

The complaint

Mr G has complained that Wellington Court Financial Services Limited gave him unsuitable advice to transfer his Occupational Pension Scheme (OPS) to a Self-Invested Personal Pension (SIPP).

What happened

I issued a provisional decision which set out the background to this complaint and my provisional findings. This forms part of this decision and is set out below:

'Mr G says that he searched google about taking his pension benefits, as he knew he could do this at age 55. He found a website following this search and filled in a form with his details. He was then contacted by a person called 'Max'. This person took information about Mr G and his pension. Mr G says he was told by Max that he could get 45% of his pension as a lump sum but to do this he would need to transfer his pension twice. Mr G says he was told this was perfectly legal and that an adviser from Wellington Court would be in touch.'

The adviser from Wellington Court called Mr G and following that a number of appointments in person also took place.

Wellington Court recorded Mr G's details in an undated fact find document. According to the records, Mr G had an intended retirement age of 67, was employed, had limited financial knowledge, and had a risk attitude of 7/8 from a scale of 1 to 10.

Wellington Court wrote to the scheme administrators of Mr G's OPS requesting that a cash equivalent transfer value (CETV) be sent to Mr G.

Wellington Court produced a transfer analysis report. The CETV was for £50,404. The report stated that for Mr G to have the same benefits on retirement the CETV would have to grow by 13.1% each year until Mr G's retirement age of 67. At the time Mr G was 54. A file note at the time confirmed that Mr G had around £6,500 of debt which he was trying to repay, and that he had left his employer's scheme in March 2017 as he could not afford to meet the employee contributions.

Wellington Court summarised their advice in a suitability report. The recommendation was to transfer the scheme benefits to a Hubwise SIPP and for a Discretionary Fund Manager (DFM) to manage the funds. The paperwork confirms an upfront charge of 4% with 1% ongoing fees. The DFM's fee was 1.2% per year and the Hubwise SIPP fee was £114 per year. The report noted that Mr G 'may be better off transferring your benefits, mainly for the flexible access to benefits and the potential death benefits in retirement that may be available to your children.'

The report also noted that 'you [Mr G] advise me that you have other pension funds of around £47,000 which are currently going through Court action...'

Wellington Court sent Mr G a prefilled Hubwise SIPP application form on 16 September 2017, and the application was submitted on 22 September 2017. The funds were transferred on 20 November 2017.

Mr G then signed a transfer out form on 12 February 2018 and £48,143 was transferred out of the SIPP on 21 February 2018. It was stated on the form that 'the decision to transfer out is my own and I have taken no advice on the transfer and its suitability from my adviser.'

The funds were transferred to an unrelated (to Mr G) metal workers retirement scheme, this was a Small Self Administered Scheme (SSAS). The funds were invested into loan notes in a company which appears to be based in Gibraltar.

Wellington Court wrote to Mr G on 1 March 2018 about the transfer, saying:

'I am writing regarding your Hubwise SIPP that was finalised in the first few days of December 2017, because I am concerned that in the very short time your new pension has been established, you have now transferred your funds out of this arrangement. My initial worry, therefore, is that you may have been persuaded to transfer your pension funds into a non-regulated investment arrangement or an outright scam, and I am surprised and sorry that you did not wish to discuss any thoughts with me first before taking this further action.'

Mr G sent a text message to the Wellington Court adviser in March 2018. The text provided the two contact numbers for two individuals called Paul and Max, and another, Adam from a different firm. Mr G said in his text message these were the individuals who had 'dealt with the transfer'.

In response to this the adviser at Wellington Court said:

'To give you some background information Max and Paul no longer work together and haven't done since before the end of 2017. I agreed to meet with you last year to discuss your pension options and provide you with regulated advice. However, I suspected (and this is corroborated by what you said to me) that once your pension through the Hubwise SIPP had been sorted out, without my knowledge, Paul was going back to some clients (including you) and suggesting a further change of pension arrangement. For this reason, both Max and I refused to have anything further to do with him and this was the reason that I wrote to you on 1st March 2018 expressing my concerns.'

It seems Mr G received £9,000 but the remainder of his pension fund was lost.

Our investigator looked into matters and upheld the complaint. But he didn't think Wellington Court should be held responsible for the loss relating to the transfer to the SSAS.

Mr G's representatives disagreed and argued there was no break in causation. And had Wellington Court given suitable advice, Mr G wouldn't have suffered these losses.

Wellington Court responded to say that the advice wasn't unsuitable, Mr G needed money to pay off his debts. And he had been given the relevant warnings about the risk involved but had decided to transfer anyway. It says that Mr G needs to take responsibility for his choices.

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Was the advice to transfer out of the OPS suitable?

Financial viability

The starting assumption when advising on a transfer from a DB scheme is that it is unsuitable. Wellington Court should have only considered a transfer if they could clearly demonstrate that the transfer was in Mr G's best interest (COBS 19.1.6). And having looked at all the evidence available, I'm not satisfied it was. I'll explain why.

The Financial Ombudsman Service maintains records, for the purpose of reviewing pension transfers, of what rates of return are realistic from stock markets or 'Discount Rates'. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

The documents from the time of advice show that Mr G was looking to retire at age 67 if possible. Wellington Court's transfer analysis showed that the average investment return required in the new pension to match the OPS benefits was 13.3% retiring at age 56, or 7.2% retiring at age 67, both with tax-free cash taken.

The most up to date discount rate that would apply to Mr G is 3.8% per year – far below the critical yield. This suggests it was highly unlikely that Mr G would be better off in financial terms, transferring.

Where a pension transfer is recommended it should be clearly and unambiguously in the client's interests. Therefore, given the critical yields involved here, to still transfer there would need to be an extremely good reason to do so.

I'm satisfied that by transferring his pension Mr G was unlikely to improve his benefits. Instead there was a big risk he would be worse off in retirement. So based on the above alone, a transfer wasn't in Mr G's best interest. Furthermore, the investment advice given and product selected was unsuitable for Mr G's needs. Mr G had a small fund, and the recommended investment product came with considerable costs. Mr G was also paying a DFM which is usually an avenue prescribed to experienced investors with large funds, hoping for market beating returns that are required to offset the cost of the DFM. These extra costs will have been reflected in the critical yield.

Financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower or the same benefits.

Wellington Courts justification for the transfer

Wellington Court argue that:

- Mr G was in debt and was uncomfortable with this
- Transferring gave him the ability to clear this debt and provided him with flexibility
- The death benefits on transfer were improved
- It was difficult to balance his immediate needs against his longer-term requirements
- It provided a service, but Mr G chose to accept its recommendation and should be responsible for his choices.

But I don't think these arguments justify the advice to transfer. Mr G doesn't appear to be financially astute; he wasn't good at managing his finances. He did have debt but there were no other alternatives put forward for managing this debt. The OPS was the only guaranteed income (aside from state pension) that he'd have in retirement, it should've been a priority to protect this. His OPS was extremely valuable to him when you consider his financial position. Mr G might have wanted to take money out of his pension, but I don't think he had a good understanding of the potential consequences of doing so. Suitable advice would've been to make it clear to Mr G that he should leave his benefits in the OPS as it would form the cornerstone of his retirement provision. And that his short-term needs didn't outweigh the benefits of retaining his guaranteed OPS benefits.

Wellington Court also said a transfer gave Mr G flexibility that he didn't have within his OPS. But as I've noted above, I don't think this was a benefit to Mr G given his difficulty in managing his finances and likelihood of making poor financial decisions based on a lack of understanding. His benefits remaining within the OPS would've provided security against this.

Mr G had an unmarried partner who wouldn't benefit from the occupational pension scheme's spouse's pension in the event of his death. But pension provision is intended to provide for an individual's retirement rather than a desire to leave a lump sum for family. The financial wellbeing of a partner and children would inevitably have been a priority for Mr G but the recommendation needed to be given in the context of – primarily - Mr G's best interests in terms of his retirement needs. And given the critical yields here and Mr G's circumstances (nothing to suggest death benefits were a priority) I don't think the possibility of more suitable benefits on death should've outweighed the need for income in retirement.

Wellington Court was meant to be the expert, giving expert advice that Mr G paid it to provide. It is not a defence to say it was Mr G's decision and therefore it is not responsible. Mr G was not treated as an

insistent client. And the adviser recommended that he transfer his benefits and put forward a number of reasons to say why Mr G might be better off. Mr G was reliant on the advice he was given by Wellington Court and so it is liable for any losses due to its unsuitable advice.

I've fully taken into account that Mr G likely was keen to transfer out as he was worried about his debt and his finances were tight. However, it was the adviser's responsibility to objectively weigh up the options for Mr G. He should have advised him what was best for his circumstances and explain what he was giving up in the OPS scheme. For the reasons given above I think this advice should have been not to transfer out. On balance I think Mr G would have listened to the adviser and followed their advice if they provided the proper and clear reasons why he was better off keeping his OPS benefits.

I think the advice given was wholly unsuitable and therefore Wellington Court needs to redress the situation. But I also need to decide whether Wellington Court are responsible for Mr G's losses suffered after transferring out of the SIPP and into the SSAS.

Is Wellington Court responsible for Mr G's subsequent losses?

I've considered this point very carefully and having done so I don't agree with the investigators view that Wellington Court is only responsible for losses up to the point of the transfer out of the SIPP and into the SSAS.

I think a responsible firm carrying out its due diligence and its requirements under the FCA's Conduct of Business Sourcebook (COBS) would have advised Mr G against the transfer and highlighted the risks he was undertaking taking instructions from unregulated introducers.

Mr G's testimony, which I've find to be convincing, was that on the initial contact the introducer told him he could receive 45% of his fund as tax free cash. But this would require two transfers. It appears Wellington Court had a relationship with these unregulated introducers and the adviser has admitted as much. I can't be sure that Wellington Court knew the introducer would take the course of action they did and essentially scam Mr G out of his pension. The evidence we have suggests it didn't. But in any event had it undertaken its responsibility under COBS, given suitable advice and got to know its client sufficiently, I don't think Mr G would've suffered the losses he has.

Had the adviser questioned Mr G's motives for transfer and why he'd reached out for Wellington Court for advice, I think it's likely he would've discovered what Mr G had been told by the introducer. The adviser would've or should've known then that what Mr G was told about receiving 45% of his fund as tax-free cash, couldn't legitimately be achieved by two transfers. And a reputable adviser would have serious concerns about why a transfer to a SIPP was required to facilitate another transfer.

I think it's clear the unregulated introducers were the puppet masters of a plan to move Mr G's money from the highly regulated and secure OPS environment and into a scheme where Mr G's money could be taken from him. The scheme Mr G ended up in was supposedly a scheme for metal workers – which bears no relation to Mr G. The role Wellington Court seemingly played was to provide a legitimate (it was regulated to give pension advice) way to get Mr G's money out of his OPS. Without a regulated financial adviser, this likely couldn't be done. How much of this Wellington Court was aware of, as I said, is up for debate but it did have a relationship with these unregulated introducers.

With this knowledge the adviser ought to have warned Mr G that what he had been told wasn't correct and that it sounded like a scam. The adviser also knew that Mr G had previously been scammed out of another pension. And had Mr G been warned of this (especially given his prior experience) I think he would have listened to the adviser. This of course, should've come alongside suitable advice regarding his OPS. Which would've been to explain the extremely valuable benefits Mr G had within his OPS and not to transfer them. Had this occurred I think Mr G wouldn't have wished to transfer. Even in the event Mr G wouldn't disclose what the introducers plans were, (I see no reason as to why he wouldn't have if properly questioned) had suitable advice been given, Mr G would've understood that his OPS was valuable to him and I don't think he would've insisted on transferring. And he wouldn't have then suffered the catastrophic loss of his entire retirement provision.'

Following my provisional decision, Mr G's representative responded to say that he accepted the decision. Wellington Court didn't respond.

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.

As there has been no new arguments or evidence submitted since my provisional decision, I see no reason to depart from the findings within it.

In conclusion, as explained in detail in my provisional decision and as set out above – Wellington Court gave Mr G unsuitable advice and it is responsible for the losses he suffered that followed from this advice.

Putting things right

My aim is to put Mr G, as closely as possible, into the position he'd be in now but for Wellington Court's unsuitable advice. Mr G ought to have been recommended to keep his benefits within the OPS.

Wellington Court should undertake a redress calculation in line with the pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers. But the calculation should be run to date – and include the subsequent transfer. I understand Mr G's pension now has a zero value.

The calculation should be carried out using the most recent financial assumptions at the date of the actual calculation.

Wellington Court may wish to contact the Department for Work and Pensions (DWP) to obtain Mr G's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P).

These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr G's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation in respect of any future loss should if possible be paid into Mr G's pension plan (if he has one available). The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr G as a lump sum after making a notional deduction to allow for future income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax free cash and 75% would have been taxed according to Mr G's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the future loss adequately reflects this.

In addition, Wellington Court should pay Mr G £300 for the distress and inconvenience this matter has caused him. Losing his entire pension fund would've caused him distress.

The compensation amount must where possible be paid to Mr G within 90 days of the date Wellington Court receives notification of his acceptance of any final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of any final decision to the date of settlement for any time, in excess

of that 90 day period, that it takes Wellington Court to pay Mr G.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 27 April 2022.

Simon Hollingshead
Ombudsman