, the matter was passed to me for a decision. In October 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*

In making my provisional decision I will be referring to the following:

1. Documents provided by Mr S and GMTC

The following were provided by Mr S and GMTC:

- I. An undated letter to GMTC, sent on Wellington Court headed paper, applying to the Orbis SIPP on Mr S’s behalf. The letter said it was enclosing an application for the SIPP and an invoice. It was date-stamped as being received by the PAN Group (administrators and trustees) on 20 February 2015. The letter is signed on 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 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 form was signed on 16 February 2015.

- III. The Orbis SIPP application form, signed by Mr S on 26 January 2015.
- IV. The Orbis SIPP "Important Risk Notices" document. This was a nine-page document outlining the various risks of the SIPP. It was signed by Mr S on 26 January 2015.
- V. An "Adviser Remuneration Form". This set out the advice fee that Mr S 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*

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

*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 S signed the form on 26 January 2015.

- VI. An Orbis SIPP "Transfer Details Information Forms". This set out the details of Mr S's transfer, including the policy number of the pension he was transferring from and its transfer value. This was signed by Mr S on 26 January 2015.
- VII. An investment instruction form addressed from Mr S to GMTC instructing it to invest 100% of funds in his SIPP in Dolphin Capital, signed by Mr S on 26 January 2015.
- VIII. Various documents from Mr S's transferring pension provider.
- IX. A policy schedule for the Orbis SIPP showing a start date of 6 March 2015.
- X. A Dolphin Capital loan note offer document setting out the details of the proposed £36,400 investment in Dolphin Capital in a loan note for five years. This was signed by Mr S (and a witness) on 10 March 2015.
- XI. A welcome letter from Dolphin Capital addressed to Mr S dated 2 April 2015 including the loan note certificate, which had an issue date of 19 March 2015.
- XII. A SIPP bank account statement dated 1 May 2019 showing Mr S received interest payments of £1,821 on his investment in Dolphin Capital every six months from September 2015 to March 2019.

## 2. Mr S's recollections

Mr S says that he was "cold-called" by someone, which led to a meeting being arranged with Wellington Court. He says the adviser recommended he transfer his pension and invest in Dolphin Capital. Mr S says a risk assessment was carried out which came out as being low-medium, which he agreed with. He says he was told that investing in Dolphin Capital was consistent with his attitude to risk, so he was happy to proceed on that basis.

## 3. Information from Mr S's previous pension provider

Mr S's previous scheme provided information as part of the transfer and in relation to our investigations. This information shows that, amongst other things, Mr S's pension was previously invested in funds with a relatively high equity weighting and that he likely dealt with unregulated introducers in relation to his transfer. However, it should be noted that there is no documentation linking the unregulated introducers with the pension transfer and investment in Dolphin Capital.

## 4. Documents from Wellington Court

I'll come on to what Wellington Court has said in response to Mr S'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 S's transfer because it says it didn't advise Mr S and that Mr S has never been a client of Wellington Court.

Wellington Court has, however, said (in relation to a different complaint) 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 has, however, said its regulator, the FCA, contacted it in 2016 in relation to some GMTC pension cases which led to it meeting with the FCA on 10 August 2016. The attendees at that meeting were Mr P from Wellington Court and two representatives from the FCA. I haven't included the notes provided in relation to this meeting as ultimately they are not material to the outcome of this complaint.

## 5. Payment to Wellington Court in relation to Mr S

Mr S transferred £37,502.10 from his personal pension to the Orbis SIPP on 6 March 2015. A 1% fee on this amount (along the lines of the "initial fee" in the Adviser Remuneration Form described above) would equal £375.02. According to his SIPP transaction statement, this exact amount was taken from Mr S's transfer value on 30 March 2015. This was recorded on his SIPP statement as a "Wellington IFA Fee". I can see the £375.02 was paid from the SIPP deposit account (with Metro Bank) to the GMTC client account (with 'Bank N') on 30 March 2015. This amount was included with 31 other 1% fees for other individuals and the total amount, which came to £9,239.74, was then paid from the GMTC client account to Wellington Court's bank account (with 'Bank H') on 30 March 2015.

## 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 S's case. Whilst I'm deciding here on what's fair and reasonable in the particular circumstances of Mr S'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 S'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. Paperwork from other complaints show a number of introducer firms were involved in these transfers.
- III. The recollections of the complainants in other cases haven't been particularly detailed.
- IV. Other payments to Wellington Court

Information provided by GMTC in relation to other complaints shows that 1% payments along the same lines as Mr S'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". This payment included Mr S's £375.02 fee.
- £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). 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 S'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 2015 and the £4,624.87 payment on 18 August 2015. 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. So, I'll proceed on that basis, particularly as Wellington Court has already had the opportunity to dispute this evidence in relation to other cases in which decisions have been issued and has offered no explanation for these payments.

#### *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 S (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 S'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 S's transfer and many other transfers. I came to this conclusion because the documentary evidence showed Mr S (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 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 S's pension – to the Orbis SIPP.

I went on to provisionally conclude that Mr S's complaint was in the jurisdiction of the Financial Ombudsman Service. I was satisfied that Mr S 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 S 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 S's complaint, I noted Wellington Court didn't appear to have done anything in return for the 1% advice fee it was paid in relation to Mr S'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 that the transfer wasn't suitable because Mr S ended up investing in Dolphin Capital, which was a non-mainstream, high risk, unregulated investment. I didn't think this investment was suitable for Mr S. I also didn't think Mr S would have needed to transfer his pension to a SIPP, given the costs involved in doing so. All things considered, therefore, I didn't think the transfer was suitable.

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

I invited both parties to respond. Mr S accepted the decision and had no further comments. Wellington Court made a number of comments, which I address below.

#### *What did Wellington Court say in response?*

Wellington Court made the following points in response to my provisional decision, which I've summarised below.

- Mr P's consultancy work for GMTC was explained to the FCA in 2016. The FCA has not provided any feedback on their investigation into GMTC or the consultancy work Mr P carried out.
- Further details about the meeting with the FCA and the evidence provided in relation to the work carried out by Mr P can be provided by the FCA.
- All payments received from GMTC were for administrative consultancy work carried out by Mr P and nothing else.
- It did not know that 1% was calculated, allocated, deducted from GMTC's client account and purportedly paid to it – GMTC's accounting system is controlled by GMTC and not Wellington Court.
- The fact that some customers say they did not speak to Mr P or know of Wellington Court's involvement in the transfer shows that Wellington Court was not involved.
- If Wellington Court had genuinely advised customers to transfer their pensions, it would've expected GMTC to provide it with the customary acknowledgements and associated documents that go alongside the setting up of a new client SIPP. Wellington Court received no such documentation in relation to Mr S's transfer or to

other clients, which suggests GMTC was an accomplice to the fraud it believes was taking place.

- When Wellington Court is appointed as an adviser it receives regular remuneration statements stating the client name, policy number and the fee charged – no such documentation was sent to it by GMTC for the clients it allegedly advised to transfer their pensions.
- The FCA or our service should have investigated who Dolphin Capital was paying commission to for placing the investments.

Wellington Court maintains that Mr S's claim against Wellington Court is fraudulent and that it has been 'framed'. It said it would be referring the matter to the police unless the case was withdrawn. It added that the FCA was aware of GMTC's clients making fraudulent claims and asked Mr S to apologise for making the claim against it.

For completeness, I have also considered Wellington Court's previous response to provisional decisions issued on other cases. Its arguments weren't specific to any particular case but were intended to apply to a number of similar cases. The response contained, in aggregate, over 50 bullet points. 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 decisions include 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.
4. The adviser on the paperwork – Mr P from Wellington Court – was not a registered adviser and therefore couldn't give advice on the transfers in question.
5. GMTC accepted business directly from individuals or 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 relation to a number of transfers to GMTC in 2015. I outlined this evidence in my provisional decision. I've repeated it in the background section above. To recap, the evidence was four-fold.

First, Mr S 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 S's SIPP statement shows that a 1% "Wellington IFA Fee" was taken from the transfer value of his pension on 30 March 2015. This fee was then paid from the SIPP deposit account to the GMTC client account on 30 March 2015. This amount was included with 31 other 1% fees for other individuals and the total amount, which came to £9,239.74, was then paid from the GMTC client account to Wellington Court's bank account on



30 March 2015. The £9,239.74 appeared on Wellington Court's bank statement as "GM ADVISER FEES".

Third, 1% fees along the same lines were paid from GMTC to Wellington Court 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.

Fourth, Wellington didn't at any point query the above payments despite them being substantial.

My view was, and remains, that this evidence is critical to the outcome of the complaint. It shows that many individuals – Mr S 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 at the time.

Wellington Court says 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 "GM IFA FEES" (or something similar) which I think is clear. 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 appreciate Wellington Court has 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. It isn't clear whether Wellington Court means it is confirming the fees I outlined in my provisional decision and again above were for the consultancy work it says Mr P carried out for GMTC, or whether it is simply confirming that it did receive money from GMTC for consultancy work.

Either way, I'm not persuaded the fees I've mentioned above 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. Wellington Court hasn't provided us with any details of the fees it earned for its consultancy work and the bank statements it did provide (which would have shown the full pattern of payments Wellington Court received from GMTC) have been too heavily redacted to allow much insight. In my provisional decision, I did invite Wellington Court to provide unredacted bank statements for the period under review but it hasn't done so. So whilst it's possible that Wellington Court was also receiving fees for its consultancy work, I find it hard to believe that Wellington Court could've mistaken the substantial fees outlined above, which were paid around the same time and had similar payment references, were for administrative services carried out by Mr P.

Also as I said in my provisional decision, other financial advice firms that did similar consultancy work in relation to transfers to GMTC charged a fixed fee of £30 per case. So for Wellington Court to have earned enough to have reasonably overlooked some payments from GMTC, it would have to have worked an unfeasibly large number of cases to make the numbers add up. Alternatively, it could have charged more than £30 per case. But even with this assumption, the numbers don't look feasible. A charge of £100 per case (unlikely in itself to just check whether a pension had safeguarded benefits) would still require 870 cases in order to produce an income in the region of £87,000.

In short, whilst Wellington Court may have earned additional sums for its consultancy work, it's not plausible that the fees it earned for such work could, realistically, have caused it to overlook the 1% advisory fees it was also receiving from GMTC.

So it's reasonable for me 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 S's pension and many others like it.

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 – they were marked as coming from GMTC – so I don't see any practical reason why it wouldn't have been able to raise the issue with GMTC or 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 (Mr S included). 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 S's transfer, or any other transfer as far as I was aware. And I made the point that based on the recollections of the complainants, Mr S and others like him dealt primarily with unregulated introducers and much of this was over the phone. So I can understand why Mr S, 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.

It is not uncommon for an introducer to drive the process 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 Mr S not having spoken with a representative of Wellington Court, or being unaware of its involvement, is particularly unusual here.

As I have said above, in order to proceed with the transfer, GMTC wanted the involvement of an independent financial adviser ('IFA') before accepting any transfers. 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 S's included – and paid to (and accepted by) Wellington Court. So whatever the extent of Wellington Court's contact with Mr S, it was still nonetheless engaged in an advisory capacity in relation to his transfer and subsequent investment in Dolphin Capital – 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 S, 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 S's transfer papers was undated and signed on 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 S's pension.
- Wellington Court's actions are not consistent with it being the victim of fraudulent activity.

#### *Wellington Court's other comments*

Wellington Court seems to suggest that evidence of the work carried out by Mr P for GMTC can be obtained from the FCA. But it is for Wellington Court to provide us with evidence in support of its position. In the absence of such evidence, I don't think Wellington Court has shown that its role in Mr S's pension transfer was limited to providing a checking service for GMTC.

Wellington Court says GMTC failed to undertake due diligence of the SIPP's intended investment in Dolphin Capital. But Mr S hasn't complained about GMTC – he has complained about the actions of Wellington Court. So my role is to consider Mr S's complaint against Wellington Court – which I've done. On a similar note, Wellington Court questions whether the Financial Ombudsman Service and the FCA have investigated GMTC or Dolphin Capital to ascertain who it was paying commission to. I can't comment on the FCA. And as I've said above, it isn't my role to investigate GMTC or Dolphin Capital in relation to this complaint. Based on the evidence I've seen, I'm persuaded that it advised Mr S to transfer his pension to GMTC and is responsible for his investment in Dolphin Capital.

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 provisional 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 in my decisions 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 S's included. Indeed, its case relies heavily on its views about the legitimacy of that paperwork.

I'm satisfied Wellington Court has seen a copy of Mr S's SIPP statement showing the 1% "Wellington IFA Fee" being taken from his transfer value. Wellington Court has also been sent a copy of GMTC's payment summary showing Mr S's advice fee being paid to Wellington Court's bank account. This evidence is central to the outcome of the complaint and our investigator made particular reference to it in his assessment. And in my provisional decision, I set out in some detail the payments GMTC made to Wellington Court during 2015 in relation to a large number of other transfers with very similar circumstances to Mr S's transfer. In the circumstances, it's difficult to see what material evidence Wellington Court has been deprived of.

### *Jurisdiction*

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

I said Mr S had complained about a regulated activity, as advising someone to set up a SIPP and to transfer rights in existing personal pensions to that SIPP is a regulated activity. I also said Wellington Court's actions had the direct effect of bringing about Mr S's transfer and investment in Dolphin Capital. In short, what Wellington Court did here constituted making arrangements under Article 25(1) of The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

I also said that Mr S was an eligible complainant. I said I thought Mr S was Wellington Court's customer as he signed up for advice and 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 S transferring and investing in the way he did. So I was satisfied there is a customer relationship here.

I acknowledged that Wellington Court may well have undertaken some consultancy work for GMTC, which may have given rise to a business-to-business relationship. But, I said it hadn't provided enough information 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 S, and Wellington Court anyway regardless of any consultancy arrangement that may have been in place.

I also said the activities in question were carried on from an establishment in the UK; that Wellington Court is a regulated business and Mr S brought his complaint to us within the relevant time limits. So, with all of this above in mind, I was satisfied that this is a case I can consider.

Wellington Court hasn't provided any specific arguments in relation to jurisdiction except for its broader arguments about Mr S 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 S's complaint*

In my provisional decision, I concluded that Mr S'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 S's financial needs and circumstances were at the time. Mr S recalls a risk assessment being carried out, but no documentary evidence of this is available. Nevertheless, I'm satisfied the transaction wasn't suitable for Mr S. I say this because Dolphin Capital was a non-mainstream, high risk, unregulated investment. Mr S 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 all 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 S would have needed to switch his existing pension to 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 strikes me that Mr S had some interest in reviewing his investment strategy because that seems to have been behind his decision to think about a transfer in the first place. And although he says he was a low-medium risk investor, it looks like he was probably a medium risk investor given his previous pension was invested in a portfolio with a relatively high equity weighting and he still had over 10 years before he could think about accessing his pension. My approach to compensation, which is set out below, reflects these considerations.*

*It follows from the above that I intend to uphold Mr S's complaint. If I do uphold Mr S'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 S 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 S'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 S's complaint and the best approach to take to compensate him. So, I'm upholding this complaint.

### **Putting things right**

My aim is that Mr S should be put as closely as possible into the position he would now be in if he had been given suitable advice. I think Mr S would have invested differently. It's not possible to say *precisely* what he would have done, but I'm satisfied that what I've set out below is fair and reasonable given Mr S's circumstances and objectives when he invested.

### ***What should Wellington Court do?***

To compensate Mr S fairly, Wellington Court must:

- Compare the performance of Mr S'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 S'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 S'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 S's actual or expected marginal rate of tax at his selected retirement age. As Mr S 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 S 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 S how much has been taken off. Wellington Court should give Mr S 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	FTSE UK Private Investors Income Total Return Index	date of investment	date of my final decision	8% simple per year on any loss from the end date to the date of settlement

### **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. This is complicated where an investment is illiquid (meaning it could not be readily sold on the open market) as appears to be the case here. 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 S 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.

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.

### **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 S 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 S wanted income with growth and was willing to accept some investment risk.

- 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.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr S's circumstances and risk attitude.

### **My final decision**

I uphold the complaint. My decision is that 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 S in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 January 2022.

Hannah Wise  
**Ombudsman**