

## **The complaint**

Mr C with the help of a professional representative complains about the advice he says he received in 2015 to transfer his 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 and a UK hotel development scheme which is now valued at nil after being dissolved in 2019. 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**

I set out the background to, and my provisional findings on, this complaint in my provisional decision dated 19 November 2021. I’ve included the background and provisional findings below and they form part of this decision:

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

*Mr C’s representatives (from now on I’ll just refer to Mr C) complained to Wellington Court in 2019. He said, in brief, that Wellington Court’s advice had been negligent because the investments were too high risk for him and he was not a sophisticated investor. The investment now looks to have little value. Mr C says Wellington Court is responsible for his losses. In response, Wellington Court said Mr C has never been its customer, so it has no case to answer. It says any paperwork linking Mr C to Wellington Court is fraudulent.*

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

*As Wellington Court disagreed, the matter has been passed to me for a decision.*

*What Wellington Court has said has already been considered and communicated in other decisions – with very similar circumstances, so much of what I say in this decision will already be familiar to it. However, this case has been considered on its own merits and in light of the particular circumstances of this case. And the fact that this decision will largely follow what has come before is because I’ve considered the available evidence and come to same conclusions that we’ve reached previously.*

## **What I’ve provisionally 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.*

### **Review of Evidence**

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

1. Documents provided by Mr C and GMTC

The following were provided by Mr C and GMTC:

- I. A letter undated to GMTC, sent on Wellington Court headed paper, applying to the Orbis SIPP on Mr C's behalf. The letter said it was enclosing an application for the SIPP and an invoice. It was date-stamped as being received on 6 March 2015. 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 form was signed on 5 March 2015.
- III. The first page of the Orbis SIPP application form which includes Mr C's details.
- IV. The Orbis SIPP "Important Risk Notices" document. This was a nine-page document that outlined the various risks of the SIPP. This is signed by Mr C on 2 March 2015
- V. An "Adviser Remuneration Form". This set out the advice fee that Mr C 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 C signed the form on 2 March 2005.*

- VI. Two Orbis SIPP "Transfer Details Information Forms". These set out the details of Mr C's transfer, including the transfer value, scheme name transferred from and policy number. These were signed by Mr C on 2 March 2015.
- VII. Mr C's statements from his SIPP showing a fee of £272.16 being paid on 30 March 2015 from the SIPP as IFA Fees. The description says, 'Wellington Financial IFA Fee.'

## 2. Mr C's recollections

Mr C hasn't provided us with any detailed recollections of the events in question.

## 3. Documents from Wellington Court

I'll come on to what Wellington Court has said in response to Mr C'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 C's transfer because it says it didn't advise Mr C and that Mr C 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.

Wellington Court has told us it emailed the FCA ahead of that meeting with the following statement about its activities:

*“Telephone conversations and selected paper work was initiated by Guinness Mahon (GM) and presented to our representative.*

*[Mr P] liaised with GM over the phone or occasionally inspected paper work at the GM's Reigate office to ascertain whether the cases had safeguarded or final salary benefits and filtered them out and informed GM accordingly.*

*There was no need for us to retain or obtain any documents as we were not advising or dealing with clients.*

*The service provided to GM was on a very generic basis, not relating to personal client's needs and objectives. At no stage did [Mr P] meet or have any communication with the clients of GM or Orbis.*

*We did not record telephone calls with GM's administration team. We presume that GM has the relevant clients files with all the information you require. “The briefings” received from GM were made verbally and were selective.*

*As mentioned in my email dated 9.7.2016, under 'Point 3 of your email dated 24.6.2016' Orbis' criteria: Orbis did not want any safeguarded or differed [sic] benefits pensions to be transferred to their schemes. Orbis wanted money purchase business. Orbis wished to contract out this work on an “as needed” basis to somebody with suitable experience to be able to identify the filter criteria.*

*My colleague [Mr P] will brief you fully on Wednesday the 10.8.2016 on the dealings with GM and will answer any questions you may have.”*

#### 4. Payment to Wellington Court in relation to Mr C

*Mr C transferred £27,215.66 from his personal pension to the Orbis SIPP in March 2015. A 1% fee on the combined amount (along the lines of the “initial fee” in the Adviser Remuneration Form described above) would equal £272.16. According to his SIPP transaction statement this exact amount was taken from Mr C's transfer value on 30 March 2015. It was recorded on his SIPP statement as a “Wellington IFA fee. This amount was included with 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 HSBC) on 30 March 2015.*

#### 5. Evidence from similar cases

*I am aware of a significant number of other complaints about Wellington Court which have very similar features to Mr C's case. Whilst I'm deciding here on what's fair and reasonable in*

*the particular circumstances of Mr C'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 C'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 C'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). 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". This payment included Mr C's £777.05 fee.

The above is based on information provided in Mr C'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. However, as this is a provisional decision, Wellington Court is welcome to provide us with its unredacted bank statements to show the payments it did, and did not, receive from GMTC.

#### **Interpreting the evidence – what does all this mean?**

I need to make findings of fact based on the available evidence in order to decide whether this complaint is one we can consider against Wellington Court and, if so, whether it's fair and reasonable to uphold the complaint. Where things are unclear or in dispute, I have made my findings on the balance of probabilities; that is, on what I think is more likely than not to have happened in the circumstances.

In the absence of any clear evidence or persuasive arguments to the contrary, my findings of fact will likely be as outlined in this section.

It looks like Mr C was approached by someone – most likely an unregulated introducer – and as a result of those conversations, became interested in transferring his pension to the Orbis SIPP and investing in the Dolphin Capital and Hotel development scheme.

It looks like GMTC wanted the involvement of an independent financial adviser (IFA) before accepting a transfer because in its "Important Risk Notices", it said the SIPP was "ordinarily" offered through an IFA regulated by the FCA. It appears the paperwork described above was evidence enough for GMTC to have accepted the transfer as coming through an IFA. As a result, the transfers went ahead and the 1% initial advice fee was taken from the two transfer values and paid to Wellington Court. As his investments had failed and recovery of funds looks uncertain, Mr C complained to Wellington Court because its name appeared on the transfer paperwork which said, amongst other things, that it had provided the advice to transfer.

Wellington Court says it has never had any direct, or indirect, dealings with Mr C and the evidence linking Wellington Court to Mr C is fraudulent. It says the covering letter from Wellington Court to GMTC to open the SIPP was faked and didn't come from Wellington Court. It points to the unprofessional look of the letter, as well as the fact that the letter was signed on behalf of the adviser in question – Mr P – rather than by Mr P himself and the person who signed that letter is untraceable because their signature is indecipherable. With regards to the application checklist, it points to an incorrect FCA reference number being written on the form and the adviser, Mr P, misspelling (and then correcting) his name. It also says Mr P worked in a marketing, rather than advisory, capacity. More broadly, there isn't any evidence to show any documents were sent to Wellington Court, which it says supports its view that all of the above was done without its knowledge.

*My view is that Wellington Court was engaged in advisory business involving the transfer of pensions (Mr C's included) to the Orbis SIPP and that Wellington Court's actions are not consistent with its allegations that it has been the victim of fraud.*

*I say this because I would have expected Wellington Court to have investigated the receipt of advice fees if they had genuinely been unexpected. They 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 could have been overlooked, which suggests to me that they weren't overlooked but were, instead, recognised payments in relation to the aforementioned advisory work.*

*I've also reviewed Wellington Court's financial statements for the period under review and these show a significant increase in income in 2015 in comparison with the previous year (where income was minimal). Given the numbers, it's reasonable to say the increase in income was driven largely by the fees from GMTC. So Wellington Court would have to have overlooked large payments both at the time and later on when preparing its accounts. Overlooking one in isolation seems unlikely. Overlooking both seems improbable.*

*I appreciate Wellington Court has (in other cases) pointed to the consultancy work it did with GMTC. It hasn't articulated in detail what its argument is in this respect. But I can only assume that it's saying either the payments it received from GMTC were for its consultancy work or that its consultancy work meant other payments from GMTC could easily have been overlooked which would give credence to its argument that the transfers were happening without its knowledge.*

*I don't think the first argument stands up to much scrutiny because there's a clear audit trail – outlined in 6(iv) above – that shows the payments weren't for consultancy work but related to 1% advice fees for particular policies that had been transferred. So I'll proceed on the basis that Wellington Court is arguing that receiving payments from GMTC was a normal enough occurrence that it wouldn't have considered any one payment unusual or a sign that it was a potential victim of fraud. But on this point, 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 all income received from GMTC) have been too heavily redacted to allow much insight. So whilst it's possible that the fees for its consultancy work were of a similar magnitude to the 1% initial fees outlined above, were paid around the same time and had similar payment references – so that Wellington Court wouldn't reasonably have considered them unusual – there's no evidence to support this.*

*I'm also minded that other financial advice firms that have done 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.*

*It's also worth noting that in cases where I've seen advisory firms provide checking-type services as part of the transfer process, the checklists they completed and signed on each case are still available. I find it unusual that GMTC's consultancy work left no paper trail whatsoever whereas there is a paper trail for work it said it didn't do. I think its case can only be weakened by such an anomaly. And the advisory firms that provided checking-type services also made it clear in their paperwork that they wouldn't be offering advice. So I think Wellington Court's case is weakened further because it can't now provide any similar evidence to show it never intended to operate in the advisory space in relation to its work with GMTC.*

*I think the meeting Wellington Court had with the FCA would also have been a prompt for further investigation on Wellington Court's part. Wellington Court hasn't provided us with much detail about that meeting – I've repeated what it said above. So I don't know if the FCA had specific concerns about Wellington Court or whether the purpose was to investigate GMTC and/or the unregulated introducers who were operating in this area.*

*Either way, it strikes me that the FCA's intervention was unusual and, as such, should reasonably have prompted further investigation by Wellington Court about its own dealings with GMTC. The fact that Wellington Court – based on the evidence provided to date – didn't take any further action is another reason why I think the advice fees it received from GMTC were in line with what it was expecting rather than being a result of something more alarming like fraudulent activity. I also 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 started to enquire about it.*

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

*In terms of its allegations of fraud, Wellington Court appears to be blaming GMTC. It points to GMTC's insolvency, and questions its due diligence processes, but hasn't provided much further detail or evidence in terms of the specifics of what it thinks happened.*

*I think questioning GMTC's role in what happened is a reasonable response here. But it doesn't necessarily follow from this that GMTC was acting fraudulently or that Wellington Court wasn't involved. It could be argued that Wellington Court's involvement in the transfers could only have happened had there been failures on the part of GMTC too. So I don't think the well-publicised issues at GMTC necessarily absolve Wellington Court here.*

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

*It's also not clear to me how GMTC could have acted in the way Wellington Court has suggested. Wellington Court says its letter template was forged. But I don't think it's clear from the evidence that that's the case. And to forge the letter in this way, and pay fees to Wellington Court, would have required access to one of Wellington Court's letters, and for it to have known GMTC's bank details. GMTC may have been able to get hold of both if it had previously worked with Wellington Court – through the consultancy work referred to earlier for instance. But Wellington Court hasn't provided anything to show what information (letter templates, bank details, names of employees and the like) GMTC would have had access to prior to the transfers taking place. It's worth noting in this context that Mr P from Wellington Court was self-employed and not a registered financial adviser so it seems unlikely his name would have been in the public domain or publicly linked with Wellington Court. GMTC also doesn't appear to have tried to hide the payments it made to Wellington Court in any way. If it had wanted its fees to go unnoticed, referring to them as "GM IFA FEES" or "GM ADVISER FEES" on its payment*

*reference wouldn't have been the best way to have ensured that.*

*I can also see from its Companies House filings that Wellington Court was registered in the UK in 2014 with an address in Reigate. GMTC's address was also in Reigate. So at the time of Mr C's transfer (and the transfer of many others) there appears to have been a close geographical proximity between GMTC and Wellington Court. This doesn't, of course, mean Wellington Court acted incorrectly. But it does add weight to the possibility of a close working relationship between Wellington Court and GMTC (especially as Mr P appears to have spent time at GMTC's offices). It also shows that the relationship could have involved minimal formality and paperwork which would be in keeping with how Mr C's transfer appears to have been conducted.*

*For the sake of completeness, I should point out that Wellington Court's company address has since moved from Reigate to Devon (which was effective from December 2016 according to Companies House).*

*I have given Wellington Court's arguments careful consideration. As it rightly says, the covering letter in Mr C's case (item 1(i) above) isn't signed by the adviser in question (Mr P) but signed on his behalf by someone who has an indecipherable signature. Mr P's name is misspelt, and then corrected, in the application checklist (item 1(ii) above). And the same form has Wellington Court's Irish business registration number instead of its FCA reference number. I also haven't seen any correspondence that was sent to Wellington Court or any documents that are typical of an advice process. So there are a number of question marks here.*

*However, my role is to make findings of fact based on the available evidence in order to establish whether this is a complaint that we 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. With this in mind, and for the reasons set out above, I make the following findings of fact:*

- *Wellington Court was engaged in advisory business relating to the transfer of pensions to the Orbis SIPP. This included the transfer of Mr C's pension.*
- *Wellington Court's actions are not consistent with it being the victim of fraudulent activity.*

*I've covered why I think this already, but I think it's worth repeating the key points:*

- *There's documentary evidence to show Mr C – and many others – signed up for advice from Wellington Court and that the 1% fee for that advice was paid to Wellington Court.*
- *By its own admission, Wellington Court undertook some work in relation to the transfer of a number of pensions to the Orbis SIPP.*
- *The 1% fees that were paid to Wellington Court were, in aggregate, sizeable but it doesn't appear to have queried any of them, suggesting it was expecting to receive those fees.*
- *Wellington Court's consultancy work shows there was a working relationship between the parties at the time. It wouldn't be a stretch to say that this could have led to Wellington Court doing other work on the transfers, potentially with the minimum of paperwork – especially as both organisations were based in the same town when the transfers (Mr C's included) were taking place and Mr P apparently spent time in GMTC's offices.*
- *The consultancy work could be looked at in a different light in so far as it*



could explain why Wellington Court overlooked payments from GMTC. However, Wellington Court hasn't provided us with the agreement it signed with GMTC for its consultancy work, or the amounts it was paid or the dates the payments were made (or indeed if there was more than one payment) so it's difficult to say its consultancy work would reasonably have explained why it didn't query all the income it was receiving from GMTC.

- The nature of Wellington Court's consultancy work was such that it held discussions with the FCA about what it was doing for GMTC so it seems its activities were important and prominent enough to have warranted interest from the regulator.
- Wellington Court hasn't kept any documents relating to its consultancy work with GMTC even though it wasn't a particularly long time ago and despite this activity coming under the scrutiny of the FCA.
- Wellington Court has said it was a victim of fraud. It's a serious allegation and yet Wellington Court hasn't (based on the available evidence) reported its concerns to the appropriate authorities (the police for instance) or even done much to investigate the matter itself beyond telling us, and many complainants, that it wasn't involved. So it's difficult to give Wellington Court's allegations too much credence at this point given its own lack of action on the alleged fraud.

#### **Jurisdiction - in respect of the activities of Wellington Court**

Mr C has complained about the advice he was given to transfer his personal pension to the Orbis SIPP and invest in speculative investments, which he says was too risky for him. The investment now looks to have minimal value. Mr C complained to Wellington Court because it was the advisory firm that appeared on the transfer paperwork.

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 an existing personal pension 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 C. There is a lack of documentation to show what, if anything, Wellington Court did in relation to giving advice to Mr C. 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 C would have transferred and invested in Dolphin Capital and the Hotel development scheme 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 C 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 C'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 C 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 C 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 C'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 C'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 C was its customer. I disagree.

Mr C 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 IFA fee" on his SIPP statement. I've seen nothing to show Mr C 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 C 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 C wasn't its customer given it knowingly accepted the 1% payment in relation to Mr C and the transfer wouldn't have happened if it hadn't been for its involvement.

In short, Mr C 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 C 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 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 C, 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 C 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.*

### ***The merits of Mr C's complaint***

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, my provisional decision is to uphold Mr C's complaint.*

*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 C's financial needs and circumstances were at the time. Nevertheless, I'm satisfied the transaction wasn't suitable for Mr C. I say this because the investments were non-mainstream, high risk, and unregulated investments. Mr C 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 just these investments 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 C would have needed to transfer his pension into a SIPP, especially given the costs involved in doing so. All things considered, therefore, I don't think the transfer was suitable.*

*I think if Mr C hadn't been approached about this investment, he would've remained in his personal pension until he decided to take his benefits.*

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

Mr C's representatives said as the provisional decision had been an uphold it had no further comment to make.

Wellington Court hasn't responded directly on this case but it has responded on cases with very similar circumstances – and so I've treated these responses as a response to this case as well.

Much of what it's said it has told us before but I have outlined below the relevant

statements that appear to new arguments, for example:

1. We confirm that all payments received from Guinness Mahon (GMTC) were for administrative consultancy work carried out by NP and nothing else. Evidence of administrative consultancy work undertaken by NP was produced to the FCA at the meeting in Aug 2016.
2. We did not know that 1% was calculated, allocated, deducted from GMTC's client and purportedly paid to us. GMTC's accounting system was controlled by GMTC and not Wellington Court. All documents and forms presented as evidence were issued and handled under the direct control of GM.
3. It is wrong to allege that Wellington Court accepted to be an adviser and agreed to 1% of adviser fees for **not** advising clients, **not** keeping any records and investing in unregulated funds to accommodate GMTC's dodgy scheme to the detriment 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.

My view as set out in the provisional decision was that Wellington Court's actions don't correlate with what I'd expect if it were the innocent victim of fraud.

And the points it raised don't change my view of events. However, for completeness I'll set out a response to the points made above.

Wellington Court has now said that it did not know that 1% was calculated, deducted from GMTC's client and paid to it, saying that GMTC's accounting system was controlled by it and not Wellington Court. However, as I explained in the provisional decision, its bank statements show fees totalling at least £87,000 received from GMTC and these were shown on their bank statements as 'GM IFA FEES'. It doesn't seem plausible that these payments could've been overlooked, they are for substantial amounts and were all paid to the same bank account. I think it's more likely they were recognised as payments for work Wellington Court had completed. If they were genuinely unexpected, I'd expect this to have been investigated by Wellington Court.

Wellington Court's financial statements for this period show a significant increase in income in 2015 in comparison with the previous year (where income was minimal). This increase in income was driven largely by the fees from GMTC. So Wellington Court would've had to have overlooked large payments both when they were received and later on when preparing its accounts. I don't think that is likely, especially considering the significance of these fees in terms of Wellington Court's finances.

I appreciate Wellington Court has (in other cases) pointed to the consultancy work it did with GMTC. It has most recently said that all payments received from GMTC were for administrative consultancy work carried out by Mr P and nothing else. It isn't clear whether Wellington Court means it is confirming the fees I have outlined above were for the consultancy work 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 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 all income received from GMTC) have been too heavily redacted to allow much insight. 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.

To expand on what I said in my provisional decision on this matter – I'm aware other financial advice firms have done similar consultancy work in relation to transfers to GMTC – those firms 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 considering the going rate for this type of work) would still require 870 cases in order to produce an income in the region of £87,000.

It's also worth noting that in cases where I've seen advisory firms provide checking-type services as part of the transfer process, the checklists they completed and signed on each case are still available. I find it unusual that the consultancy work Wellington Court says it did for GMTC left no paper trail whatsoever, whereas there is a paper trail for work it said it didn't do. I think its case can only be weakened by such an anomaly. And the advisory firms that provided checking-type services also made it clear in their paperwork that they wouldn't be offering advice. So I think Wellington Court's case is weakened further because it can't now provide any similar evidence to show it never intended to operate in the advisory space in relation to its work with GMTC.

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. And it has had plenty of opportunity to do so, but to date it hasn't produced anything. In the absence of such evidence, I don't think Wellington Court has shown that its role in Mr C's pension transfer was limited to providing a checking service for GMTC.

Wellington Court has also said evidence hasn't been shared. It hasn't at any point said specifically what hasn't been shared which makes responding difficult. But I'm satisfied Wellington Court has seen the transfer paperwork for numerous complainants. 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. I've outlined in detail the "money trail" that shows the 1% fee being deducted from Mr C's SIPP and being paid to Wellington Court. I have also recorded in detail the evidence that showed similar payments relating to other transfers being made to Wellington Court. I referred to the same payments in other decisions as have my colleagues. Wellington Court still hasn't referred to those payments in any detail or adequately told us which of those payments it received.

It's also worth noting that because Wellington Court didn't provide complete bank statements, I only have evidence of it receiving some of the payments in question. But my view is that it's reasonable – given the evidence that is available – to assume *all* the payments would have been received by Wellington Court. If Wellington Court disagreed with this assumption, it has had more than ample opportunity to provide a more comprehensive set of its bank statements to show the payments it received (or didn't receive) from GMTC.

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

So in conclusion for the reasons explained here and in my provisional decision as set out above, I'm satisfied the transaction wasn't suitable for Mr C. And that Wellington Court is responsible for any losses. Wellington Court should put things right as set out below.

### **Putting things right**

My aim is that Mr C 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 C 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 C's circumstances and objectives when he invested.

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

To compensate Mr C fairly, Wellington Court must:

Compare the performance of Mr C'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 C'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 C'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 C's actual or expected marginal rate of tax at his selected retirement age. For example, if Mr C 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 C would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

Unless either party provides evidence to the contrary, compensation should be based on Mr C being a basic rate taxpayer.

Income tax may be payable on any interest paid. If Wellington Court deducts income tax from the interest, it should tell Mr C how much has been taken off. Wellington Court should give Mr C 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 fund(s)			8% simple per

Orbis SIPP	still exists	Mr C was invested in with his personal pension with Scottish Widows previously	date of investment	date of my final decision	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)
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### **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 C 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. This means Wellington Court will need to contact Mr C's original pension provider to obtain this value.

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 C 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.

### **Compensation for trouble and upset**

I think the loss of what appears to be Mr C's only pension provision would've caused upset and worry and therefore I think Mr C should be compensated £300 in recognition of this.

**My final decision**

I uphold Mr C's complaint against Wellington Court Financial Services Limited in full and direct it to put things right as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 12 January 2022.

Simon Hollingshead  
**Ombudsman**