

The complaint

Mrs B complains about the advice she says she received in late 2014 and early 2015 to transfer a personal pension to a self-invested personal pension ("SIPP"). Her transfer proceeds were invested in an unregulated investment scheme that has since failed. Mrs B says the advice to transfer wasn't suitable because the proposed investment was too high risk for her. She holds Wellington Court Financial Services Limited responsible.

What happened

In 2015, Mrs B switched the benefits she 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. She now believes she was advised to transfer her pension by Wellington Court.

Mrs B complained to Wellington Court in 2020. She said, in brief, that Wellington Court's advice had been negligent because the investment in Dolphin Capital was unregulated and too high risk for her. The investment now looks to have little value. Mrs B says Wellington Court is responsible for her loss. Wellington Court didn't respond so Mrs B referred her complaint to us.

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

Wellington Court said it did not give Mrs B any advice and Mrs B has never been its customer. It said any paperwork linking Mrs B to Wellington Court is fraudulent and denies that it has any responsibility for the complaint. So, the matter was passed to me for a decision.

On 18 May 2022, I issued a provisional decision in which I outlined in detail the evidence that was available to me. I repeat what I said here.

"Review of Evidence"

1. Documents provided by Mrs B and GMTC

The following were provided by Mrs B and GMTC:

- i) An undated letter to GMTC, sent on Wellington Court headed paper, applying to the Orbis SIPP on Mrs B'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 26 January 2015. The letter is signed on behalf of Mr P from Wellington Court. The signature is indecipherable. The letter specified that Mrs B 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 20 January 2015.*
- iii) The Orbis SIPP application form, signed by Mrs B on 18 December 2014.*
- 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 Mrs B on 18 December 2014.*
- v) An Orbis SIPP “Transfer Details Information Form”. This set out the details of Mrs B’s transfer, including the policy number of the pension she was transferring from and its transfer value. This was signed by Mrs B on 18 December 2014.*
- vi) A GMTC ‘New Business Sign Off Sheet’ completed by a representative of GMTC on 26 February 2015. This showed the processes followed – it noted that the sale of the SIPP was ‘advised’.*
- vii) A SIPP bank account statement dated 5 May 2020 showing the account transactions since the SIPP was opened on 19 February 2015. The statement shows Mrs B’s personal pension funds were transferred on 16 March 2015. Mrs B then purchased a ‘5 Year Loan Note’ in Dolphin Capital on 14 April 2015, paying £29,882. And it also shows Mrs B received dividend income of £1,494.10 on the loan note every six months from October 2015 to April 2019.*

2. Mrs B’s recollections

Mrs B says that she was cold-called by an introducer to discuss the possibility of investing her pension funds in assets that would produce higher returns. She said another introducer obtained her permission to contact her former pension provider for information about her pension. Mrs B doesn’t recall meeting or speaking to Mr P or anyone else from Wellington Court, but understands from the paperwork completed that it was Wellington Court that arranged the transfer and her investment in Dolphin Capital.

3. Information from Mrs B’s previous pension provider

Mrs B’s previous pension provider – ‘P’ – sent us information to assist with our investigations. This information shows that Mrs B’s pension was mostly invested in a with-profits fund. It also showed that in 2015, a regulated financial adviser – ‘J’ – was sent confirmation when the funds were transferred to the SIPP. When questioned, P explained that J had been associated with Mrs B’s personal pension since 2005. P told us it had sent the confirmation to it because Mrs B hadn’t transferred the agency of her pension to the introducer.

4. Documents from Wellington Court

Wellington Court hasn't provided any documents in relation to Mrs B's transfer because it says it didn't advise Mrs B and that Mrs B 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 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 Mrs B

Mrs B transferred £30,518.01 from her personal pension to the Orbis SIPP on 16 March 2015. In other complaints I've seen that have very similar circumstances to Mrs B'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 Mrs B's case no advice fee was deducted from her SIPP account following the transfer of her funds. This is explained by the covering letter provided by Mr P of Wellington Court, who stated that Mrs B would be remunerating him directly.

The investigator asked Mrs B if she could provide evidence of the payment made to Mr P or Wellington Court, but she was unable to do so and couldn't recall making such a payment. Mrs B was also asked whether she remembered or could evidence making a payment to anyone else, for example, either of the introducers, but Mrs B didn't recall making a payment to anyone else either. She said she thought that the fee was going to be deducted from the investment directly.

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 Mrs B's case. Whilst I'm deciding here on what's fair and reasonable in the particular circumstances of Mrs B'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 Mrs B'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 Mrs B'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 Mrs B (and others like her) 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 Mrs B'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 Mrs B's transfer and many other transfers. I came to this conclusion because the documentary evidence showed Mrs B had agreed to pay Wellington Court an advisory fee in relation to the Orbis SIPP and the investment 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 Mrs B'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 Mrs B's pension – to the Orbis SIPP.

I went on to provisionally conclude that Mrs B's complaint was in the jurisdiction of the Financial Ombudsman Service. I was satisfied that Mrs B was an eligible complainant, the activities in question were carried on from an establishment in the UK, Wellington Court is a regulated business and Mrs B brought her complaint within the relevant time limits. I was also satisfied that the activities complained about fall within our jurisdiction because they relate to acts or omissions in carrying on the regulated activities of advising on and arranging pensions and investments.

With regards to the merits of Mrs B's complaint, I noted Wellington Court didn't appear to have done anything in return for the advice fee Mrs B had agreed to pay in relation to her 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 Mrs B ended up investing in Dolphin Capital, which was a non-mainstream, high risk, unregulated investment. I didn't think this investment was suitable for Mrs B. I also didn't think Mrs B would have needed to transfer her pension to a SIPP, given the costs involved in doing so. All things considered, therefore, I didn't think the transfer was suitable for her.

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

I invited both parties to respond. Mrs B accepted the provisional decision and didn't have anything to add.

Wellington Court didn't respond. However, in response to complaints similar to Mrs B's, it has 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. 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 GMTCC and its associates (specifically unregulated firms). It says it is "obvious" that GMTCC, 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 GMTCC being in administration should "speak for itself." It added that the pensions regulator is responsible for looking into GMTCC'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 Mrs B'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 Mrs B's complaint fell within this service's jurisdiction. And I upheld Mrs B's complaint on the grounds that the advice to transfer her existing pension to a SIPP and invest in Dolphin Capital wasn't suitable for her.

Mrs B accepted my findings I made in my provisional decision but Wellington Court didn't respond. So, there isn't 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 Mrs B'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 Mrs B – 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 (Mrs B'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 Mrs B'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 Mrs B has said here), is particularly unusual.
- In order to proceed with the transfer, GMTC needed to have confidence that advice had been given to Mrs B. The paperwork submitted, such as the covering letter from Wellington Court, confirmed Mrs B had appointed Wellington Court to provide her with advice. And GMTC's 'New Business Sign Off Sheet' stated Mrs B had been advised on the transfer of her pension. So, I think the transfer proceeded on the basis that Wellington Court had advised Mrs B 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 Mrs B, it was still nonetheless engaged in an advisory capacity in relation to her 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 Mrs B, and others, despite being paid to do so.

Jurisdiction

- Mrs B complained about a regulated activity, as advising someone to set up a SIPP and to transfer rights in an existing personal pension to that SIPP is a regulated activity. Wellington Court's actions had the direct effect of bringing about Mrs B's transfer and investment in Dolphin Capital. 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.
- Mrs B is an eligible complainant. Mrs B most likely dealt with an introducer and she signed documents on 18 December 2014 agreeing to transfer her pension. It appears the paperwork was then passed on to Wellington Court. I'm persuaded by this because Mr P, on behalf of Wellington Court, sent Mrs B's paperwork to GMTC on Wellington Court headed paper. Someone signed this on Mr P's behalf on 20 January 2015. Mr P referred to Mrs B 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 Mrs B would be paying Wellington Court, via Mr P, directly.
- So, Mrs B is Wellington Court's customer as she signed up for advice and she 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 Mrs B transferring and investing in the way she did. So I'm satisfied there is a customer

relationship here. And even if Mrs B hadn't paid a fee to Wellington Court for the advice, that doesn't have an impact on the customer relationship. I think there was enough activity here to demonstrate a customer relationship even before payment was made. I also haven't seen anything in the regulator's rules that says a customer relationship is only established upon the payment of a fee.

- I acknowledge that Wellington Court may well have undertaken some consultancy work for GMTTC, 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 GMTTC was. And, for the reasons given above, there is a relationship between the complainant, Mrs B, 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 Mrs B brought her 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 Mrs B'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, GMTTC 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 GMTTC in return for a 1% fee on a large number of transfers.
- There isn't any detailed documentary evidence to show what Mrs B's financial needs and circumstances were at the time. But, I'm satisfied the transaction wasn't suitable for Mrs B. I say this because Dolphin Capital was a non-mainstream, high risk, unregulated investment. Mrs B 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 she allocated all of her pension savings to that investment, 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 Mrs B needed to transfer her 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 Mrs B had some interest in reviewing her investment strategy because she 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 Mrs B's previous pension provider in order to see how her pension assets were previously invested. This would give some insight into Mrs B's risk profile. This information showed that Mrs B's pension was invested almost exclusively in a with-profits fund, which in my view, would indicate a cautious attitude to risk. Mrs B tells us this was her only pension, so she had very little capacity for loss. With this in mind, I think Mrs B most likely had a cautious 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 often 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 Mrs B'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 Mrs B'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 Mrs B'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 has also said 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 Mrs B for her 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 Mrs B recalls about the introducer's involvement. And in any event, I've taken into account that an introducer was involved in the transfer of Mrs B'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 Mrs B and that Mrs B'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 Mrs B'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 Mrs B'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 Mrs B has asked our service to consider her complaint against Wellington Court and I'm satisfied I can come to a fair and reasonable decision on her 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.

Putting things right

My aim is that Mrs B should be put as closely as possible into the position she would probably now be in if she had been given suitable advice. I think Mrs B would have remained with her previous provider. However, given she was interested in reviewing her pension, I think it's likely she would've made changes to the way it was invested if suitable advice had been given to her. So, I'm satisfied that what I've set out below is fair and reasonable given Mrs B's circumstances and objectives when she invested.

What must Wellington Court do?

To compensate Mrs B fairly, Wellington Court must:

- Compare the performance of Mrs B'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.
- If there is a loss, Wellington Court should pay into Mrs B'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 Mrs B's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mrs B won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mrs B's actual or expected marginal rate of tax at her selected retirement age.
- It's reasonable to assume that Mrs B is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mrs B 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%.

- Pay Mrs B £400 for the distress caused by the loss she suffered as a result of the advice.

Income tax may be payable on any interest paid. If Wellington Court deducts income tax from the interest, it should tell Mrs B how much has been taken off. Wellington Court should give Mrs B a tax deduction certificate in respect of interest if Mrs B asks for one, so she 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 the illiquid assets by paying a commercial value acceptable to the pension provider. The amount Wellington Court pays should be included in the actual value before compensation is calculated.

If Wellington Court is unable to purchase the portfolio the actual value should be assumed to be nil for the purpose of calculation. Wellington Court may require that Mrs B provides an undertaking to pay Wellington Court any amount she may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Wellington Court will need to meet any costs in drawing up the undertaking.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark. To arrive at the fair value when using the fixed rate bonds as the benchmark, Wellington Court should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum that Mrs B paid into the investment should be added to the fair value calculation at the point it was actually paid in.

Any withdrawal from the portfolio should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if

Wellington Court totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

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

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

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mrs B wanted Capital growth with a small risk to her 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 her 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 Mrs B's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs B into that position. It does not mean that Mrs B would have invested 50% of her 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 Mrs B could have obtained from investments suited to her objective and risk attitude.

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 Mrs B in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 15 July 2022.

Hannah Wise
Ombudsman