

The complaint

Mr R complains about the advice he says he received in 2015 to transfer a personal pension to a self-invested personal pension ("SIPP"). His transfer proceeds were invested in unregulated investment schemes that have since failed. He says the advice to transfer wasn't suitable because the proposed investments were too high risk for him. He holds Wellington Court Financial Services Limited responsible.

What happened

In 2015, Mr R transferred the benefits he had in a personal pension to "The Orbis SIPP" administered by Guinness Mahon Trust Corporation Limited ("GMTC"). The funds were then invested in Dolphin Capital and Residential Regeneration. He now believes he was advised to transfer his pension by Wellington Court.

Mr R complained to Wellington Court in 2020. He said, in brief, that Wellington Court's advice had been negligent because the investments in Dolphin Capital and Residential Regeneration were unregulated and too high risk for him. The investments now look to have little value. Mr R says Wellington Court is responsible for his loss. Wellington Court didn't respond so Mr R referred his complaint to our service.

Our investigator said that there was evidence demonstrating that Wellington Court was involved in the transfer of Mr R's pension to the Orbis SIPP, including a letter from a Mr P at Wellington Court which referred to Mr R as his client. She thought this was enough evidence to show Wellington Court was responsible for Mr R's transfer and, therefore, that this was a complaint that we could look at.

Wellington Court said it did not give Mr R any advice and Mr R has never been its customer. It says any paperwork linking Mr R to Wellington Court is fraudulent and denies that it has any responsibility for the complaint.

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

On 18 January 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.

1. Documents provided by Mr R and GMTC

The following were provided by Mr R and GMTC:

- I. An undated letter to GMTC, sent on Wellington Court headed paper, applying to the Orbis SIPP on Mr R's behalf. The letter said it was enclosing an application for the SIPP and its investment instructions. It was date-stamped as being received by the PAN Group (administrators and trustees of the SIPP) on 19 January 2015. The letter is signed on behalf of 'Mr P' from Wellington Court. The signature is indecipherable. The letter specified that Mr R would be remunerating Mr P directly so the Adviser Remuneration Form hadn't been included.

- II. The Orbis SIPP “New Application Checklist”. This was a series of tick boxes of the various documents (such as a SIPP application form and transfer discharge form) that the adviser had to check had been provided for the transfer to proceed. Like the covering letter, this was signed on behalf of Mr P from Wellington Court rather than by Mr P himself. The signature is indecipherable but looks to be the same as the one on the covering letter. 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 13 January 2015.
- III. The Orbis SIPP application form signed by Mr R on 9 January 2015.
- IV. The Orbis SIPP “Important Risk Notices” document. This was a nine-page document outlining the various risks of the SIPP. It was signed by Mr R on 9 January 2015.
- V. An Orbis SIPP “Transfer Details Information Form”. This set out the details of Mr R’s transfer, including the policy number of the pension he was transferring from and its transfer value. This was signed by Mr R on 9 January 2015.
- VI. A ‘Supplemental Deed’ relating to the Orbis SIPP between Mr R and GMTC dated 9 January 2015 which set out the provisions of the SIPP arrangement.
- VII. Documents relating to the investment in Residential Regeneration, including the application form signed by Mr R for an investment of £10,000; a bond certificate showing Mr R held 10 bonds with a principal amount of £10,000 and a deed setting out the terms of the bond.
- VIII. Documents relating to the investment in Dolphin Capital, including a loan note offer for an investment of £84,500 over a term of five years signed by Mr R on 4 April 2015; a loan note certificate for £84,500 from Dolphin Capital which had an issue date of 15 April 2015 and statements to 2019.
- IX. A GMTC ‘New Business Sign Off Sheet’ completed by a representative of GMTC on 25 February 2015. This showed the processes followed – it noted that the sale of the SIPP was ‘advised’.
- X. SIPP valuation statements from 2016 to 2019 and a SIPP bank account statement dated 24 October 2019 showing the account transactions since it was opened on 21 January 2015.

2. Mr R’s recollections

Mr R says that he was recommended by someone to Mr C, who worked for a company I’ll refer to as ‘A’, to talk about his pension. He says Mr C introduced the idea of investing his pension in Dolphin Capital and Residential Regeneration, which he said was a low-risk ‘bricks and mortar’ investment, with guaranteed returns in five years. Mr R says he never met or spoke to Mr P or anyone else from Wellington Court, but Mr C told him his pension transfer and the investments were arranged by Wellington Court.

3. Information from Mr R’s previous pension providers

Mr R’s previous pension provider sent us information to assist with our investigations. This information shows that, amongst other things, Mr R’s pension was invested equally across three funds. The asset classes in first fund were almost exclusively equities. The asset classes in the second and third funds were weighted in favour of equities.

4. Documents from Wellington Court

Wellington Court hasn't provided any documents in relation to Mr R's transfer because it says it didn't advise Mr R and that Mr R 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 Financial Conduct Authority ('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.

5. Payment to Wellington Court in relation to Mr R

Mr R transferred £96,579.26 from his personal pension to the Orbis SIPP on 25 March 2015. In other complaints I've seen that have very similar circumstances to Mr R's complaint, customers were charged an advice fee of 1% of the transfer value, up to a maximum of £800, which was deducted directly from the customers' SIPP account and paid to a GMTC holding account. The advice fees were then transferred in bulk payments to a bank account held by Wellington Court - I will set out in detail what we know about this below.

However, in Mr R's case no advice fee was deducted from his SIPP account following the transfer of his funds. This is explained by the covering letter provided by Mr P of Wellington Court, who stated that Mr R would be remunerating him directly.

The investigator asked Mr R if he could provide evidence of the payment made to Mr P or Wellington Court, but he was unable to do so and couldn't recall making such a payment. Mr R was also asked whether he remembered or could evidence making a payment to anyone else, for example Mr C of A, but Mr R didn't recall making a payment to anyone else either.

6. Evidence from similar cases

As I've said above, I am aware of a significant number of other complaints about Wellington Court which have very similar features to Mr R's case. Whilst I'm deciding here on what's fair and reasonable in the particular circumstances of Mr R'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 R's case. Specifically:

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

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

III. Other payments to Wellington Court

Information provided by GMTC in relation to other complaints shows that payments representing 1% of the sums transferred by customers to GMTC 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”.

The above is based on information provided in other cases similar to Mr R’s case. It’s not necessarily comprehensive. Furthermore, it appears that fees were also paid directly to Mr P of Wellington Court, as is the case here, and in another complaint I’ve seen. So I think it’s fair to say the above shows that at least £87,000 was paid 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 R (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 R’s pension (and other pensions).

However, I went on to conclude that Wellington Court had most likely been paid a 1% advisory fee in relation to Mr R’s transfer and many other transfers. I came to this conclusion because the documentary evidence showed Mr R had agreed to pay Wellington Court an advisory fee in relation to the Orbis SIPP and the investments intended to be held in the SIPP. I thought the documentary evidence relating to other customers persuasively showed that the 1% fees collected from individuals were paid to Wellington Court – I didn’t think it made a difference that we couldn’t trace the fee paid in Mr R’s case. The 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 R’s pension – to the Orbis SIPP.

I went on to provisionally conclude that Mr R’s complaint was in the jurisdiction of the Financial Ombudsman Service. I was satisfied that Mr R 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 R 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 regard to the merits of Mr R’s complaint, I noted Wellington Court didn’t appear to have done anything in return for the advice fee Mr R had agreed to pay in relation to his 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 R ended up investing in Dolphin Capital and Residential Regeneration, which were both non-mainstream, high risk, unregulated investments. I didn't think these investments were suitable for Mr R. I also didn't think Mr R would have needed to transfer his pensions to a SIPP, given the costs involved in doing so. All things considered, therefore, I didn't think the transfer was suitable for him.

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

I invited both parties to respond. Mr R's representative didn't have anything to add.

Wellington Court responded, although not specifically about Mr R's complaint. It said we had not given Wellington Court a fair and open hearing nor had we disclosed all of the evidence. It said the conclusions reached on decisions issued were irrational and not supported by the evidence. It also said our service had ulterior motives and it believed Wellington Court was being targeted because it was an Irish company. To avoid further misunderstanding, Wellington Court proposed a face-to-face meeting with our service and the FCA. It asked whether we had received a copy of the investigation report when the FCA visited Mr P in 2016.

Wellington Court also said 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." It added that the pensions regulator is responsible for looking into GMTC's actions and asked whether our service had approached it for any information.

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 R'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 R's complaint fell within this service's jurisdiction. And I upheld Mr R's complaint on the grounds that the advice to transfer his existing pension to a SIPP and invest in Dolphin Capital and Residential Regeneration wasn't suitable for him.

Mr R 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.

Nevertheless, I've carefully considered everything submitted again. And I accept that some of the transfer paperwork looks unusual. For instance, the letter that was sent to GMTC enclosing Mr R'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) and an incorrect FCA reference number was also provided. But despite this, I think the evidence against Wellington Court here is stronger. And as such, 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 R – and many others, as outlined above – signed up for advice from Wellington Court and that a 1% fee for that advice was most likely 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 R’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.
- Wellington Court hasn’t kept any documents relating to its consultancy work with GMTC, even though it wasn’t a particularly long time ago.
- 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 R’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 (as Mr R has said here), is particularly unusual.

- In order to proceed with the transfer, GMTC needed to have confidence that advice had been given to Mr R. The paperwork submitted, such as the covering letter from Wellington Court, confirmed Mr R had appointed Wellington Court to provide him with advice. And GMTC's 'New Business Sign Off Sheet' stated Mr R had been advised on the transfer of his pension. So, I think the transfer proceeded on the basis that Wellington Court had advised Mr R to do so.
- Questioning GMTC's role in what happened is 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 R, 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 R, and others, despite being paid to do so.

Jurisdiction

- Mr R 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 R's transfer and investment in both Dolphin Capital and Residential Regeneration. 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 R is an eligible complainant. Mr R most likely dealt with an introducer, Mr C, and Mr R signed documents on 9 January 2015 agreeing to transfer his pension. Mr C says that the paperwork was then passed to Wellington Court to complete the advice process. I'm persuaded by this because Mr P, on behalf of Wellington Court, sent Mr R's paperwork to GMTC on Wellington Court headed paper. Someone signed this on Mr P's behalf on 13 January 2015. Mr P referred to Mr R as his 'client' and asked GMTC to establish the SIPP and carry out 'our' investment instructions. I think this shows the investment instructions came from Wellington Court. The paperwork also says that Mr R would be paying Wellington Court, via Mr P, directly. So, Mr R is Wellington Court's customer as he signed up for advice and he most likely paid for advice. Wellington Court was most likely sent, and accepted, payment for that advice. And that advice – or appearance of advice – was critical to Mr R 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 R, 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 R 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 R'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 R's financial needs and circumstances were at the time. But, I'm satisfied the transaction wasn't suitable for Mr R. I say this because Dolphin Capital and Residential Regeneration were both non-mainstream, high risk, unregulated investments. Mr R doesn't appear to have had the degree of investment knowledge or risk appetite such an investment would have required. And it also looks like he allocated all of his pension savings to those 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 R needed to transfer his existing pension to a SIPP, especially given the costs involved in doing so. All things considered, therefore, I don't think the transfer was suitable.
- Nevertheless, I think Mr R had some interest in reviewing his investment strategy because he was open to a transfer in the first place. As no attitude to risk assessment was carried out by Wellington Court, we asked for information from Mr R's previous pension provider in order to see how his pension assets were previously invested. This would give some insight into Mr R's risk profile. This information showed that Mr R's pension was invested across funds with a relatively high equity weighting, which in my view, would indicate a balanced or medium attitude to risk. Mr R still had over six years before he could think about accessing his pension, so he had time to recoup losses. With this in mind, I think Mr R most likely had a medium attitude to risk. My approach to compensation, which is set out below, reflects these considerations.

Wellington Court's other comments

Wellington Court has made a number of arguments in response to other similar cases. Where applicable, I've addressed some of those arguments above. I address the remaining arguments below.

Wellington Court has said we have not made a full disclosure of the evidence. But it hasn't at any point said exactly what evidence hasn't been shared, which makes responding difficult. Wellington Court was sent the evidence we received from GMTC relating to Mr R's pension transfer following my provisional decision. My provisional decision also set out, in detail, the evidence I'd relied on in this case and the evidence I'd seen and taken into account on other cases like Mr R's. Wellington Court has also seen the transfer paperwork for numerous other complainants where decisions have been issued. Indeed, its case relies heavily on its views about the legitimacy of that paperwork – a message it repeats in relation to Mr R's complaint. 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.

Wellington Court says we have not obtained evidence of the introducer's involvement. It also says that the decisions made are irrational and not supported by the evidence. Our investigator asked Mr R for his recollections from the time of the advice, which I set out in my provisional decision and I have repeated above. So, I'm satisfied that Wellington Court is already aware of what Mr R recalls about the introducer's involvement. And in any event, I've taken into account that an introducer was involved in the transfer of Mr R's pension. But irrespective of this, and as I have set out in detail with reference to the relevant evidence, I'm satisfied that there was an advisory relationship between Wellington Court and Mr R and that Mr R's pension was only transferred to the SIPP because of Wellington Court's involvement.

Wellington Court maintains that it is the victim of fraud and that GMTC was running a scam. 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.

Furthermore, 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 says our service has failed to investigate GMTC or liaise with the pensions regulator about GMTC's role in the transfers. As my remit here is to consider Mr R's complaint against Wellington Court, I won't be investigating GMTC's due diligence or conducting a broader investigation into GMTC. 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 seems to suggest that a report into the work carried out by Mr P for GMTC can be obtained from the FCA. But, as I said in my provisional decision, it is for Wellington Court to provide us with evidence in support of its position. Wellington Court was invited to provide me with this evidence so that I could consider it. But it has not sent me a copy of this

report. And in the absence of such evidence, I don't think Wellington Court has shown that its role in Mr R's pension transfer was limited to providing a checking service for GMTC.

Wellington Court also asked for a meeting with us and the FCA in order to resolve this matter. But Mr R has asked our service to consider his complaint against Wellington Court and I'm satisfied I can come to a fair and reasonable decision on his complaint based on the evidence I've outlined. Wellington Court has had ample opportunity to provide any evidence it has in support of its position, and indeed it has had several years to investigate the matter since it was first brought to its attention in 2019. I don't think the matter, by which I assume Wellington Court means all of the cases that have been submitted against it, can be resolved through a meeting with our service and the FCA.

Finally, Wellington Court says we haven't replied to a number of its emails. For the avoidance of doubt, I've 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. However, for the reasons given above, I'm upholding this complaint and I think Wellington Court should compensate Mr R for his losses.

Putting things right

My aim is that Mr R should be put as closely as possible into the position he would now be in if he had been given suitable advice. I don't think Mr R would've transferred his pension to a SIPP, but I think he would have sought to invest his pension differently to achieve higher growth. 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 R's circumstances and objectives when he invested.

What should Wellington Court do?

To compensate Mr R fairly, Wellington Court must:

- Compare the performance of Mr R'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 R'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 R'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 R's actual or expected marginal rate of tax at his selected retirement age. For example, if Mr R 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 R 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 R 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 R how much has been taken off. Wellington Court should give Mr R 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
Orbis SIPP	still exists	FTSE UK Private Investors Income Total Return Index	date of investment	date of my final decision	8% simple per year from date of final decision to date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance)

Actual value

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

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

Fair value

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

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

SIPP Fees

The SIPP only exists because of Wellington Court's actions. But to close the SIPP and prevent further fees from being incurred, the illiquid investments need to be removed. If Wellington Court can't do this, Mr R 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 investments, 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 investments.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr R 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 R's circumstances and risk attitude.

I also think Wellington Court should pay Mr R £300 compensation for the distress and inconvenience caused by the unsuitable advice, which has caused a total loss to his pension.

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 R in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 26 March 2022.

Hannah Wise
Ombudsman