complaint

Mr R complains about advice from Wellington Court Financial Services Limited ('Wellington") in 2015 to transfer his personal pension plan ('PPP') to a self-invested personal pension ('SIPP') and then invest the transferred funds into unsuitable investments.

background

In 2015 Mr R was referred to Wellington in order to review his pensions. At this time, Mr R was 46 years old, employed earning approximately £26,000pa, saving of around £15,000, he had two personal pension plans, one with Provider A worth approximately £105,000 and a second with Provider B worth approximately £6,500. The plan with Provider A was invested in five mainstream funds. The ongoing cost was 0.96% per annum.

Aside from his personal pension plans, Mr R also had a low-cost endowment. He said he had no other investment experience.

On 10 June 2015 Mr R signed an Advisor Remuneration Form issued by the SIPP administrator. This form confirmed that Mr R had appointed Wellington to provide him with advice in relation to a SIPP and any related investment advice in respect of assets held within the SIPP. The agreed fee for the transfer would be 1% to a maximum of £800.

Mr R was advised to transfer his Provider A plan to the SIPP. The main objective of the transfer was to achieve potentially better returns.

The SIPP was opened in July 2015 and on 3rd August 2015 £104,529.02 was transferred into the SIPP from Provider A. The funds within the SIPP remained in cash. On 11 August 2015 Wellington received the initial advice fee of £800. There were also scheme fees of £627.17 or about 0.6% of the balance of the fund.

In late 2015 Mr R was contacted by an unregulated introducer who acted as an introducer to a new advice firm, Firm C.

On 6 August 2015 Mr R signed a letter of authority to transfer the agency of his SIPP to Firm C. The agency formally transferred on 15 September 2015. Mr R was then advised by Firm C to transfer to another SIPP to facilitate investment in a Discretionary Fund Management service (DFM). The DFM subsequently entered administration. This latter advice provided by Firm C is subject to a separate complaint that has also been brought to this service.

In 2018 Mr R employed the services of TLW Solicitors ("TLW"), who complained to Wellington on his behalf about the advice to transfer his personal pension from Provider A. Wellington responded that it had no records of any dealings with Mr R and disagreed that it was responsible for the advice.

In their submission to this service, TLW argued that the advice was unsuitable and raised the following substantive arguments:

- The advice did not meet regulatory standards or principles. In particular the advice did not meet Mr R's objectives or fully explain why the transaction was suitable.
- The advice resulted in a loss of investment growth.

- Wellington did not fully advise on the funds and the investments exceeded Mr R's attitude to risk.
- Wellington were not entitled to receive commission payments without consent.
- An adviser cannot exclude themselves from providing advice on an investment connected to other regulated advice.
- There was insufficient justification for a more expensive product.

They claimed redress to cover all financial loss and associated future advice and product fees.

One of our adjudicators looked into Mr R's concerns. He first considered Wellington's argument that it had no record of Mr R as a client and so had no complaint to answer. The adjudicator concluded there was sufficient evidence Wellington provided the advice to transfer to a SIPP. He noted the SIPP application received by the SIPP provider included a covering letter from Wellington. It said:

> *Please find enclosed a new application for my client to the Orbis SIPP together with our Investment Instructions. I would be grateful if you could establish the SIPP and then carry out the instructions as prescribed.*
>
> *Please also find enclosed our invoice relating to the fees as agreed with our client that will become due once the SIPP is established and funded.*

In addition, he noted an application checklist signed and dated by Wellington and an adviser remuneration form completed by Mr R which stated that he had appointed Wellington as his adviser and agreed to pay it 1% of the transfer amount up to a maximum of £800.

A statement of Mr R's SIPP account reflected that a payment of £800 was made from his account to Wellington's bank account on 11 August 2015.

Wellington didn't agree. It said the covering letter was fraudulent and not issued by it and the fee payment was not received. The adjudicator looked into this further and confirmed with the SIPP provider that a fee was paid to Wellington for setting up Mr R's SIPP. From this evidence our adjudicator concluded Wellington had advised Mr R to transfer his funds to a SIPP. Leaving aside the other documentation, allegedly fraudulently produced according to Wellington (although there was no persuasive evidence of this) the payment of the fee into Wellington's bank account was, in isolation, compelling evidence of a client relationship with Mr R. So the adjudicator concluded this was a complaint this service could look into.

Wellington continued to contest it had a client relationship with Mr R, so an ombudsman considered the issue of our jurisdiction. He issued his decision regarding our jurisdiction on 25 July 2019. In it the ombudsman explained:

> *our adjudicator's conclusion that this complaint can be investigated by this service is supported by the evidence. In the absence of any evidence from Wellington to show the evidence we have seen should not be relied on, he rightly discounted Wellington's assertion that it never had a client relationship with Mr [R].*
>
> *Wellington's argument that it has no knowledge of him as a client, is an assertion in my view only based on its inability to source any record of its relationship with Mr [R]. Its*

further assertion that documentation which shows it did have a client relationship with Mr [R] is fraudulent is unsupported by any evidence or reasoning.

Nor has it provided any credible explanation to show that the Orbis SIPP application, which named Wellington as the adviser, should not be taken at face value.

Nor has Wellington offered any explanation as to why [the SIPP provider] would fabricate evidence it supplied to this service in respect of fee payments made to Wellington.

In view of the evidence and the absence of any compelling evidence to support Wellington's arguments to refute it, I can reach no other conclusion than that Wellington's accusation of fabrication of the evidence is misconceived.

The ombudsman then detailed the evidence relied on in reaching his conclusion; this included the SIPP application form and covering letter; confirmation from the SIPP provider that payment was made to a bank account with account details identical to those provided to this service by Wellington on its account statement for August 2015 and this statement also showed a payment of £6544.10 was paid into this account on 11 August 2015. The SIPP provider had previously explained this was a bulk payment of which Mr R's fee was included.

From this, the ombudsman concluded that Mr R's fee was paid to Wellington, to its correct bank account and so indicates a client relationship existed between Wellington and Mr R.

The ombudsman also explained:

I think it not unreasonable to assume Wellington reconciles such payments to its bank account with invoices it has issued. It presumably does this to ensure that it has received payment for invoices issued.

But as it asserts it had not issued an invoice for Mr [R]'s SIPP fee then I would have expected it to query with [the SIPP provider] why the bulk payment apparently included an overpayment of £800. I have not seen evidence to show it did this.

As the ombudsman considered this service had jurisdiction, the complaint was returned to the adjudicator who investigated the merits of Mr R's complaint.

The adjudicator took the view that Wellington didn't act fairly. In summary, he explained:

- The existing personal pension with Provider A was relatively low cost at 0.96% per annum and invested across 5 mainstream funds, that offered diversification. The SIPP offered no additional features that benefitted Mr R.
- The transferred funds were held in cash for five months until Mr R was advised to transfer again. Wellington had a responsibility to look at the suitability of the intended investments.
- The adjudicator was unsatisfied with Wellington 's assertion that they were unable to locate evidence of their involvement.

The adjudicator suggested fair redress would be a benchmark comparison assuming Mr R was willing to accept some risk along with interest from the date of transfer from the Provider A to when the SIPP was transferred again. In addition, the adjudicator thought Wellington should pay Mr R £200 for trouble and upset it actions caused him.

Wellington challenged this view, reasserting that it has no knowledge of Mr R. It said the evidence implicating them was fraudulent and misleading.

As no agreement could be reached, the complaint has been passed to me for a decision.

my findings

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, I agree with the adjudicator and broadly for the same reasons.

When considering what is fair and reasonable, I have taken into account relevant law and regulations; regulator's rules, guidance and codes of practice; and what I consider to have been good industry practice at the time.

Where the evidence is incomplete, inconclusive, or contradictory (as it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Wellington continues to contest that a client relationship existed with Mr R. Most recently it has claimed widespread fraud and wrongdoing by other parties, namely the SIPP provider.

I feel therefore, that I must clarify what this service does and my role in it. This service is impartial between, and independent from, consumers and businesses. What this means is that we don't represent either party, and I don't act under either's instructions or take directions on how a complaint will be looked at and what questions should be asked or answered.

I should also clarify that the role of this service isn't to regulate or to punish businesses. That is the job of the regulator, the Financial Conduct Authority (FCA). So allegations of widespread fraud, as being claimed by Wellington – by a business regulated by the FCA, should be raised with the FCA. But for completeness, I have not been presented with evidence that persuades me that the relevant information provided to this service by the SIPP provider was fraudulent.

It is my role to fairly and reasonably decide if the business has done anything wrong in respect of the individual circumstances of the complaint made and – if I find that the business has done something wrong – award compensation for any material loss or distress and inconvenience suffered by the complainant as a result of this.

The issue of responsibility was presented to an ombudsman, who in July 2019 issued his decision that Wellington were responsible for the advice. Jurisdiction remains an open matter until a final resolution on a complaint has been reached. So I have reconsidered whether Mr R's complaint is one we can look into.

No new substantive evidence has been provided since the ombudsman issued his decision on jurisdiction. Having considered everything provided, I see no need to depart from the finding that there was a client relationship between Wellington and Mr R and the reasons in support of this conclusion. Therefore, this is a complaint we can consider.

Now turning to the merits of Mr R's complaint, Wellington was required to follow the relevant rules set out by the regulator. All of which needs to be considered with regard to the overarching principles for businesses – in particular, principles 1 (integrity), 2 (due skill, care and diligence), 6 (customer's interests) and 9 (reasonable care).

The Conduct of Business Sourcebook (COBS) 9.2.1 required Wellington to gather the necessary information about Mr R's knowledge and experience relevant to the specific type of designated investment, his financial situation and investment objectives. This was to enable it to make a recommendation which was suitable for Mr R.

COBS 9.2.2 required Wellington to gather enough information to ensure that the recommendation met his objectives, that he could bear the risks involved and had sufficient knowledge and experience to understand the risks involved in the transaction.

So, amongst other things, to fulfil its duties Wellington had to know its client, act in his best interests and give suitable advice.

Unfortunately, Wellington has been unable to provide any information about the advice. But from what I have been provided, at the time of advice Mr R was aged 46 and sought to retire at 65. He was neither a sophisticated investor nor a high net worth individual and aside from his pensions and a low-cost endowment, he had no other investment experience. It seems his objective was to increase his retirement provision.

The evidence provided suggests Wellington advised Mr R to transfer his pension plan benefits with Provider A to a SIPP. I've seen no evidence that it made a recommendation on how those funds would then be invested within the SIPP. Mr R's funds remained in cash until he received advice from Firm C and transferred his existing SIPP to a new SIPP arrangement.

In my view switching a pension can be a complex transaction with several different factors to weigh up and consider. Mr R was an ordinary retail investor. He doesn't appear to have had any experience or knowledge of this type of transaction. So I think he was entitled to rely on this advice. And presumably he was persuaded the switch to a SIPP would meet his objective to increase his provision for retirement.

But I've not seen enough evidence to persuade me that the advice to switch to a SIPP was suitable. This arrangement was more complex than Mr R was used to, considering his previous investment experience and that he was originally invested in a mainstream plan. The SIPP was also more expensive (assuming the funds didn't remain in cash). So I can't see that the benefits of the SIPP, like flexibility and a wider choice of investment, were benefits Mr R sought or needed. In my view, based on the evidence I've been provided, if Mr R was unsatisfied with the performance of the funds he was in he could've considered making a fund switch.

Additionally, in order to provide suitable advice, Wellington needed to have considered where the transferred funds would be invested once in the SIPP. I've seen no evidence this was done. Considering Mr R was only 46 at the time of advice, with over 20 years left before retirement, in my view he did not need to de-risk his pension provisions in such a way.; especially if he was looking for investment growth as appears to have been his objective. Therefore, it was not suitable that the funds remained in cash.

For all of these reasons, I consider Wellington's advice unsuitable and I uphold Mr R's complaint.

However, Wellington isn't responsible for what happened after the SIPP was surrendered following the advice of a Firm C.

Fair compensation

My aim is that Mr R 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 R 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 R's circumstances and objectives when he invested.

What should Wellington do?

To compensate Mr R fairly, Wellington must:

- Compare the performance of Mr R's investment with that of the benchmark shown below. If the *fair value* is greater than the *actual value* there is a loss and compensation is payable. If the *actual value* is greater than the *fair value*, no compensation is payable.

  Wellington should add interest as set out below.

  If there is a loss, Wellington should pay into Mr R'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 is unable to pay the total amount into Mr R's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

  The *notional* allowance should be calculated using Mr R's actual or expected marginal rate of tax at his selected retirement age.

  For example, if Mr R is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr R would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

- Pay to Mr R £200 for the trouble and upset caused by the disruption to his retirement plan.

Income tax may be payable on any interest paid. If Wellington deducts income tax from the interest it should tell Mr R how much has been taken off. Wellington should give Mr R a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue &

Customs if appropriate.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
GM Orbis SIPP	surrendered	FTSE UK Private Investors Income Total Return Index	date of transfer	date of surrender	8% simple per year on any loss from the end date to the date of settlement

Actual value

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

Fair value

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

why is this remedy suitable?

I've decided on this method of compensation because:

- Mr R wanted capital growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr R's circumstances and risk attitude.
- The additional interest is for being deprived of the use of any compensation money since the end date.

my final decision

I uphold the complaint. My decision is that Wellington Court Financial Services Limited should pay the amount calculated as set out above.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 30 April 2021.

Jennifer Wood
ombudsman