DRN-4814653

The complaint

Mr and Mrs R complain that Montfort International Limited ("Montfort") provided them with a poor level of service and advice. They say that Montfort caused delays and failed to provide information during the advice process which prevented them from implementing their financial plan sooner. They believe the delay led to them suffering a combined financial loss greater than £250,000.

Mr and Mrs R have made a joint complaint about the same issues. Under our process we have severed their complaint into individual complaints. This decision relates to Mr R. I've considered Mrs R's complaint under a separate reference number. I've referred to them as a couple in both decisions for ease of reading.

What happened

Mr and Mrs R have supplied to the Financial Ombudsman Service a significant amount of evidence. I haven't set out in this decision a detailed chronological order of events. I will instead provide a summary of the events that led to this complaint.

Mr and Mrs R lived in Australia. They had built-up a wide range of assets in the UK and overseas including savings, investments, pensions and investment properties. This included benefits they had each separately built up in a DB pension scheme and benefits Mr R had built up in a DC pension scheme when they previously lived in the UK. They were interested in transferring the value of their UK pensions into individual self-invested personal pensions ("SIPP") with a view to transferring these to Australia in due course.

They wanted to implement a financial plan they had devised incorporating all their assets into various trusts, tax wrappers and legal structures across multiple tax jurisdictions, all invested in a way that aligned with their objectives, summarised as follows:

- achieve "financial freedom" by age 60;
- buy a residential property in Australia;
- buy an investment property in Australia;
- be mortgage free;
- achieve financial security for their children (and any grandchildren in the future);
- put in place inheritance planning to ease the transition of assets; and
- increase their wealth by moving away from traditional asset classes and investing most of their liquid assets in various model investment portfolios they had created which were heavily weighted in crypto and technology related investments.

In January 2022, when Mr R was aged 45 and Mrs R aged 44, they contacted Montfort to seek advice on assessing and implementing their financial plan.

The scope of Montfort's activities was confirmed in an invoice dated 18 January 2022. In summary, this document confirmed Montfort's role was to holistically assess the entirety of the financial plan taking into account all aspects of their financial situation including the value of their UK pensions – and then provide advice on implementing the plan. Montfort couldn't provide pension transfer advice which it confirmed to Mr and Mrs R at the outset. Rather, after carrying out some information gathering, Montfort intended to introduce them to another regulated business ("Firm D") to provide pension transfer advice and then incorporate the outcome of that advice into its wider, holistic assessment of the financial plan.

Over the next few months there followed an exchange of emails and video calls between Mr and Mrs R and Montfort while it gathered information. During this time, Montfort arranged for Mr and Mrs R to complete various documents to obtain information about their financial plan, objectives, and their personal and financial situation.

Montfort arranged for Mr and Mrs R to complete risk questionnaires in February 2022. They both scored 5 on a scale of 1 to 7, where 1 is lowest risk and 7 is highest risk. A score of 5 translated into a *'medium to high'* risk profile.

Mr R confirmed on the questionnaire that he was *'very knowledgeable about investing'.* Before completing the questionnaire, he thought he would score 7 (the highest risk profile). His score of 5 indicated that he had a lower tolerance for risk than he thought. The questionnaire output stated, *"Most people under-estimate their score by a few points. However, yours was a major over-estimate. When compared to others you are much less risk tolerant than you thought you were".*

In Mrs R's case, she confirmed she had *"no or very little knowledge about investing"* and had *"never experienced a financial downturn".* Before completing the questionnaire, she thought she would score 5. This aligned with her actual score of 5 indicating that she had a tolerance for risk in line with her expectations.

Montfort considered Mr and Mrs R's *'medium to high'* risk profile was incompatible with their plan to invest most of their liquid assets in crypto and technology related investments which it considered to be a very high risk strategy. It explained this to Mr and Mrs R and that the disparity needed to be resolved, particularly given that Mr R had over-estimated his level of risk tolerance and Mrs R had no very little knowledge about investing, as confirmed in the risk questionnaires.

By early April 2022, Mr and Mrs R were unhappy about how long it was taking Montfort to understand and assess their financial plan and to provide a personal recommendation to implement it. They emailed Montfort to express dissatisfaction about the lack of progress and to say that they didn't want to progress things further at that time. Around this time Montfort introduced Mr and Mrs R to Firm D to provide pension transfer advice on the element of the financial plan related to their UK pensions. Around this time, Mr R lost his job and moved home to another state in Australia. These life events diverted Mr and Mrs R's attention on dealing with those personal matters. As a result, their UK pensions remained where they were.

In October 2022, Mr and Mrs R contacted Firm D to restart the process of obtaining pension transfer advice on their UK pensions. There was further contact between Montfort and Mr and Mrs R in late 2022 which continued into early 2023, but they remained frustrated with how long things were taking and for Montfort to present a personal recommendation in connection with their financial plan. The relationship was terminated.

Mr and Mrs R instead progressed the pension transfer element of their financial plan with Firm D. By July 2023, Firm D had arranged to transfer the value of their UK pensions into individual SIPPs. The transfer values paid into the SIPPs were significantly lower than quoted to Mr and Mrs R in early 2022 when they first engaged Montfort. They were unhappy about the reduced transfer values.

This complaint

Mr and Mrs R said they made it clear to Montfort in January 2022 they wanted to transfer the value of their UK pensions as soon as possible to lock in the high transfer values offered at that time. This was because they believed there would be a significant shift in the financial system and a “reset” which would result in lower transfer values in the future. Therefore, they wanted to extract the value of their UK pensions and manage their own affairs as part of their financial plan. They felt that accepting the higher transfer values in January 2022 and moving away from traditional asset classes and instead investing in crypto and technology related assets was the best way of maximising their family’s long-term wealth.

Mr and Mrs R believed that they had provided sufficient information to Montfort to help it understand and assess their objectives, financial situation, risk profiles, structure of the financial plan and model investment portfolios. In their view, Montfort should have been able to understand what they were looking to achieve and be able to provide a personal recommendation on how to implement it before April 2022. Mr and Mrs R said that Montfort provided conflicting advice that transferring the value of their UK pensions to individual SIPPs wasn’t suitable due to the risks involved but then suggested later it would be suitable which caused confusion and delayed matters.

Mr and Mrs R accepted Montfort wasn’t directly responsible for the reduced transfer values upon which the pension transfers were completed in 2023 on the advice of Firm D. Rather, they acknowledged this was a consequence of changing market conditions during that period. But they felt Montfort misled them to believe there were no time pressures in making a decision because the value of their UK pensions were safe from market fluctuations. They say Montfort ought to have recognised the direction of the economy and prospect of higher interest rates and gilt yields which would lead to reduced transfer values – and that it failed to tell them critical information about how gilt yields impacted transfer values which prevented them from making an informed decision to press ahead and arrange the transfers in 2022 rather than wait until 2023. They believe the delay led to them suffering a combined financial loss greater than £250,000.

Montfort’s position

Montfort didn’t uphold this complaint. It said it didn’t provide a personal recommendation to Mr and Mrs R. Its position is that it couldn’t provide a personal recommendation, largely because it struggled to understand the structure of the financial plan put forward by Mr and Mrs R. In addition, it had to also resolve the disparity between their identified risk profiles and that they wanted to invest most of their liquid assets – including the value of their UK pensions – into high-risk crypto and technology related investments. It said that what Mr and Mrs R were proposing was out of the norm which led to it requesting more information than it usually would so that it could understand and assess the financial plan. Montfort said that before matters could move to the stage of a personal recommendation, it was first necessary to understand the proposed structure – but it never got to that stage because Mr and Mrs R terminated their relationship.

Financial Ombudsman Service

One of our investigators didn’t think Montfort had made an error or treated Mr and Mrs R unfairly. So he didn’t recommend this complaint should be upheld. In his view, Montfort acted reasonably in requesting the information it believed was necessary to be able to understand and assess the financial plan and provide a personal recommendation. In summary, he didn’t think Montfort was responsible for:

- Mr and Mrs R terminating the relationship before it was able to provide a personal recommendation;

- causing any avoidable delays;
- the suitability of the pension transfer advice given by Firm D; or
- the reduced transfer values paid into the SIPPs.

As a result, our investigator didn't think Montfort needed to do anything further.

Mr and Mrs R didn't accept the investigator's opinion and provided substantial additional comments. They requested this complaint be reviewed by an ombudsman. This has now been allocated 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.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

I've considered the evidence afresh including Mr and Mrs R's comments in response to our investigator's assessment. I'd like to clarify that the purpose of this decision isn't to repeat or address every single point raised by the parties to this complaint. So 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.

The FCA's rules and guidance on DB pension transfers

A significant element of Mr and Mrs R's financial plan concerned transferring the value of their UK pensions – so that they could then invest the transfer values in crypto and technology related investments. The value of Mr and Mrs R's DB pensions were significant compared to the value of Mr R's DC plan. Given the importance of the value of the DB pensions to the financial plan, I think it's important to cover off the relevant regulatory expectations when firms advise on these arrangements. I've set out some of the key points below.

Section 48 of the Pension Schemes Act 2015 stipulates that members of DB pension schemes must take regulated financial advice before being allowed to transfer out preserved benefits worth more than £30,000. The purpose of this 'advice requirement' is to ensure scheme members are fully aware of what they would be giving up by transferring and to understand the significant increase in risk to which they would be exposed once they leave the DB pension scheme. Since Mr and Mrs R's DB pension transfer values were greater than £30,000, they was required to take advice before they would be permitted to transfer out.

The FCA requires regulated businesses to follow rules and consider its guidance when providing advice in connection with DB pension transfers. These are set out in the FCA's Handbook in COBS 9 and COBS 19. The FCA expects businesses to start the advice process by assuming that a pension transfer is unsuitable and to only recommend a transfer if it can clearly demonstrate it's in their client's best interests. In demonstrating suitability, businesses are required to consider other ways of meeting the client's objectives so that they can maintain the DB pension. There are several key steps that need to be completed before a firm can get to the stage of providing a personal recommendation.

I do understand Mr and Mrs R's motivations in wanting to take control of their finances including transferring and obtaining control of their DB transfer values. But given the FCA's default position and presumption of unsuitability, Montfort couldn't simply take an order from Mr and Mrs R and blindly facilitate a pension transfer so that they could achieve their objectives. Notwithstanding this point, Montfort couldn't provide pension transfer advice. It made Mr and Mrs R aware of this at the outset in January 2022. Rather, Montfort introduced them to Firm D who was going to provide advice on this. But before it introduced them to Firm D it asked them to complete various documents and risk profile questionnaires. The purpose of obtaining this information was to satisfy various regulatory requirements and to attempt to understand and assess their financial plan and objectives.

Montfort were then going to incorporate the outcome of Firm D's pension advice into its wider, holistic assessment of the financial plan and provide a personal recommendation on this. This overarching role to be carried out by Montfort was confirmed in the invoice dated 18 January 2022. So Montfort's role wasn't simply to advise on their UK pensions.

Did Montfort advise Mr and Mrs R on their UK pensions?

Mr and Mrs R say Montfort provided conflicting advice that transferring the value of their UK pensions wasn't suitable due to the risks involved but then suggested later it would be suitable which caused confusion and delayed matters.

I want to deal with Mr and Mrs R's claim that Montfort advised them. There's no evidence Montfort advised Mr and Mrs R. For example, I cannot see that Montfort provided a personal recommendation and associated suitability report to Mr and Mrs R on any aspect of the financial plan – including the suitability of transferring their UK pensions. That's perhaps not surprising given Montfort wasn't able to advise on pension transfers. Instead, as noted above, Montfort introduced Mr and Mrs R to Firm D to specifically provide advice on this.

I can see in various email exchanges that Montfort suggested to Mr and Mrs R that they shouldn't rush into any decision on transferring and hold fire until it was established this was appropriate for them to do so, particularly given their insistence the transfer values be invested in model portfolios heavily weighted in crypto and technology related investments. I think this was a prudent suggestion by Montfort given the FCA's default position and presumption of unsuitability for DB pension transfers. I cannot see any evidence that Montfort acted inappropriately on this specific complaint point.

Did Montfort fail to tell Mr and Mrs R information about how transfer values are calculated?

One of the main complaint points Mr and Mrs R have made is that Montfort failed to provide information to enable them to make an informed decision to transfer their UK pensions sooner. They say that Montfort incorrectly told them that their DB pensions weren't impacted by the performance of the underlying investments in the DB pension scheme and were safe from market fluctuations. They also say that Montfort failed to specifically mention how the 15-year UK gilt index impacts transfer values or explain the different tax treatment of their DB pensions and SIPPs. Their position is that had this information been provided in January 2022 they would have pressed ahead and arranged the transfers as soon as possible rather than wait until 2023.

As noted above, certain regulatory requirements applied to DB pension transfers. So even if Mr and Mrs R were made aware, they had to go through a defined advice process that may have resulted in a recommendation not to transfer despite their personal motivations.

There are many factors which affect DB transfer values, such as the number of members in the scheme, the scheme's investment strategy, member age profile, scheme retirement age, funding level of the scheme and assumptions about life expectancy, investment returns and inflation. So this isn't just a gilt yield issue as Mr and Mrs R seem to believe. But I don't think this is relevant. As noted above, Montfort couldn't provide pension transfer advice which it confirmed to Mr and Mrs R at the outset. Instead, it gathered information about them and their financial plan before introducing them to Firm D to provide advice on their UK pensions. So I don't think Montfort would be expected to provide the sort of information Mr and Mrs R believe it should have provided given it wasn't going to provide pension transfer advice. Notwithstanding this point, I'm not persuaded disclosure of information in early 2022 about how gilt yields impact DB transfer values and tax differences between DB pensions and SIPPs would have made Mr and Mrs R act differently.

As for the security of DB pensions, Montfort was correct in indicating that the value of Mr and Mrs R's DB pensions were safe. In my view, Montfort was referring to 'safe' in the context of the security of the DB scheme pensions Mr and Mrs R had built up rather than the transfer values which Montfort likely would have known change over time based on the factors I've noted above. This is because the DB scheme pension accrued is guaranteed regardless of the underlying investment, inflation and longevity risks. These risks are ultimately borne by the sponsoring employer of the DB pension schemes and not the members. In my view, this is the point Montfort meant when it told Mr and Mrs R their DB pensions were safe. I don't think it provided misleading information on this point. This is because their DB scheme pensions *were* in fact safe from market fluctuations.

Did Montfort cause avoidable delays?

I've read through the substantial evidence. Included in this are diagrams setting out the structure of the financial plan that Mr and Mrs R envisioned. As noted, a significant part of the financial plan involved transferring and investing the value of their UK pensions into individual SIPPs. The combined value of these pensions was significant in the context of their wider wealth. I think it's fair to say that the financial plan could be described as complex. It involved many elements and was designed to hold all Mr and Mrs R's assets in various trusts, investment products and legal structures across multiple tax jurisdictions. And then, once established, it was Mr and Mrs R's intention to invest most of their liquid assets in model portfolios heavily weighted in crypto and technology related investments. I think it's fair to say that the model portfolios could be described as high risk. In my view, the financial plan was both complex and high risk in nature.

The evidence shows that Montfort was struggling to understand the financial plan and was concerned about Mr and Mrs R's intention to invest in crypto and technology related investments given their identified risk profiles. This prompted Montfort to request more information and arrange video calls with Mr and Mrs R. It told the Financial Ombudsman Service that before matters could move to the stage of it providing a personal recommendation to Mr and Mrs R on the financial plan, it was first necessary to understand the proposed structure. In its view, a personal recommendation couldn't be provided until it understood structure and haw this aligned with their objectives.

Having considered the evidence, I agree with Montfort's position here. Mr and Mrs R engaged Montfort to assess and provide advice on their financial plan which I've described as both complex and high risk. In my view, Montfort couldn't assess suitability and present a personal recommendation without first assessing whether the proposed financial plan:

- matched Mr and Mrs R's objectives, financial situation and timescale for investment;
- would lead to exit charges and/or higher costs without good reason;
- took into account their tax position across the multiple tax jurisdictions in which they were looking to invest;

- matched their knowledge and experience;
- would expose their assets to level of risk they were not willing *and* able to tolerate;
- would lead to the loss of valuable benefit guarantees or features without good reason; and
- required ongoing advice and, if so, making arrangements to put this in place.

If Montfort provided a personal recommendation without having first gathered the necessary information it would've failed to comply with the FCA's suitability requirements. And by not complying, it increased the risk of giving Mr and Mrs R unsuitable advice.

The evidence shows that Montfort was still in the process of trying to establish some of these key points when Mr and Mrs R contacted it in April 2022 to express their dissatisfaction about the lack of progress and to say they didn't want to progress things further at that time. I haven't seen any evidence that makes me think Montfort caused avoidable delays during the period it was acting for Mr and Mrs R. In my view, it was doing all that could be reasonably expected of it in the circumstances in trying to understand the financial plan and gather the information it needed to be able to assess this and advise them.

The evidence shows that Mr and Mrs R caused some delays due to not being available sometimes and by deciding not to proceed with their financial plan in mid-2022 due to a change in their personal circumstances before restarting it later in the year through Firm D. This isn't Montfort's fault. A further point I'd like to make is that Montfort isn't responsible for any delays, acts and/or omissions of Firm D.

Conclusion

I agree with the conclusion reached by our investigator. I don't think Montfort made an error or treated Mr and Mrs R unfairly during the period it was acting for them.

In my view, the crux of Mr and Mrs R's complaint is that lower than expected transfer values were paid into their SIPPs in 2023. Given the complexity and high risk nature of the financial plan and the need to obtain advice on the DB pensions, I think it was inevitable the transfer values available in January 2022 would change by the time any transfer was completed. In other words, I don't think Mr and Mrs R would have been able to secure the higher transfer values they wanted. For the reasons explained above, I don't consider Montfort can be held accountable for the lower transfer values paid to Mr and Mrs R's individual SIPPs in 2023. Montfort didn't provide advice in connection with those transfers.

Therefore, overall, I don't consider it would be fair or reasonable in these circumstances for me to direct Montfort to pay compensation to Mr and Mrs R – or to take any further action in response to this complaint.

My final decision

For the reasons given above, I don't uphold this complaint or make any award against Montfort International Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 3 January 2025.
Clint Penfold
Ombudsman