

The complaint

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

What happened

In 2015 Mr P transferred the benefits he had in a personal pension to "The Orbis SIPP" administered by Guinness Mahon Trust Corporation Limited ("GMTC"). He took 25% of his transfer value as tax free cash, with most of the remainder being invested in Dolphin Capital, a German property development scheme that has since failed. The investment now looks to have little value. Mr P says Wellington Court is responsible for his losses.

Mr P complained to Wellington Court in 2019. In response, Wellington Court said Mr P has never been its customer, so it has no case to answer. It says any paperwork linking Mr P to Wellington Court is fraudulent. Mr P referred his complaint to us.

Our investigator said that an advice fee was taken from Mr P's SIPP and paid to Wellington Court. She thought this was enough evidence to show Wellington Court was responsible for Mr P's transfer and, therefore, that this was a complaint we could look at. Wellington Court maintains it has never dealt with Mr P so the matter has been passed to me for a decision.

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

Review of evidence as described in my provisional decision

1. Documents provided by Mr P and GMTC

The following were provided by Mr P and GMTC:

- I. An undated letter to GMTC, sent on Wellington Court headed paper, applying to the Orbis SIPP on Mr P'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 1 June 2015. The letter is signed on the behalf of Mr A 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 A from Wellington Court rather than by Mr A himself. The signature is indecipherable but looks to be the same as the one on the covering letter. Under the signature, Mr A's name has been printed by hand. Mr A'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 18 May 2015.

- III. The Orbis SIPP application form, signed by Mr P on 14 May 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 P on 14 May 2015.
- V. An "Adviser Remuneration Form". This set out the advice fee that Mr P had agreed to pay Wellington Court. It said the following:

"I have appointed [Mr A] 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 P signed the form on 14 May 2015.

- VI. Two Orbis SIPP "Transfer Details Information Forms". These set out the details of Mr P's two intended transfers, including the policy number of the two pensions he was intending to transfer and their transfer values. These were signed by Mr P on 14 May 2015. Only one of these policies was transferred.
- VII. Various documents from Mr P's transferring pension provider.
- VIII. A Dolphin Capital loan note application form signed by Mr P (and a witness) on 10 July 2015. The investment amount was recorded as being just under £50,000.

2. Mr P's recollections

Mr P says he was cold called about his pension and encouraged to transfer to achieve better returns.

3. Documents from Wellington Court

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

Wellington Court has, however, said (in relation to several cases) that it did some consultancy work on behalf of GMTC relating 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. It has provided notes from that meeting to show its consultancy work with GMTC was discussed with the FCA.

4. Payment to Wellington Court in relation to Mr P

Mr P transferred £71,085.50 from his personal pension to the Orbis SIPP on 15 June 2015. A 1% fee on this amount (along the lines of the "initial fee" in the Adviser Remuneration Form described above) would equal £710.86. According to his SIPP transaction statement, this exact amount was taken from Mr P's transfer value on 16 June 2015. It was recorded on his SIPP statement as a "Wellington IFA fee". I can see the £710.86 was paid from the SIPP deposit account to the GMTC client account on 16 June 2015. This amount was included with 23 other 1% fees for other individuals and the total amount, which came to £8,881.16, was then paid from the GMTC client account to Wellington Court's bank account on the same day – 16 June 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 P's case. Whilst I'm deciding on what's fair and reasonable in the circumstances of Mr P'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 P'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 A – 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 P'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". This payment included Mr P's £710.86 fee.
- £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 2015 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 P's case and other similar cases. It has been presented to Wellington Court in other decisions. 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 and I'll proceed on that basis. We've invited Wellington Court to provide us with its unredacted bank statements for the period under review to show the payments it did, and did not, receive from GMTC. It has chosen not to provide these statements. As this is a provisional decision, Wellington Court can still provide these statements for me to consider.

On a similar note, Wellington Court hasn't explicitly confirmed which of the above payments it did receive from GMTC or even referred in any detail to the list of payments described above. It has said that "all" payments received from GMTC were for its consultancy work with GMTC – which suggests it received all the payments outlined above. But it also says it wasn't aware that GMTC was deducting 1% fees from transfer values and "purportedly" paying those fees to Wellington Court – which suggests it is saying it only received some of the payments in question. As I said above, Wellington Court can provide clarity on this issue by providing a complete, unredacted, set of its bank statements for the period under review. At the very least, it would be helpful if it told us categorically whether it received all the payments outlined above and, if not, what payments it did receive.

6. Other evidence

Wellington Court's financial statements show minimal income prior to 2015 followed by a significant increase in income for the period coinciding with the above payments from GMTC.

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

I went on to provisionally conclude that Mr P's complaint was in the jurisdiction of the Financial Ombudsman Service. I was satisfied that Mr P 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 P 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 P's complaint, I noted Wellington Court doesn't appear to have done anything in return for the 1% advice fee it was paid in relation to Mr P'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 transaction wasn't suitable because Mr P ended up investing in a way that was beyond his risk tolerance.

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

I invited both parties to respond. Mr P had no further comments. Wellington Court made a number of comments in relation to similar complaints, which I address below.

What did Wellington Court say in response?

Wellington Court has made a number of comments in response to other decisions that have covered similar ground to this one. I've summarised Wellington Court's responses as follows:

1. The Financial Ombudsman Service hasn't undertaken a thorough investigation into the complaint and the provisional decision includes findings that are unwarranted and not based on the evidence. The Financial Ombudsman Service is biased and is trying to frame Wellington Court.
2. The Financial Ombudsman Service hasn't responded to all Wellington Court's emails.
3. Evidence hasn't been shared; a full disclosure would be required in court.
4. There are no grounds for complaint because the complainants have never been clients of Wellington Court. Any transfer paperwork that refers to Wellington Court is fraudulent and paperwork that looks to have originated from Wellington Court has been cloned. Complainants' testimony does little to prove Wellington Court's involvement and Wellington Court has testimony from at least one client that says it didn't advise him and had no role in arranging his pension. No evidence has been provided of any direct contact between Wellington Court and the complainants or Dolphin Capital (where many complainants invested).
5. The adviser on the paperwork – Mr A from Wellington Court – was not a registered adviser and therefore couldn't give advice on the transfers in question.
6. GMTC accepted business directly from individuals and from unauthorised advisers and introducers.
7. 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.
8. 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.

9. The Financial Ombudsman Service has failed to recognise the obligations of GMTCC, in particular in relation to undertaking due diligence on the underlying assets held in its SIPPs.
10. 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.
11. Wellington Court's advisory involvement with GMTCC 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.
12. Wellington Court wouldn't have risked its reputation and licence by supporting unregulated activities.
13. 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.
14. 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.
15. 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.

Reviewing the evidence

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

First, Mr P and many others signed an "Adviser Remuneration Form" which appointed Mr A 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 P's SIPP statement shows that a 1% "Wellington IFA fee" was taken from his transfer on 16 June 2015. The fee (for £710.86) was then paid from the SIPP deposit account to the GMTC client and then paid, along with 23 other 1% fees (totalling £8,881.16) for other individuals transferring to the Orbis SIPP, to Wellington Court's bank account. GMTC's banking records show the £8,881.16 was to be recorded on Wellington Court's bank statement as "GM IFA FEES".

Third, 1% fees along the same lines were paid from GMTC to the same Wellington Court bank account in relation to a large number of other transfers to the Orbis SIPP over a six month period in 2015. In my provisional decision, I said payments of at least £87,000 relating to at least 200 policies were paid in this period. Further payments have since come to light pushing the total to nearly £100,000. The payment references were "GM IFA FEES" or something equally clear.

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

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

So it's reasonable to conclude from all 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 P's pension and many others like it.

Wellington Court has pointed to the consultancy work it did with GMTC. It hasn't articulated in detail what its argument is in this respect – it hasn't even said which payments from GMTC it admits to receiving. But I can only assume that Wellington Court is either saying *all* the payments from GMTC catalogued above were for its consultancy work or that it received *some* payments from GMTC for its consultancy work which meant the payments catalogued above 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 paper trail – outlined above – that shows the payments weren't for consultancy work but related to 1% advice fees for a large number of policies that were transferred to the Orbis SIPP. I'll therefore proceed on the basis that Wellington Court can only be arguing that its consultancy work meant receiving payments from GMTC was a normal enough occurrence that it wouldn't have considered any other payments from GMTC as being unusual or a sign that it was a potential victim of fraud.

For this latter argument to be plausible, the fees Wellington Court earned for its consultancy work would have needed to have been of a similar magnitude to the 1% initial fees outlined above, been paid around the same time and had similar payment references in order for Wellington Court to have considered the payments as being nothing unusual. Unfortunately, Wellington Court hasn't provided any evidence to support this argument. It says it no longer has records relating to its consultancy work with GMTC. And it has chosen to be selective in terms of the bank statements it has provided to us meaning I can't see whether it could,

plausibly, have overlooked payments of nearly £100,000 from GMTC because it was – so the argument goes – earning so much other income from GMTC.

I'm also aware 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 needed 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 1,000 cases in order to produce an income in the region of £100,000.

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. Those fees must therefore have been in line with what Wellington Court had been expecting from GMTC for its role in the transfers.

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

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

As an aside, it's also worth noting that victims of scams wouldn't usually receive tens of thousands of pounds from the alleged scammer – and there appears to be little doubt that Wellington Court did receive those sorts of sums from the business it claims is behind the scam.

Wellington Court also points out that there's no evidence of there being any direct contact between it and the complainants (Mr P 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 has also referred to one of its clients who says Wellington Court had no involvement in his pension with GMTC.

I think it's likely that complainants dealt primarily with unregulated introducers. So I can understand why they can't recall much, if anything, about Wellington Court. However, this doesn't preclude the possibility of Wellington Court's involvement in the transfers. GMTC wanted the involvement of an IFA before accepting any transfers as evidenced by its "Important Risk Notices" document. The paperwork described above was evidence enough for GMTC to have accepted a transfer as coming through an IFA – Wellington Court. As a result, the transfers went ahead and the 1% initial advice fee was taken from each transfer value – Mr P's included – and paid to (and accepted by) Wellington Court. So whatever the extent of Wellington Court's contact with Mr P, it was still nonetheless engaged in an

advisory capacity in relation to his transfer and investment – and the transfer of many other pensions too. The absence of any of the usual paperwork one would expect from an advice process, and the absence of substantive testimony about meetings with Wellington Court, doesn't change any of this. It just means Wellington Court didn't properly advise Mr P, 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 P's transfer papers was undated and signed on the behalf of Mr A (the adviser from Wellington Court named on the paperwork) rather than by Mr A himself. The signature on that letter is indecipherable. Likewise, the Orbis SIPP "New Application Checklist" was signed on Mr A's behalf rather than by Mr A himself. The signature is again indecipherable (but looks to be the same as the one on the covering letter). Under the signature, Mr A'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 P's pension.
- Wellington Court's actions are not consistent with it being the victim of fraudulent activity.

Addressing Wellington Court's other comments

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

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

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

Having read the case in its entirety once again, I haven't seen anything that makes me think a hearing is required. I've outlined the evidence I've relied upon in coming to my 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 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, arguments and 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 hasn't said exactly 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 – a message it repeats in relation to Mr P's complaint. 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 a 1% fee being paid to Wellington Court in relation to Mr P's transfer. I have also recorded in detail the evidence that shows similar payments relating to other transfers being made to Wellington Court. This is evidence that has been described in other decisions as well. Wellington Court has seen evidence of many of these payments too – and has even provided evidence to us of receiving some of those payments.

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

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

On a similar note, I'm satisfied I can come to a fair and reasonable decision based on the evidence I've outlined. As such, I won't be carrying out Wellington Court's various requests to seek out further evidence from third parties. I don't consider the evidence to be necessary to my decision and Wellington Court has had ample opportunity to provide any evidence it considers important bearing in mind Mr P has been querying this transaction since 2019.

Finally, Wellington Court says we haven't replied to a number of its emails. For the avoidance of doubt, I have considered everything Wellington Court has said in relation to this case and the many others like it – even if I have limited my findings to those areas I consider relevant to the complaint's outcome.

Jurisdiction

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

Jurisdiction – in respect of the activities of Wellington Court

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

Advising someone to set up a SIPP and to transfer rights in existing personal pensions to that SIPP is a regulated activity. For the reasons given above, I'm satisfied there was an advisory relationship between Wellington Court and Mr P. There is a lack of documentation to show what, if anything, Wellington Court did in relation to giving advice to Mr P. 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 P would have transferred and invested in the way he did 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 P 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 P'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 P 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 P 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 P'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 P'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 P was its customer. I disagree.

Mr P 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 P

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 P 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 P wasn't its customer given it knowingly accepted the 1% payment in relation to Mr P and the transfer wouldn't have happened if it hadn't been for its involvement.

In short, Mr P 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 P 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 GMTCC. But, as outlined above, it hasn't provided enough information to establish what the exact nature of its relationship with GMTCC was. And, for the reasons given above, there was a relationship between the complainant, Mr P, 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 P brought his complaint to us within the relevant time limits.

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

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

In my provisional decision, I concluded that Mr P'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, GMTCC 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 significant number of transfers.

The above means there isn't any detailed documentary evidence to show what Mr P's financial needs and circumstances were at the time. Nevertheless, I'm satisfied the transaction wasn't suitable for Mr P. I say this because Dolphin Capital was a non-mainstream, high risk, unregulated investment. Mr P 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 a large portion 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. So I don't think the investment, and therefore the transfer, was suitable.

That said, it strikes me that Mr P had some interest in reviewing his investment strategy with a view to generating higher returns because that seems to have been behind his decision to think about a transfer in the first place. My provisional approach to compensation, which is set out below, reflects the likelihood of Mr P being a relatively cautious investor who nevertheless wanted at least some exposure to riskier assets.

Wellington Court hasn't provided any specific arguments in relation to what I've said except for its broader arguments about Mr P 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 P'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 P's complaint and the best approach to take to compensate him.

Putting things right

What should Wellington Court do?

My aim is that Mr P should be put as closely as possible into the position he would probably now be in if it hadn't been for Wellington Court's actions. I take the view that Mr P would have invested differently. It's not possible to say precisely what he would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mr P's circumstances and objectives when he invested.

To compensate Mr P fairly, Wellington Court must:

- Compare the performance of Mr P'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 P'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 P'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. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr P won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr P's actual or expected marginal rate of tax at his selected retirement age. Wellington Court should assume that Mr P is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%.

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

Actual value

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

It may be difficult to find the *actual* value of the portfolio. This is complicated where an asset is illiquid (meaning it could not be readily sold on the open market) as in this case.

Wellington Court should take ownership of the illiquid assets by paying a commercial value acceptable to the pension provider. The amount Wellington Court pays should be included in the actual value before compensation is calculated.

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

Wellington Court will need to meet any costs in drawing up the undertaking.

Fair value

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

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

Any withdrawal from the portfolio 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 to determine the fair value instead of deducting periodically.

The Orbis SIPP only exists because of illiquid assets. In order for the Orbis SIPP to be closed and further fees that are charged to be prevented, those investments need to be removed. I've set out above how this might be achieved by Wellington Court taking over the investment, or this is something that Mr P can discuss with the provider directly. But I don't know how long that will take.

Third parties are involved and we don't have the power to tell them what to do. If Wellington Court is unable to purchase the investment, to provide certainty to all parties I think it's fair that it pays Mr P an upfront lump sum equivalent to five years' worth of wrapper fees (calculated using the fee in the previous year to date). This should provide a reasonable period for the parties to arrange for the Orbis SIPP to be closed.

Why is this remedy suitable?

I've chosen this method of compensation because:

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

My final decision

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

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 11 March 2022.

Christian Wood
Ombudsman