DRN-3683412

## The complaint

Mr C complains about the suitability of the advice provided by Montfort International Limited ("Montfort") in January 2018 to transfer the value of his safeguarded benefits in the British Steel Pension Scheme ("BSPS") to a self-invested personal pension ("SIPP").

## What happened

The events leading up to this complaint were set out in detail by our investigator in his assessment which he provided to both Mr C and Montfort. I don't intend to repeat here what our investigator stated but will instead provide a summary.

In March 2016, Mr C's employer, Tata Steel UK Ltd ("Tata Steel"), announced that it would be examining options to restructure its business including decoupling the BSPS from the company. The BSPS was a defined benefits ("DB") pension scheme that provided a guaranteed lifetime income to members. The consultation with members referred to possible outcomes regarding their safeguarded benefits, one of which was a transfer to the Pension Protection Fund ("PPF") – the PPF is a statutory fund designed to provide compensation to members of DB pension schemes when their employer becomes insolvent. Tata Steel closed the BSPS to further benefit accrual from 31 March 2017.

In May 2017, the PPF announced that the terms of a Regulated Apportionment Arrangement ("RAA") had been agreed – this was approved by The Pensions Regulator in August 2017. Under the announced plans, Tata Steel agreed to set up and sponsor a new DB pension scheme, the BSPS2, subject to certain conditions relating to funding and size being satisfied.

In October 2017, these changes were communicated to BSPS members, including Mr C, under the *'Time to Choose'* communication exercise. This explained that BSPS members had three options regarding their safeguarded benefits:

1. Transfer to the PPF;
2. Transfer to the BSPS2; or
3. Transfer to an alternative pension plan such as a SIPP.

Options 1 and 2 would've enabled Mr C to retain guaranteed pension income, albeit at a lower level than provided by the BSPS.

Members had to decide which option they wanted by 22 December 2017 – those that didn't choose an option remained in the BSPS and were ultimately transferred to the PPF. The details of Mr C's safeguarded benefits in the BSPS at that time were as follows:

- He had accrued 25 years and 5 months' qualifying service between October 1991 and March 2017;

- The scheme pension provided was based on his final salary, qualifying service and benefit accrual rate – as at the date of leaving the scheme in March 2017, his annual scheme pension was £15,693. The scheme pension would be revalued by a prescribed amount over the term to the scheme normal retirement age of 65 and, once in payment, would also escalate annually by a prescribed amount;

- Payment of benefits before age 65 would be subject to an early retirement reduction on a sliding scale – in simple terms, the earlier benefits were taken, the greater the reduction applied to the scheme pension. Broadly, this meant a 30% reduction would apply to the scheme pension if benefits were taken at age 55 and a 18% reduction at age 60; and

- The cash equivalent transfer value of his safeguarded benefits was £385,481.20.

Mr C initially elected to transfer to the BSPS2. The BSPS reminded Mr C that if he was contemplating a pension transfer that the transfer value of £385,481.20 was guaranteed until 26 January 2018. Mr C contacted Montfort for advice in late 2017. Following this, a fact find document and attitude to risk questionnaire were completed which recorded the following information about Mr C:

- He was aged 52 and generally in good health but was concerned his health would deteriorate. His wife was aged 42 and in good health. They had two financially dependent children aged 14 and 17;

- He was employed full-time by Tata Steel and paid gross annual income of about £40,000. His wife was employed as a cleaner and paid gross annual income of about £13,000;

- Their assets comprised their marital home valued at £140,000, a second property valued at about £110,000 where his mother lived, Premium Bonds of about £13,000 and cash deposits of about £2,000;

- Their liabilities comprised a repayment mortgage of £86,000 on their marital home which was due to be repaid in 2031 when he was aged 65 and an interest only mortgage of £37,000 on the second property. They didn't have any other debts or liabilities;

- In addition to the value of his safeguarded benefits in the BSPS, he was on course to receive the full State pension at age 67 and had been a member of Tata Steel's defined contribution ("DC") pension scheme provided by Aviva since April 2017. The total annual contribution into his DC plan was 16% of his gross annual salary; and

- He had a *"Moderately Cautious"* risk profile and *"low"* capacity for loss.

Montfort recorded Mr C's objectives and preferences, summarised as follows:

- He wanted to finish work at age 55 and retire in the UK although he was interested in possibly retiring overseas at some point;

- From age 55 he required annual pension income of about £15,000 (after income tax) in 2018 terms. He wanted the ability to control the level of income he received so he could spend more in the early years and then less later in retirement. When his state pension started he planned to reduce annual pension income drawn from other sources to about £8,000;

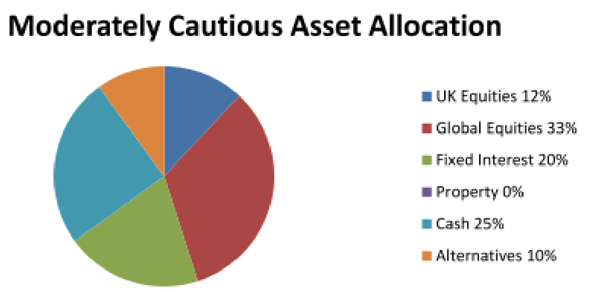
- If he didn't transfer away from the BSPS at that time he'd opt for the BSPS2 and draw benefits from that scheme at age 57 – and in the two years between age 55 and 57 he would use benefits built up his Aviva DC plan to provide income.

- He wanted to repay the mortgage of £86,000 on his marital home. He noted that this could be achieved by selling his second property. Alternatively, he could use the tax-free cash provided by his preserved benefits in the BSPS to repay his mortgage which would enable him to retain the second property and use it to generate rental income;

- In the event of his earlier death, he wanted the *"maximum"* death benefits to be paid to his wife and children in a tax-advantaged way; and

- His preference was to invest his pension funds in line with his risk profile and risk capacity. He didn't intend to secure a lifetime annuity to provided retirement income.

In January 2018, Montfort issued its suitability report to Mr C recommending that he transfer the value of his preserved benefits in the BSPS to a SIPP to achieve his objectives and to invest the value into a portfolio of funds to align with his *"Moderately Cautious"* risk profile. The following snapshot was included in the suitability report:




The costs associated with the recommendation were as follows:

*Initial charges*

- £800 plus VAT for producing the suitability report
- £5,000 initial adviser charge for implementing the recommendation
- £120 plus VAT initial set up fee for the SIPP (waived if using Montfort's *'Funds and Shares Service'*)

*Ongoing annual charges*

- 0.50% advice charge
- 0.47% investment management charge (this was a weighted average based on investment across a number of underlying funds)
- 0.20% custody charge
- £45 plus VAT quarterly administration charge (waived if using Montfort's *'Funds and Shares Service'*)
- £3.95 per online instruction to buy or sell investments
- £50 plus VAT quarterly charge for off panel investments

Mr C accepted the recommendation, following which the transfer to the SIPP was completed.

*<u>This complaint</u>*

During 2021, Mr C contacted this Service to express his concern about the suitability of Montfort's pension transfer advice. He said that he didn't think all the available options had been discussed with him and that he was also worried about the ongoing fees he was paying in connection with the management of his SIPP.

Montfort didn't uphold this complaint. In its opinion, its pension transfer advice was suitable because it enabled Mr C to achieve his recorded objectives. It noted that the complaint received was generic and provided no clear reasons why Mr C was complaining, and so in its final response letter it instead provided a general overview of the advice provided and why it believed it was suitable. It stated, in summary, that its recommendation enabled Mr C to achieve the following:

- Protect his health from the rigors of working in the steel industry in the short-term;
- Experience less stress and worry in the run up to leaving work and fully retiring;
- Dictate his life planning on his own terms including having the flexibility in the level and timing of withdrawing benefits from his pension benefits to align with his requirements and enable him to phase out of employed work and into retirement;
- Improve the level of benefits available to his wife on his earlier death; and
- Make capital reductions to his mortgage debt without having to sell his properties and being debt free.

One of our investigators considered this complaint and recommended that it be upheld. This was because he thought that Montfort's recommendation to transfer wasn't clearly demonstrated to be in Mr C's best interests. He noted that the critical yield figures at age 57 indicated that there was a strong possibility Mr C would be worse off by transferring. He noted that Mr C had already opted to transfer to BSPS2 before Montfort advised him to transfer to the SIPP. Overall, he wasn't persuaded there was enough certainty around Mr C's retirement plans or objectives to warrant relinquishing the guaranteed benefits available in the BSPS2. In his view, Mr C should've been advised to transfer to the BSPS2 and preserve his benefits in that scheme until his retirement plans became clearer, at which point he'd be able to reassess the benefits available from that scheme or consider transferring at that time.

To put things right, our investigator recommended that Montfort carry out a redress calculation in line with the FCA's *'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers'* on the basis that Mr C opted for the BSPS2 and would be a 20% income taxpayer in retirement. In addition, he recommended that Montfort pay Mr C £300 compensation for the trouble and upset caused by its unsuitable recommendation.

Montfort disagreed with our investigator's view and provided substantial comments in response, most of which repeated previous comments in its final response letter. It questioned our investigator's competence and qualifications to be able to form a view on the merits of this complaint. It thought its advice was suitable because it enabled Mr C to achieve his objectives, particularly retiring early. It didn't believe Mr C's objectives could've been met by the BSPS2. It also stated that it couldn't understand how Mr C was content with its advice in 2018 but then complained in 2021 and suspected that a third party, possibly the adviser who originally advised Mr C (and who had subsequently left the employment of Montfort), had colluded with him in making this complaint.

Our investigator considered Montfort's additional comments but wasn't persuaded to change his view and recommendation that this complaint should be upheld. Since agreement couldn't be reached, the investigator told Montfort and Mr C that this complaint would be referred to an ombudsman to review. While in the queue awaiting allocation to an ombudsman, our investigator wrote to Montfort and Mr C to tell them that the FCA had developed a BSPS-specific redress calculator to calculate redress due under the BSPS consumer redress scheme, as set out in PS22/13. And that the FCA was encouraging businesses to use that calculator for non-scheme cases, such as this complaint made by Mr C. Our investigator stated that in the event an ombudsman upholds this complaint, Montfort may be directed to use the FCA's calculator.

This complaint has been referred to me to review and decide. This is the last stage of our process.

**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.

When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 and the Dispute Resolution section in the FCA's Handbook, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I'd like to clarify that the purpose of this final decision isn't to repeat or address every single point raised by the parties. I've carefully considered the evidence provided by Mr C and Montfort. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. I'm satisfied that I've been provided with sufficient evidence to decide this complaint.

To make my findings easier to follow, I've set them out under separate headings below.

*The FCA's suitability rules and guidance*

Montfort was authorised and regulated by the FCA at the time it provided its recommendation to Mr C. This meant that when it advised him it was required to follow the rules and consider the guidance in the Conduct of Business Sourcebook ("COBS") section in the FCA's Handbook.

Primarily, Montfort was required under COBS 2.1.1R to *"act honestly, fairly and professionally in accordance with the best interests of its client"* in its dealings with Mr C. The suitability rules and guidance that applied when Montfort provided its recommendation to Mr C were set out in COBS 9. The purpose of the rules and guidance are to ensure that businesses take reasonable steps to provide advice that is suitable for their clients' needs and to ensure they're not inappropriately exposed to a level of risk beyond their investment objectives and risk profile. To ensure that this is the case, and in line with the requirements in COBS 9.2.2R, the business must gather the necessary information for it to be confident its advice is suitable. Broadly speaking, this section of COBS 9 sets out the requirement for a regulated advisory business to undertake a "fact find" process.

There were also specific requirements and guidance relating to pension transfers involving safeguarded benefits, as was applicable to Mr C's case – these were contained in COBS 19.

COBS 19.1.2R required the following:

> *"A firm must:*
>
> *(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;*
>
> *(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;*
>
> *(3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and*
>
> *(4) take reasonable steps to ensure that the client understands the firm's comparison and its advice."*

Under the heading "Suitability", COBS 19.1.6G set out the following:

> *"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can* ***clearly demonstrate, on contemporary evidence****, that the transfer, conversion or opt-out is in the client's best interests."* [my emphasis added]

COBS 19.1.7G also stated:

> *"When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client's attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up."*

And COBS 19.1.8G stated that:

> *"When a firm prepares a suitability report it should include:*
>
> *(1) a summary of the advantages and disadvantages of its personal recommendation;*
>
> *(2) an analysis of the financial implications (if the recommendation is to opt-out); and*
>
> *(3) a summary of any other material information."*

Businesses are required to follow these rules and consider the guidance because the FCA considers safeguarded benefits to be valuable. Based on the above regulatory rules and guidance, businesses advising on pension transfers should start by assuming that the existing DB pension scheme is suitable and to only recommend a transfer, which converts safeguarded benefits into flexible benefits, if it can *clearly* demonstrate it's in their client's best interests.

In assessing the suitability of Montfort's recommendation, it's necessary for me to have due regard to the FCA's rules and guidance applicable at the time it advised Mr C.

*<u>Mr C's situation</u>*

The situation for Mr C wasn't normal because the existing DB pension scheme, the BSPS, was closing. So he was essentially forced to transfer the value of his safeguarded benefits to a new scheme. He had three options, as set out in the *'Time to Choose'* pack issued to him in October 2017:

1. Transfer to the PPF;
2. Transfer to the BSPS2; or
3. Transfer to an alternative pension plan such as a SIPP.

It's undeniable that it was a period of great uncertainty for individuals such as Mr C. Many of these individuals were in a vulnerable position due to the uncertainty surrounding the future of the BSPS. I think the uncertainty only served to emphasise the need at that time for a balanced assessment of the options available and ultimately the provision of suitable advice. It's my view that any concerns Mr C had about the security of his safeguarded benefits should've been addressed and appropriately managed by the professional party in the transaction, Montfort.

Options 1 and 2 would've enabled Mr C to retain guaranteed income, albeit at a lower level than provided by the BSPS. There were differences between the PPF and the BSPS2. For deferred members below the scheme normal retirement age, like Mr C, the PPF would provide compensation based on 90% of their accrued pension at the scheme normal retirement age (in effect a 10% reduction in benefits). The BSPS2 didn't apply such a reduction. The BSPS2 also provided the potential for discretionary increases to the accrued pension, a higher level of spouse's pension and the option to transfer to an alternative pension to convert to flexible benefits at a later date, if then deemed suitable.

So while the situation was somewhat unusual, Mr C still had the option to retain guaranteed benefits in either the PPF or BSPS2. Based on his age, circumstances and uncertainty about whether he could retire earlier than age 65 (which I'll come on to later), it's my view that he would've been better off choosing the BSPS2 instead of the PPF because of the higher level of income it would pay at that age. And I note that Mr C had already opted to transfer to the BSPS2 before Montfort advised him to transfer to the SIPP, which supports my view on this point.

I don't believe that the circumstances surrounding the BSPS altered the FCA's position or its expectations of firms. Given the FCA's view on safeguarded benefits and what was known at that time, it's my fair and reasonable opinion that Montfort should've started its advice process by assuming the BSPS2 was likely to be the most suitable option for Mr C and to only recommend a transfer to the SIPP if it could *clearly* demonstrate it was in his best interests, as referenced in COBS 19.1.6G.

*<u>Transfer analysis</u>*

One of the key components in determining the suitability of a pension transfer is assessing the financial viability of the proposed transaction.

The transfer value analysis system ("TVAS") rules applied at the time Montfort advised Mr C. This required it to carry out a transfer value analysis to calculate the 'critical yield' applicable to the proposed transfer. The critical yield is the annual rate of investment return required on the invested transfer value, after charges, to match the capitalised value of the benefits offered by the DB pension scheme on the assumption that the value of the alternative pension is used to secure a lifetime annuity at the scheme normal retirement age (or other selected age) – the higher the critical yield, the less likely that the alternative pension will achieve sufficient investment growth to match the revalued pension payable by the DB pension scheme.

The TVAS isn't a precise tool or personalised to reflect individual circumstances and objectives. But TVAS has a role to play where it's likely the individual would use the accumulated fund at retirement to provide steady, secure income. The critical yield also gives an indication of the value offered by the transfer value and the ability to secure comparable benefits on the open market. So it's also useful in that regard.

Montfort calculated the following critical yield figures for Mr C on the basis he invested in the SIPP it recommended:

| Scheme | At age 57 based on taking a reduced pension and maximum tax-free cash | At age 57 based on taking a full pension | At age 65 based on taking a reduced pension and maximum tax-free cash | At age 65 based on taking a full pension |
|---|---|---|---|---|
| BSPS | 9.73% | 13.74% | 5.38% | 7.09% |
| PPF | 10.36% | 11.41% | 5.22% | 5.76% |

The critical yield figures for the BSPS2 weren't calculated. But it was known at the time Montfort advised Mr C that the BSPS2 would, at age 65, pay a higher level of benefits than the PPF but lower than the BSPS, so the critical yield figures for the BSPS2 likely fell somewhere in between the figures above.

Montfort's recommendation to Mr C was provided to him after the FCA gave instructions in its *'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers'* as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published on our website.

Businesses weren't required to refer to discount rates when giving pension transfer advice. But I consider that they provide a useful indication of what growth rates would've been considered reasonably achievable when the advice was given in this case. The discount rates we refer to are based on a typical investment spread across shares and bonds. The closest discount rate which I'm able to refer to and published by this Service for the period before October 2017 is 3% based on Mr C taking benefits at age 57 and 4% based on him taking benefits at the scheme normal retirement age of 65. Furthermore, the FCA's projection rate for pensions at the time was 8% per year for the upper rate, 5% per year for the middle rate and 2% per year for the lower rate.

I've taken this into account, along with the composition of assets in the discount rate, Mr C's *'Moderately Cautious"* risk profile and the investment timeframe. Based on these factors, I think the critical yield figures above meant that it was very likely Mr C would be financially worse off as a result of the pension transfer regardless of when he took benefits from the SIPP. And it seems that Montfort agrees because in its suitability report it stated, *"These critical yields are not achievable for the expected investment returns of your moderately cautious risk portfolio".* But then the adviser inexplicably concluded in the suitability report, *"In my professional opinion, unless you encounter a very adverse investment environment and high inflation, you could get higher pension benefits, should you transfer out. After considering the above points, I recommend that you transfer out of the British Steel Pension Scheme into a Self-Invested Personal Pension (SIPP)…".* I think this was a misleading statement based on the critical yield figures since all the analysis strongly indicated that Mr C would be financially worse off if he transferred to the SIPP.

Of course, financial viability isn't the only consideration when giving pension transfer advice, as was set out in COBS 19.1.7B (G). A reasonable prospect of the critical yield being met or exceeded wouldn't necessarily mean that the transfer was suitable, and, conversely, there might be other considerations which mean a pension transfer is suitable, despite providing overall lower benefits. I'll now go on to consider this in the context of Mr C's recorded objectives.

<u>*Mr C's objectives*</u>

Based on the fact find document and suitability report, Mr C had several objectives regarding his safeguarded benefits, which can be distilled into three broad areas, summarised as follows:

- **Flexibility and early retirement:** He wanted the flexibility to retire early from age 55 and, at that point, receive annual retirement income of about £15,000 (net of income tax) in 2018 terms. He wanted the ability to control and vary the level of income and envisaged reducing income from other sources once his state pension started at age 67;

- **Death benefits:** He wanted to ensure that, in the event of his earlier death, that the *"maximum"* level of benefits be paid to his wife and children; and

- **Mortgage repayment:** He wanted to repay the mortgage of £86,000 on his marital home.

I recognise that Mr C's safeguarded benefits was ultimately his money to do with as he saw fit. However, he was relying on Montfort to provide expert, balanced information and advice, taking into account all the information available to it at that time – so that he could then make an informed decision. I understand that there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or DB pension scheme but, as the professional party, Montfort was tasked with rationally addressing those concerns and providing an appropriately balanced view of the available options.

In my view, financial planning isn't simply about wish fulfilment and facilitating whatever course of action a client wishes to take. If an advising business considers a course of action to be unsuitable for their client, or otherwise not in their best interests, it has a choice not to facilitate the transaction.

<u>*Flexibility and early retirement objective*</u>

Mr C's safeguarded benefits, accounting for 25 years and 5 months' qualifying service, represented the backbone of his retirement provision built up by that time. His other savings and investments included Premium Bonds of about £13,000 and cash deposits of about £2,000, his Aviva DC plan and the equity available in his second property. Taking this into account, I think it's fair to say that when the time came to retire, he and his wife would be heavily reliant on the value of his BSPS benefits to support their standard of living in retirement. Given the importance of these benefits, I think Mr C had limited capacity for loss because a reduction in the value would likely have a materially detrimental effect on his standard of living in retirement.

At the time of the advice Mr C was aged 52 and generally in good health but was concerned his health would deteriorate after working in heavy industry for over 25 years. Montfort recorded that he wanted to retire early from age 55 onwards and receive annual retirement income of about £15,000 (net of income tax) in 2018 terms. Montfort based its recommendation on the basis that between age 55 and 57, Mr C would use his benefits built up in the Aviva DC plan before drawing down on the value of his preserved benefits in the BSPS from age 57 onwards – it was for this reason it calculated the critical yield figures at age 57 so as to provide a comparison of benefits payable at that age by the SIPP compared to the BSPS.

The suitability report confirmed that if benefits were taken early under the BSPS (and similarly the BSPS2) then the income paid to Mr C would be reduced. The reduction wasn't a penalty but applied to reflect the fact that the scheme would need to support the income for longer than anticipated, and to protect the interests of scheme members generally. Montfort calculated the following estimated benefits based on Mr C taking benefits at either age 57 or age 65:

| Scheme | Age 57 based on taking a reduced pension and maximum tax-free cash | At age 57 based on taking a full pension | At age 65 based on taking a reduced pension and maximum tax-free cash | At age 65 based on taking a full pension |
|---|---|---|---|---|
| BSPS | £9,927 plus tax-free cash of £66,186 | £13,584 | £14,031 plus tax-free cash of £93,543 | £20,360 |
| PPF | £11,003 plus tax-free cash of £73,215 | £13,205 | £14,509 plus tax-free cash of £96,537 | £18,331 |

Montfort's adviser carried out a sustainable withdrawal rate ("SWR") analysis on the basis of Mr C investing the transfer value of £385,481.20 in the SIPP on a *'Moderately Cautious'* basis and taking benefits from age 57. The adviser stated:

> *"Should you start pension benefits at a 3% SWR, you could start retirement withdrawals* [from age 57] *at £11,280 per annum assuming 1% growth or £13,110 per annum assuming 4% growth. These are lower than what you would receive from the British Steel Pension Scheme. As I already explained over the phone it is unlikely if you transfer out to get similar pension benefits when compared with early retirement benefits from the New BSPS. Your pension benefits would be lower by between 17% and 4%."*

So Montfort's own analysis indicated that Mr C would be worse off if he transferred to a SIPP. This was mainly because if he invested on a '*Moderately Cautious'* basis, the scope for investment returns to replenish income withdrawals was limited.

Notwithstanding this point, I'm concerned about the way in which Montfort determined Mr C's early retirement objective and income need – and then went on to base its recommendation on this figure. I say this because it's unclear how the target annual retirement income figure of £15,000 (net of income tax) in 2018 terms was determined or if it was realistic that he could retire early. It seems that the figure was a notional figure put forward by Mr C rather than being a proper analysis carried out by Montfort based on Mr C's expected expenditure in retirement and the required income need to cover this. There's no reference to the income need increasing in payment to counter the effects of inflation. Rather, it appears to be a fixed income requirement which I find concerning.

I think it's clear that Mr C was attracted to a flexible arrangement. Many people want to retire early. But this can only happen if they have the financial means to support themselves in retirement. Financial planning generally involves managing client expectations and a need for compromises. Mr C may have wanted to retire from age 55 but it was for Montfort, as the expert, to establish if this was feasible, manage his expectations and help him modify his objectives to reflect the reality of his circumstances, if necessary. The further away from retirement an individual is, the harder it is to establish what their likely income need will be. And in Mr C's case, being aged 52 at the time of the advice, I think it was sufficiently unclear what his circumstances would look like in three years' time and beyond – and therefore what realistic level of income he would need and whether, in fact, he could retire early.

While I don't doubt he would've liked the flexibility to retire at age 55, plans can and do change. Mr C couldn't access the money in the SIPP until age 55 at the earliest anyway. So I don't think there was any need to transfer at that time, especially given the critical yield figures attached to the transaction and that Montfort's own analysis showed that the BSPS2 would likely provide a higher level of benefits if taken early. In my view, since benefits couldn't be accessed until age 55, it made the case for a pension transfer at that time – for the sake of achieving early retirement – more difficult to justify.  This fact alone means that Montfort didn't clearly demonstrate, on the evidence, that transferring was in Mr C's best interests, as set out in COBS 19.1.6G.

Transferring to the SIPP led to the investment, inflation and longevity risks associated with providing the retirement benefits moving from the DB pension scheme to Mr C at that time for no clearly defined advantage compared to the alternative option of transferring to the BSPS2.

It's not in dispute that Mr C required his safeguarded benefits to generate a minimum level of income in retirement whenever he came to draw them. Where there is such a need it's difficult to justify relinquishing guaranteed income in exchange for flexible income that doesn't have any guarantees. That is, unless the prospect of an alternatively secured guaranteed income, by way of a transfer and then annuity purchase, was likely to have produced a higher level of guaranteed income. But as illustrated above, and as also acknowledged by Montfort at the time of the advice, this wasn't the case here.

In conclusion, the contemporaneous evidence simply doesn't support the position as to why flexibility and early retirement objectives would've been a sufficiently compelling reason for Mr C to relinquish valuable benefit guarantees at that time.

*Death benefits objective*

It was recorded that Mr C wanted to ensure that, in the event of his earlier death, that the *"maximum"* level of benefits be paid to his wife and children. Montfort didn't explain or define what was meant by *"maximum".*

The recommended SIPP offered flexible death benefits. Based on the applicable tax rules, if death occurred under age 75 the benefits are paid free of income tax – after age 75 the benefits are taxed at the beneficiary's marginal rate of income tax. It's fair to say that immediately following the transfer to the SIPP and for the period until Mr C withdrew retirement benefits, the death benefits available would be significant (subject to investment performance) due to the simple fact he couldn't access and deplete the fund value.

Mr C was recorded as being in good health but was concerned his health would deteriorate due to working in heavy industry for over 25 years. Despite his concerns, I haven't seen any evidence he had a reduced life expectancy. So he could expect life expectancy into his 80s. There weren't any immediate health concerns that indicated a pension transfer was a suitable course of action at that time.

Withdrawing money from the SIPP to meet his income and lump sum needs possibly from age 57 onwards would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected, particularly in this case where the SWR analysis showed that Mr C would need to draw a high level of income (relative to the fund value) from his SIPP in the early years to support his standard of living.

If Mr C wanted to provide a lump sum to his family on his death, then life cover could've achieved the same objective of providing a lump sum while enabling him to maintain safeguarded benefits in the BSPS2. I note that Mr C had disposable income available every month after paying his bills which he could've used to pay for life cover to achieve the death lump sum objective. Pure life cover for a defined term is generally cheap and some cover may have been affordable for Mr C given he was aged 52 and recorded as being in good health. However, I cannot see evidence that Montfort adequately investigated the life cover option. For example, I haven't seen evidence that Montfort quantified Mr C's death lump sum need, over what term, how this might change over time, how it might be met by other means or present personalised life cover quotes to him to enable him to make an informed decision.

But, in any case, I understand that through his employment Mr C had death in service life cover based on a multiple of four times' his salary, meaning a lump sum of about £160,000 would be paid in the event he died while still employed by Tata Steel – this was payable regardless of whether his safeguarded benefits were transferred to BSPS2, PPF or a SIPP. In addition, the value of his Aviva DC plan would be payable to his nominated beneficiaries, the value of which would increase over time with 16% of his earnings being invested into that scheme annually.

So it seems to me that in the immediate future, certainly while Mr C remained employed by Tata Steel, that a lump sum of at least £160,000 would be paid on his death. I think it's worth noting that at that time the only debt Mr C and his wife had was the repayment mortgage of £86,000 on their marital home and interest only mortgage of £37,000 on the second property.

It appears that Mr C intended to remain employed by Tata Steel until he retired, so I think it's fair to say that there wasn't any expectation the death in service benefits would disappear in the foreseeable future. This leads me to conclude that there wasn't any immediate need to transfer at that time to provide death benefits in a different format bearing in mind the cover already in place while Mr C remained employed by Tata Steel.

While I understand that death benefits are important to consumers, the priority here, in my opinion, was to advise Mr C about what was best for his own retirement provision. A pension is primarily designed to provide income in retirement. It's my view that Mr C had no health issues at the time Montfort advised him which might reasonably have prompted him to relinquish the guarantees attached to his own retirement income for the sake of an enhanced safety net for his family. So I'm not convinced there was any real merit in him transferring to a SIPP at that time to provide a lump sum death benefit.

*Mortgage repayment objective*

At the time of the advice Mr C's liabilities comprised a repayment mortgage of £86,000 on the marital home which was due to be repaid in 2031 when he was aged 65 and an interest only mortgage of £37,000 on the second property. He didn't have any other debts or liabilities.

Montfort recorded that one of Mr C's objectives attached to the pension transfer was to repay the mortgage of £86,000 on his marital home early. He didn't want the loan to continue to the end of the term at age 65 because that didn't fit in with his plans to retire early debt free. It was noted that the mortgage could be repaid by selling his second property and using the equity this would release. But it was then occupied by Mr C's mother and so it wasn't a viable option to sell it at that time. Alternatively, it was noted that he could use the tax-free cash provided by his preserved benefits in the BSPS which would enable him to retain the second property and use it to generate rental income. But he couldn't access the tax-free cash under his pension until at least age 55. So, that too wasn't a viable option at that time.

Mr C was employed and his salary enabled him to continue mortgage repayments until such time as he retired. So I don't think there was any pressing need to repay his debt at that time. It seems to me that Mr C would need to continue with his mortgage repayments for the foreseeable future.

In my view, it would've been sensible for Mr C to opt for the BSPS2 and then re-evaluate the situation when he could actually access the tax-free cash sum from age 55 onwards. In my view, there wasn't any clearly defined advantage in transferring at that time for the purposes of meeting the mortgage repayment objective.

*<u>If properly informed, would Mr C have transferred anyway?</u>*

For the reasons explained above, I'm not persuaded that a pension transfer was clearly in Mr C's best interests. As a result, I think it's fair and reasonable to uphold this complaint.

In potential mitigation of Montfort's advice, I've also thought about whether Mr C, if placed in a fully informed position, would nevertheless have decided to transfer the value of his safeguarded benefits to a SIPP. This was a complex transaction involving many factors which Mr C, as a layperson, wouldn't have been familiar. It's my view, given his lack of investment knowledge and experience, that he was heavily reliant on Montfort, as the professional party in the transaction, to take those factors into account and provide suitable, balanced advice.

Mr C might have chosen to transfer against advice on the basis of his concerns. However, bearing in mind that he initially opted for the BSPS2 and many other members transferred to the BSPS2 even though such concerns were widely held, and bearing in mind also his lack of investment experience, *"Moderately Cautious"* risk profile and *"low"* capacity for loss, I don't think, on balance, that he would've insisted on transferring. Given Mr C's reliance on Montfort, I think it's likely he would've accepted a recommendation for the BSPS2 had it advised him to take that course of action.

**Putting things right**

A fair and reasonable outcome would be for Montfort to put Mr C, as far as possible, into the position he would now be in but for the unsuitable advice he was given. My view is aligned with that of our investigator.

Our investigator concluded that, if properly advised, Mr C would've transferred to the BSPS2 and his benefits would now be preserved in that scheme. While some information on the benefits of the BSPS2 were still to be confirmed, it's my view that by January 2018 the risk of the BSPS falling into the PPF had receded by a large extent. So I think Montfort should've considered the BSPS2 as a viable option. So, in addition to the PPF, I think it's fair to consider the BSPS2 as a potential comparator scheme for redress purposes.

There were differences between the BSPS2 and PPF. These differences meant that the PPF was likely the better option for unmarried, deferred members who expected to retire early or take the maximum tax-free cash available even allowing for the 10% reduction in the starting entitlement. But the BSPS2 was likely the better option for married pensioners and deferred members who expected to draw benefits at or close to the scheme normal retirement age of 65. Given the timeframe, I'm not convinced that it could be reasonably determined in 2018 that the PPF was the likely better option for Mr C. And so I think, given the lack of clarity surrounding Mr C's ability to retire early, the BSPS2 was likely the better option for him based on what was known at the time and that at age 65 the BSPS2 would provide a higher level of benefits than the PPF. As such, the calculation on the basis of entering the BSPS2 should be carried out.

For clarity, compensation should be based on the BSPS2's normal retirement age of 65, as per the usual assumptions in the FCA's guidance, and not at age 57, for the reasons I've explained above about the uncertainty about when Mr C would retire.

Montfort must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

Montfort should use the FCA's BSPS-specific redress calculator to calculate the redress rather than using third party actuarial software. This is because in its 'Dear CEO letter' of 19 May 2023, the FCA expressed its concerns about businesses using such software. A copy of the BSPS calculator output should be sent to Mr C and our Service upon completion of the calculation.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr C's acceptance of this final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Montfort should:

- calculate and offer Mr C redress as a cash lump sum payment,

- explain to Mr C before starting the redress calculation that:

    - its redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and

    - a straightforward way to invest the redress prudently is to use it to augment his DC pension

- offer to calculate how much of any redress Mr C receives could be augmented rather than receiving it all as a cash lump sum;

- if Mr C accepts Montfort's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr C for the calculation, even if he ultimately decides not to have any of his redress augmented; and

- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr C's end of year tax position.

Redress paid to Mr C as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Montfort may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could've been taken as tax-free cash and 75% would've been taxed according to Mr C's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

In addition, Montfort should pay Mr C £300 compensation for the trouble and upset caused by its unsuitable recommendation.

**My final decision**

<u>Determination and money award:</u> I uphold this complaint and require Montfort International Limited to pay Mr C the compensation amount as set out in the steps above, up to a maximum of £160,000. Where the compensation amount doesn't exceed £160,000, I would additionally require Montfort International Limited to pay Mr C any interest on that amount in full, as set out above. Where the compensation amount already exceeds £160,000, I would only require Montfort International Limited to pay Mr C any interest as set out above on the sum of £160,000.

<u>Recommendation:</u> If the compensation amount exceeds £160,000, I also recommend that Montfort International Limited pays Mr C the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr C.

If Mr C accepts this final decision, the money award becomes binding on Montfort International Limited. My recommendation wouldn't be binding. Further, it's unlikely that Mr C can accept this final decision and go to court to ask for the balance. Mr C may want to consider getting independent legal advice before deciding whether to accept this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 14 September 2023.
Clint Penfold
**Ombudsman**