

The complaint

Mr N has complained about the transfer of two personal pensions to a self-invested personal pension ("SIPP") in 2015. His transfer proceeds were put into an overseas property-based investment that appears to have failed. He holds Wellington Court Financial Services Limited responsible for his losses.

What happened

In 2015 Mr N transferred the benefits he had in two personal pensions to "The Orbis SIPP" administered by Guinness Mahon Trust Corporation Limited ("GMTC"). He invested his transfer proceeds in a Dolphin Capital secured loan note that now looks to have little value. Mr N says Wellington Court is responsible for his losses. Wellington Court says Mr N has never been its customer, so it has no case to answer. It says, in brief, that any paperwork linking Mr N to Wellington Court is fraudulent.

Our investigator said, in brief, that an advice fee was taken from Mr N's SIPP and paid to Wellington Court. He thought this was enough evidence to show Wellington Court was responsible for Mr N's transfer and, therefore, that this was a complaint we could look at. As Wellington Court maintained it never dealt with Mr N, the matter was passed to me for a decision.

I issued a provisional decision in which I outlined in detail the evidence that was available to me and the conclusions I drew from that evidence. I repeat what I said here so that it forms part of this final decision.

What I said in my provisional decision

Review of Evidence

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

1. Documents provided by Mr N and GMTC

The following were provided by Mr N and GMTC:

- I. An undated letter to GMTC, sent on Wellington Court headed paper, applying to the Orbis SIPP on Mr N'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 9 April 2015. The letter is signed on the behalf of Mr P from Wellington Court. The signature is indecipherable.*
- II. The Orbis SIPP "New Application Checklist". This was a series of tick boxes of the various documents (such as a SIPP application form and transfer discharge form) that the adviser had to check had been provided for the transfer to proceed. Like the covering letter, this was signed on the behalf of Mr P from Wellington Court rather than by Mr P himself. The signature is indecipherable but looks to be the same as the one on the covering letter. Under the signature, Mr P's name has been printed by*

hand. Mr P's first name was spelt incorrectly at first but was then corrected. An incorrect Financial Conduct Authority (FCA) reference number was also provided – the number used was actually Wellington Court's Irish company registration number. The form was signed on 8 April 2015.

III. The Orbis SIPP application form, signed by Mr N on 1 April 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 N on 1 April 2015.

V. An "Adviser Remuneration Form". This set out the advice fee that Mr N had agreed to pay Wellington Court. It said the following:

"I have appointed [Mr P] of Wellington Court Financial Services Ltd ("The Company") to provide me with advice in relation to The Orbis SIPP ("The SIPP") and any related investment advice in respect of assets held within the SIPP

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

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 N signed the form on 1 April 2015.

VI. An Orbis SIPP "Transfer Details Information Form" for the two personal pensions Mr N was transferring from, signed by Mr N on 1 April 2015.

VII. A transfer instruction showing Mr N wanted to invest 100% of his transfer proceeds in "Dolphin". Mr N signed this instruction but it is undated.

VIII. A Dolphin Capital "loan note offer", signed by Mr N and a witness on 29 April 2014 (which I assume should have read 2015), showing an investment amount of £41,740.

2. Mr N's recollections

Mr N's recollections aren't detailed but he says he was misadvised because his investment was too high risk for him.

3. Documents from Wellington Court

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

Wellington Court has, however, said (in relation to several cases) that it did some consultancy work for 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 this 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 says further evidence of its work with GMTC can be obtained from the FCA.

4. Payment to Wellington Court in relation to Mr N

Mr N transferred £32,164.96 from a personal pension to the Orbis SIPP on 23 April 2015. He transferred in £10,769.77 from another personal pension (with a different provider) the following day. A 1% fee (along the lines of the "initial fee" in the Adviser Remuneration Form described above) on the total transfer value would equal £429.35. According to his SIPP transaction statement, this exact amount was taken from Mr N's transfer value on 19 May 2015. It was recorded on his SIPP statement as a "Wellington IFA fee".

The £429.35 was paid into the GMTC client account and was then included with 29 other 1% fees for other individuals and the total amount, which came to £9,503.33, was then paid from the GMTC client account to Wellington Court's bank account on 20 May 2015. The payment reference that was to appear on Wellington Court's bank statement was "ORBIS SIPP FEES".

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 N's case. Whilst I'm deciding on what's fair and reasonable in the circumstances of Mr N'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 N'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 1% payments along the same lines as Mr N'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 32 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". This payment included Mr N's £429.35 fee.
- £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".
- £5,459.94 on 21 July 2015 in relation to 14 transferred policies (for 14 individuals). The payment reference that was to appear on Wellington Court's statement was "GM IFA 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".
- £4,359.12 on 2 September 2015 in relation to 15 transferred policies (for nine individuals). The payment reference that was to 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 N's case and other similar cases. Two of the payments have only just come to light but otherwise Wellington Court has had the opportunity to review the list from previous decisions. It should be noted that it may not be comprehensive. For instance, it's possible payments were happening before and after the six month period referred to above. So I think it's fair to say the above shows that at least £96,000 was paid from GMTC to the one Wellington Court bank account in relation to over 250 transferred policies in a six month period.

For completeness, it should be noted that we have the records for the payments being made from GMTC but we don't have the records for all those payments being received by Wellington Court other than for the £6,573.32 payment on 25 August and the £4,624.87 payment on 18 August. This is because Wellington Court hasn't provided us with a complete set of 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 previously invited Wellington Court to provide us with comprehensive, 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. Wellington Court still has the opportunity to send them to me for consideration.

On a similar note, Wellington Court hasn't explicitly told us what payments from the list above it does admit to receiving or even referred in any detail to that list. It has said that "all" payments received from GMTC were for its consultancy work with GMTC – which suggests it admits to receiving all the payments catalogued 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 only admitting to 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 admits to receiving all the payments outlined above and, if it didn't, what payments it does admit to receiving.

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.

Interpreting the evidence – what does all this mean?

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

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

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

It looks like GMTC wanted the involvement of an independent financial adviser (IFA) before accepting a transfer because in its "Important Risk Notices" it said the SIPP was "ordinarily" offered through an IFA regulated by the FCA. It appears the paperwork described above was evidence enough for GMTC to have accepted the transfer as coming through an IFA. As a result, the transfer went ahead and the 1% initial advice fee was taken from Mr N's transfer value and paid to Wellington Court.

Wellington Court says it has never had any direct, or indirect, dealings with Mr N and the evidence linking Wellington Court to Mr N is fraudulent. It says the covering letter from Wellington Court to GMTC to open the SIPP was faked and didn't come from Wellington

Court. It points to the unprofessional look of the letter, as well as the fact that the letter was signed on behalf of the adviser in question – Mr P – rather than by Mr P himself and the person who signed that letter is untraceable because their signature is indecipherable. With regards to the application checklist, it points to an incorrect FCA reference number being written on the form and the adviser, Mr P, misspelling (and then correcting) his name. It also says Mr P worked in a marketing, rather than advisory, capacity. More broadly, there isn't any evidence to show any documents were sent to Wellington Court, and a lack of detailed testimony from complainants about their dealings with Wellington Court – all of which it says supports its view that the transfers were made without its knowledge.

My view is that Wellington Court was engaged in advisory business involving the transfer of pensions (Mr N's included) to the Orbis SIPP and that Wellington Court's actions are not consistent with its allegations that it has been the victim of fraud. The following points have informed my findings:

- Mr N and many others signed an "Adviser Remuneration Form" which appointed Mr P of Wellington Court to provide advice in relation to The Orbis SIPP and any related investments held in that SIPP. The fee for that advice was recorded as being 1%.
- A 1% advice fee (£429.35) was taken from Mr N's transfer and then paid – with similar fees for other individuals – to Wellington Court's bank account on 20 May 2015.
- 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. Payments of at least £96,000 relating to over 250 policies were paid in this period. The payment references were "GM IFA FEES" or something equally clear.
- There's little doubt that Wellington Court's bank account was the ultimate destination for all these 1% fees because the account details on the payment instructions all match Wellington Court's bank account details as provided to us (by Wellington Court) in relation to a different case. Furthermore, two payments (on 18 August 2015 and 25 August 2015) showed up on the bank statements Wellington Court has chosen to send to us.
- Wellington Court didn't query why it was receiving these fees at the time. And it's difficult to see how it 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 that the fees were in line with what Wellington Court had been expecting from GMTC for its role in the transfers.

I'm satisfied the above shows that many individuals – Mr N included – agreed to pay Wellington Court 1% of their transfer value for advice on the Orbis SIPP and their proposed investments. And I think the above persuasively shows that Wellington Court received, and accepted, the 1% payments in relation to these transfers. By extension, I'm satisfied Wellington Court was paid a 1% advice fee for the transfer of Mr N'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 clear audit 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 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 approaching 1,000 cases in order to produce an income in the region of £96,000.

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 N 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 N's included – and paid to (and accepted by) Wellington Court. So whatever the extent of Wellington Court's contact with Mr N, 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 N, 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 N's transfer papers was undated and signed on the behalf of Mr P from Wellington Court rather than by Mr P himself. The signature on that letter is indecipherable. Likewise, the Orbis SIPP "New Application Checklist" was signed on Mr P's behalf rather than by Mr P himself. The signature is again indecipherable (but looks to be the same as the one on the covering letter). Under the signature, Mr P's first name was spelt incorrectly at first but was then corrected. And an incorrect FCA reference number was also provided.

So there are question marks here. However, my role is to make findings of fact based on the available evidence in order to establish whether this is a complaint the Financial Ombudsman Service can consider against Wellington Court and, if so, what the fair and reasonable outcome of the complaint should be. My role isn't to speculate beyond that. Taking all the above into consideration, I make the following findings of fact:

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

Wellington Court's other arguments

As I've said earlier, 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 says GMTC failed to undertake due diligence of the SIPP's intended investments. On a similar note, Wellington Court questions whether the Financial Ombudsman Service and the FCA have investigated GMTC.

As my remit here is to consider Mr N'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 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 reviewed the case carefully, I haven't seen anything that makes me think a hearing is required. I outlined the evidence I relied upon earlier. I'm satisfied there's nothing in that evidence that would necessitate me speaking to either party in order to better understand it. 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 at any point 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 N'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 N's transfer. I have also recorded in detail the evidence that shows similar payments relating to other transfers being made to Wellington Court. Wellington Court has seen evidence of many of these payments too – and has even provided evidence to us of receiving some of those payments.

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

Given all the above, I'm satisfied Wellington Court has been made aware of, and can still respond to, all the evidence I've relied upon.

On a similar note, I'm satisfied I can come to a fair and reasonable decision based on the evidence I've outlined. If Wellington Court thinks there is further evidence that would help its case, then it's welcome to provide it. I will consider it. But I won't be carrying out Wellington Court's various requests to seek out further evidence from third parties. It's for Wellington Court to provide the evidence it considers important. It has had ample opportunity to do that considering Mr N first queried the transaction with Wellington Court back in 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. However, if Wellington Court thinks there are substantive points (that is, points that would change the outcome of the complaint and haven't already been addressed) in the emails it has referred to, it is welcome to highlight those points in response to my provisional decision.

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 N. There is a lack of documentation to show what, if anything, Wellington Court did in relation to giving advice to Mr N. 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 N would have transferred and invested in the way he did if it hadn't been for Wellington Court's involvement. Mr N 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. And, in addition, GMTCC required the involvement of an advisory firm before it would accept a transfer. I'm satisfied, therefore, that Wellington Court's actions had the direct effect of bringing about Mr N'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 N 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 N 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 N'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 N'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 N was its customer. I disagree.

Mr N 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. I've seen nothing to show Mr N queried the fee when it was taken so I think it's evident he wasn't, at that point, concerned about paying an advice fee 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 N 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 N wasn't its customer given it knowingly accepted the 1% payment in relation to Mr N and the transfer wouldn't have happened if it hadn't been for its involvement.

In short, Mr N 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 N 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 for instance) 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, and had a business-to-business relationship with, GMTC. But, as outlined above, it hasn't provided enough information to establish what the exact nature of its relationship with GMTC was. And, for the reasons given above, there was

a relationship between the complainant, Mr N, 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 N brought his complaint within the relevant time limits.

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

The merits of Mr N's complaint

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

It looks like the transfers to the Orbis SIPP were initiated by introducers who sourced potential clients and did much of the work in terms of getting clients into a position to transfer. And then in order to progress the transfer, GMTC required the involvement of an advisory firm. Wellington Court fulfilled that role. But there's a lack of paperwork to show what, if anything, it 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 the appearance of advice to satisfy GMTC in return for a 1% fee on a large number of transfers.

The above means there isn't any detailed documentary evidence to show what Mr N's financial needs and circumstances were at the time. Nevertheless, I'm satisfied the transaction wasn't suitable for Mr N. I say this because Mr N's investment was non-mainstream, high risk and unregulated. Mr N says he was a low-risk investor and I see no reason to disbelieve him. So he doesn't appear to have had the risk appetite such an investment would have required. And it also looks like Mr N allocated a large portion of his pension savings to the one high risk property investment which strikes me as being an unsuitable strategy even for the most knowledgeable and least risk averse investors.

That said, it strikes me that Mr N 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 N being a relatively cautious investor who nevertheless wanted at least some exposure to riskier assets.

If either party disagrees with the above, they are welcome to comment. Likewise, my provisional approach to compensation assumes Mr N has remained invested in the Dolphin Capital loan note and Orbis SIPP and that the investment is illiquid. The parties should comment if this isn't the case.

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.

Mr N accepted my provisional decision. Wellington Court didn't make any comments in relation to my findings on this specific case. However, it has responded to a number of other

provisional decisions that cover similar ground and which relied on similar evidence. I've considered what it has said in relation to these other cases and I'm satisfied that my provisional decision has addressed Wellington Court's comments. So in the absence of any further substantive points from either party, and having considered the case once again, I have come to the same conclusions as I did in my provisional decision, for the same reasons. I've repeated above what I said in that decision and it forms part of this final decision.

It follows that I uphold Mr N's complaint. In my provisional decision, I outlined my proposed approach to redress. Neither party had any comments on this. So my approach to redress was – and remains – as set out below.

Putting things right

My aim is that Mr N should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I take the view that Mr N 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 N's circumstances and objectives when he invested.

What must Wellington Court do?

To compensate Mr N fairly, Wellington Court must:

- Compare the performance of Mr N's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable. If the fair value is greater than the actual value there is a loss and compensation is payable.
- Wellington Court should add interest as set out below.
- Wellington Court should pay into Mr N's pension plan to increase its value by the total 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 total amount into Mr N'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 total amount 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 N won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr N's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume that Mr N is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr N would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

Income tax may be payable on any interest paid. If Wellington Court deducts income tax from the interest it should tell Mr N how much has been taken off. Wellington Court should

give Mr N a tax deduction certificate in respect of interest if Mr N asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
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 final decision to settlement (if not settled within 28 days of the business receiving the complainant's 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 any 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 illiquid assets, their value should be assumed to be nil for the purpose of calculating the *actual value*. Wellington Court may require that Mr N provides an undertaking to pay Wellington Court any amount he may receive from the illiquid assets 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 additional sum paid into the investment should be added to the fair value calculation from the point in time when it was actually paid in. Any withdrawal from the Orbis SIPP 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 assets need to be removed. I've set out above how this might be achieved by Wellington Court taking over the illiquid

assets, or this is something that Mr N 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 illiquid assets, to provide certainty to all parties I think it's fair that it pays Mr N 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 decided on this method of compensation because:

- Mr N 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 N'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 N into that position. It does not mean that Mr N 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 N could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold the complaint. Wellington Court Financial Services Limited must put things right for Mr N by following the steps set out above. It must also provide details of its calculation to Mr N in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 22 April 2022.

Christian Wood

Ombudsman