

The complaint

Mr S complains about the advice he says he received in 2015 to transfer his personal pension to a self-invested personal pension ("SIPP"). He says the advice wasn't suitable and he holds Wellington Court Financial Services Limited responsible for the loss to his pension.

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.

In September 2015 £56,701.57 was transferred to the SIPP bank account. The funds remained in cash until Mr S transferred the funds to another pension provider in August 2016.

Mr S complained to Wellington Court in 2019. He said, in brief, that Wellington Court should not have advised him to transfer his pension to a SIPP, which exposed him to higher risks. 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. His representative added that Mr S had previously pursued a claim with the Financial Services Compensation Scheme ('FSCS') in respect of investments made through another financial adviser - 'C'. The representative explained Mr S received some compensation for this.

Our investigator said, in brief, that an advice fee was taken from Mr S's SIPP and paid into Wellington Court's bank account. This advice fee was in keeping with the paperwork from the transfer, which showed Mr S had agreed to pay Wellington Court 1% for its advice. He concluded that there was enough evidence to show Wellington Court was responsible for Mr S's pension 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. On 9 December 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 of the SIPP) on 11 August 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 10 August 2015.
- III. The Orbis SIPP application form, signed by Mr S on 3 August 2015.
- IV. The Orbis SIPP “Important Risk Notices” document. This was a nine-page document that outlined the various risks of the SIPP. It was signed by Mr S on 3 August 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> | 1% to a maximum of £800 plus VAT | <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 3 August 2015.

- VI. The Orbis SIPP “Transfer Details Information Form”. This set out the details of Mr S’s transfer, including the policy number of the pension he was transferring from and the transfer value. This was signed by Mr S on 3 August 2015.
- VII. Various documents from Mr S’s transferring scheme.
- VIII. Screen-shots showing the entries made into an “advisers portal” for Mr S’s 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.

2. Mr S's recollections

Mr S's recollections are not detailed. He says he recalls being contacted by an introducer who told him about the possibility of investing his pension funds in more attractive investments which would produce higher returns. In order to receive advice on this he says he was referred to Wellington Court, who were regulated. Mr S says he was advised by Wellington Court to transfer his pension to a SIPP with GMTC as he would be able to get better returns.

3. Documents from Wellington Court

Wellington Court 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. It has also recently stated that all payments it received from GMTC were for administrative consultancy work carried out by Mr P and nothing else.

Wellington Court added that 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. It says evidence of the administrative work carried out by Mr P was produced at the meeting with the FCA. Wellington Court provided some notes relating to the meeting but I haven't included the notes here as ultimately they are not material to the outcome of this complaint.

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. Wellington Court says 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.

4. Payment to Wellington Court in relation to Mr S

Mr S transferred £56,701.57 from his personal pension to the Orbis SIPP on 14 September 2015. A 1% fee on this amount (along the lines of the "initial fee" in the Adviser Remuneration Form described above) would equal £567.02. According to his SIPP transaction statement, this exact amount was taken from Mr S's transfer value on 6 October 2015. It was recorded on his SIPP statement as a "Wellington IFA fee" and was paid from the SIPP deposit account (with Bank M) to the GMTC client account (with Bank N) on 6 October 2015. The £567.02 was included with 1% fees for 30 other individuals and the total amount, which came to £12,672.03, was then paid from the GMTC client account to Wellington Court's bank account (with Bank H) on 7 October 2015. The £12,672.03 appeared on Wellington Court's bank statement as "GM IFA FEES".

5. Evidence from similar cases

I'm 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. Paperwork from other cases show a number of introducer firms were involved in these cases.
- II. The recollections of the complainants in other cases haven't been particularly detailed. But it's apparent that for many other individuals, they invested in Dolphin Trust (a German property investment that has since failed) and that they signed a one-page investment instruction in order to make that investment. There is no such instruction in Mr S's case, which accounts for why Mr S's SIPP remained invested in cash (although why Mr S didn't complete an investment instruction isn't clear).
- III. 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".
- £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 included the £567.02 Mr S paid to Wellington Court.

The above is based on information provided in Mr S's case and other similar cases. It's not necessarily comprehensive. 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.

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. 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's funds remained in cash. Given Mr S wanted to receive better returns, advising him to transfer his pension from a managed portfolio invested in equities just to leave it in cash wasn't suitable for him. 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's representative had some comments about the redress I proposed. It said I stated a comparison should be made between the benchmark and the underlying investment, but it pointed out that no investments had been made. It also said that there would be a conflict of interest if compensation was paid to Mr S's new SIPP because he had made a separate claim to the FSCS about this SIPP. Finally, it queried why I hadn't awarded compensation for distress and inconvenience as it understood this was the usual practice.

Wellington Court responded, maintaining that Mr S's complaint was totally unwarranted. It said Mr S was not a customer of Wellington Court and it did not provide him with advice. Wellington Court said that any documents linking it to the pension transfer were fraudulent. It said Mr S's complaint should be lodged with the responsible parties who it believes he met at the time. Wellington Court also asked for a copy of our full file, including all evidence, meeting notes and statements obtained from Mr S about his involvement with third parties.

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.

In my provisional decision, I concluded that Wellington Court was engaged in advisory business relating to the transfer of pensions to the Orbis SIPP, which included the transfer of Mr S's pension. I also concluded that Wellington Court's actions were not consistent with it being the victim of fraudulent activity.

For this reason I concluded that Mr S's complaint fell within this service's jurisdiction. And I upheld Mr S's complaint on the grounds that the advice to transfer his existing pension to a SIPP and leave the funds in cash wasn't suitable for him.

Mr S didn't dispute the findings I made in my provisional decision and although Wellington Court responded, it didn't make any new points or provide any new evidence for me to consider. So, I see no reason to depart from the conclusions I reached in my provisional decision, which I summarise again as follows:

- There's documentary evidence to show Mr S – and many others, as outlined above – signed up for advice from Wellington Court and that the 1% fee for that advice was paid to Wellington Court.
- 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.
- By its own admission, Wellington Court undertook *some* work in relation to the transfer of a number of pensions to the Orbis SIPP. It told us Mr P was involved in this but his role was restricted to checking whether the customers' pensions included safeguarded benefits.
- 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 S'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 hasn't provided any evidence of the work carried out by Mr P for GMTC. In the absence of such evidence, Wellington Court hasn't shown that its role in Mr S's pension transfer was limited to providing a checking service for GMTC.
- 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 given its own lack of action on the alleged fraud.
- It is not uncommon for an introducer to drive the process of transferring a pension with the intention of investing in a particular scheme. And introducers often carry out the majority of the fact-finding directly with the customer before involving a regulated adviser to complete the process. In some instances, customers will not meet with or speak to the firm providing the advice. So I don't think that those customers who say they didn't speak to a representative of Wellington Court, or who were unaware of its involvement, is particularly unusual here. In order to proceed with the transfer, GMTC

needed to have confidence that advice had been given to Mr S. And the paperwork submitted, such as the adviser remuneration form, confirmed Mr S had appointed Wellington Court to provide him with advice. So, I think the transfer proceeded on the basis that Wellington Court had advised Mr S to do so.

- 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.
- Questioning GMTC's role in what happened is a reasonable. But it doesn't necessarily follow from this that GMTC was acting fraudulently or that Wellington Court wasn't involved. 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.
- 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 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.

Jurisdiction

- Mr S 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. Wellington Court's actions had the direct effect of bringing about Mr S's transfer. 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.
- Mr S is an eligible complainant. Mr S is 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'm satisfied there is a customer relationship here.
- I acknowledge that Wellington Court may well have undertaken some consultancy work for GMTC, which may have given rise to a business-to-business relationship. But, 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 is a relationship between the complainant, Mr S, and Wellington Court anyway regardless of any consultancy arrangement that may have been in place.

- 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 to us within the relevant time limits. So, with all of this above in mind, I'm satisfied that this is a case I can consider.

The merits of Mr S's complaint

- The transfers to the Orbis SIPP appear to have been 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.
- 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.
- There isn't any detailed documentary evidence to show what Mr S's financial needs and circumstances were at the time. But, I'm satisfied the transaction wasn't suitable for Mr S. This is because Mr S transferred from a personal pension which was invested in a managed portfolio invested predominately in overseas and UK equities (between 40% and 85%) and transferred to a SIPP that ended up invested in cash. Mr S wanted to achieve better returns, so I think investing the funds in a balanced portfolio would have been the suitable recommendation here. I say this because Mr S was only 45, so had at least 10 years before he could think about accessing his pension. So he appears to have had time to “ride out” any short term falls in the equities market meaning he could have benefited – if he had been advised properly – from the growth equities typically bring over the longer term.
- Although it appears Mr S was open to transferring his pension to another provider in order to benefit from higher returns, there's nothing to evidence this or to show why a SIPP was the right product for him. Based on what I know about Mr S, who had very little investment knowledge or experience, I don't think he wanted or needed access to non-standard investments. And I don't think he had the necessary investment knowledge to self-manage his pension or select his own investments. And, more importantly, I don't think it was appropriate for Mr S to have moved to the Orbis SIPP only to end up invested in 100% cash. So, in the circumstances, therefore, I don't think the transfer advice was suitable for him and as a result I think he has suffered a loss to his pension.
- I think Mr S probably would've transferred his pension to another provider at the time of the advice in 2015. And I think he would've invested his funds in line with his attitude to risk, which, based on the way his previous pension was invested, was balanced. I say this because Mr S transferred his pension away from the Orbis SIPP in August 2016, which appears to have been through another adviser, C. I think this demonstrates that he was always motivated to move away from his original pension provider. This also means that when putting things right for Mr S, Wellington Court is only required to compensate him for loss he experienced up to the point he transferred his pension away from the Orbis SIPP via C. My approach to compensation, set out below, reflects this.

Wellington Court's request for our full file

Wellington Court has asked for our full file, particularly statements from Mr S about his involvement with third parties.

Wellington Court was sent the evidence we received from GMTC relating to the SIPP and evidence demonstrating the fee it received for providing Mr S with advice following my provisional decision. This is the key evidence I relied on to make my decision.

Mr S's representative made some comments about Mr S's recollections from the time of the advice, which I set out in my provisional decision and I have repeated above. Mr S has not made any other statements. He also hasn't been able to provide any other documents that shed any further light on whatever involvement an introducer had in the transfer of his pension. So, I'm satisfied that Wellington Court is already aware of what Mr S recalls about the introducer's involvement. And in any event, as I have said above, I've taken into account that an introducer was most likely involved in the transfer of Mr S's pension. But irrespective of this, I'm satisfied that Wellington Court was appointed as Mr S's adviser and that Mr S's pension was only transferred to the SIPP because of Wellington Court's involvement.

Mr S's comments about the proposed redress

Mr S's representative believes I have made an error in the proposed redress calculation because it says a comparison should be made between the investment and a benchmark. Mr S's representative says no investments were made through Mr S's SIPP. But I'm satisfied that the redress proposal outlined below is fair. As Mr S's representative will note, the investment referred to in the redress calculation is 'The Orbis SIPP' – so it is the value of the SIPP at the relevant points in time that will be used to calculate the redress.

It has also said that paying any compensation that the redress calculation produces into Mr S's new pension will cause a conflict of interest. I don't know why that would be the case, but in order to avoid that possibility I think it would be reasonable for Wellington Court to pay any compensation due to Mr S to him directly as per the method below.

Finally, Mr S's representative asked why I hadn't awarded compensation for distress and inconvenience, which it understands to be standard practice. I considered whether or not to award Mr S compensation for distress and inconvenience, as I would in any complaint referred to me, but it isn't standard practice to make such an award. In the circumstances, I didn't think extra compensation was warranted because Mr S's pension funds remained in cash. So, I think a fair resolution to this complaint is to award him compensation for any investment loss he experienced before C became involved with his pension, which I understand has led to substantial losses.

Putting things right

My aim is that Mr S should be put as closely as possible into the position he would probably now be in if it hadn't been for Wellington Court's actions. I don't think Mr S would've transferred his pension to the Orbis SIPP, but I think it's likely he would've transferred his existing pension somewhere else. It's not possible to say *precisely* what Mr S would otherwise 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.

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 would usually be required to pay into Mr S's pension plan to increase its value by the amount of the compensation and any interest. But as per Mr S's request, it should *not* pay the compensation into Mr S's pension plan. Instead, Wellington Court should pay that amount direct to him. But had it been paid 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. Compensation should be based on Mr S 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 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 | transferred | FTSE UK Private Investors Income Total Return Index | date of transfer to Orbis SIPP | date transferred | 8% simple per year on any loss from the end date to the date of settlement |

Actual value

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

Fair value

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

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

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr S wanted income with some 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.

The additional interest is for being deprived of the use of any compensation money since the end date.

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 18 February 2022.

Hannah Wise
Ombudsman