

The complaint

Mr H has complained that Montfort International Limited ('MIL') caused delays to his pension transfer / encashment. During this delay the value available to Mr H fell.

Mr H has also complained about the fees levied by MIL when the transfer advice itself was ultimately provided by another firm ('Firm B').

What happened

I would like to note here that there has been a significant amount of documentation submitted to this service in this case. The below is a summary of the points of contact and information that I consider key, I would however like to reassure both parties that all evidence has been fully considered whether specifically referenced below or not.

Mr H is a resident of Australia. He engaged MIL in July 2022 and paid their advice fee upfront. The client agreement was signed on 14 July 2022 with the £2,500 fee covering "initial and specialist technical meetings", "cost of services post initial meetings" and "report work and preparatory work and terms".

The "description of tasks" document completed at that time identified the work that was to be undertaken. This included:

- Examination of Utmost Pension Scheme (a UK pension held by Mr H) to determine what would be the most appropriate direction to take.
- Consideration of the advice that led to the establishment of advised pension schemes and financial products and whether there may be any past Australian Tax Liability (Pt tXI of ITAA s483, etc.)
- Examination of UK held property issues facing an Australian tax resident and whether there are methods available to reduce Australian Tax Exposure
- Impact on UK Inheritance Tax Considerations.
- NEW Discussion on how to store proceeds of [property held in the UK] so as to be tax effective for an Australian resident.

On 9 September Mr H completed an investor profile document with his adviser at MIL. This included his circumstances at that time and his attitude to risk ('ATR'). A fact find completed at this time noted that:

"You wish to remain in Australia and enjoy your retirement there and be financially independent.

You wish to keep the proceeds from the Utmost pension and the [field sale – name redacted] outside of the pension/superannuation system, in order to keep the funds available for debt repayment, investment, assisting your children etc."

And

"We will deliver our advice on the understanding that you are currently tax resident in Australia and you will continue to be so. Any pensions or assets in the UK will remain subject to Australian tax and we will as stated above be discussing these matters with [name redacted], the adviser we have recommended to you in Australia to manage your Australian investment matters."

MIL provided Mr H with their suitability report in October 2022.

This noted that:

"Although a full review of your circumstances has been undertaken, this letter relates specifically to the area of pension withdrawal advice and you do not require advice relating to other areas of financial planning at this time. We have made suggestions on this advice, however, during the consultation."

Additionally,

"You know that this pension when drawn in full will be taxable. We have given you an indication of what this tax is likely to be and you are okay with this. We have given a likely percentage charge."

And,

"Your pension is an 'older style' pension and we are not aware if it fits your psychology or risk dynamic at present."

- Your main aim is to have the monies released as a lump sum and sent to you in Australia, minus any tax due.

However, to some extent this is not relevant now as you will be drawing ALL of the pension and there will not be any pension assets remaining [sic] for Montfort to manage. It would be prudent to carry out a new risk profile in Australia should you be investing there."

Finally,

"In your situation, we cannot recommend encashing this UK pension and making it subject to UK/Australian tax. We recommend a transfer via a UK Personal pension into your Australian Superannuation fund once, and if, it has been accepted by HMRC that you are willing to abide by their conditions of being a Qualifying Recognised Overseas Pension Scheme (QROPS).

We believe this to be possible, however, it can take some time and be complex. You have said that you do not want to do this and believe that your Superannuation will not accept such transfers (in) in any case."

Having submitted documentation to Utmost in October 2022, they informed Mr H that MIL were not appropriately authorised to provide advice on a pension such as Mr H's. As such Utmost requested new documentation be submitted confirming Mr H had received advice from an appropriately authorised firm.

Having queried this with MIL they stated, *"We checked and re-checked that we could deliver this advice as we would always do. I will speak to Utmost first thing. I have not had this happen before."*

Ultimately MIL referred Mr H to Firm B to provide pension transfer advice.

In January 2023 Firm B confirmed that the Utmost pension had an element of Defined Benefit guaranteed income and that if they were to provide advice then this would come at a cost of £8,200.

At this point Mr H questioned the chain of events with MIL, stating that *“all I’ve ever been seeking is an advice document confirming the options available to me re the pension product I have with Utmost, together with the completed form confirming that I have received financial advice on this product, so that I can proceed as I see fit”*.

Given the additional fees that would now be required to encash the policy, and the fact that the policy value itself had fallen over the time period since MIL were first engaged, Mr H queried whether a complaint was now needed.

The pension transfer and withdrawal was eventually completed with the help of Firm B on 21 February 2023.

Conversation between Mr H and MIL continued and in August 2023 MIL wrote to Mr H to explain that they had reviewed their engagement and *“When it became clear that we could not deliver the advice, despite our compliance people saying we could. I could easily have said we have been advised we could not help. Instead I took it as incumbent on me to come up with a solution.”*

Unhappy with MIL’s response Mr H referred his complaint to this service in February 2024.

As part of their submissions to this service MIL explained that Mr H was resident in Australia and as such there was significant work needed in order to establish the taxation implications of any possible action regarding the pension.

Our investigator looked into things and concluded that MIL had unduly delayed the transfer of Mr H’s pension. The investigator recommended a redress methodology which sought to take into account the delay period on the value of Mr H’s pension and refund the £2,500 fee paid.

Whilst Mr H accepted the findings issued, MIL did not.

MIL explained that the fee was agreed based on the extensive preparatory work which would need to be completed before any pension transfer advice was given, that they had never been engaged to provide pension transfer advice, that they had never charged Mr H for pension transfer advice, and that there was no delay as the work they needed to do would always have taken a significant amount of time.

As our investigator was not minded to change their outcome, the case was passed to me for a decision. I initially issued a provisional decision which stated:

“I would like to start by confirming that Mr H’s complaint relates to the delays he suffered (and fees he paid) in relation to his Utmost pension.

As such, I have not assessed the accuracy of the taxation advice provided to Mr H regarding the Utmost pension or his other UK based assets. This advice has not been the subject of complaint and therefore I do not need to consider it here.

Additionally, I have not considered the suitability of MIL’s advice to transfer the Utmost pension. Again, it is not the suitability of the advice which has been questioned by

Mr H. Further, the advice itself could not be enacted as MIL did not hold the appropriate authorisations to provide advice on a policy such as Mr H's in the first place.

I fully appreciate that people with extensive assets, income, and overseas residency will have complex tax affairs, and that the research and subsequent work that needs to be undertaken in order to properly advise clients such as these can take a significant amount of time.

I also appreciate that the taxation implications of a pension transfer or withdrawal for Mr H would take time to assess given his Australian residency and their international tax policy. I wish to be clear that this decision does not intend to minimize the amount of work or knowledge necessary to complete such work appropriately.

However, based on the evidence available it appears clear that Mr H was expecting to receive advice on his Utmost pension that would then allow him to proceed with a chosen course of action (either based on the advice provided or by proceeding against that advice).

Whilst I appreciate that pension transfer advice was not specifically noted on the tasks document completed, it is key to note that MIL did attempt provide pension transfer advice to Mr H. Additionally, MIL's discussions with Mr H after their advice had been rejected by Utmost confirmed their surprise. Given MIL were clearly expecting no issues with the advice they had provided at that time, I consider it reasonable to conclude Mr H was also expecting to be able to progress his transfer / withdrawal based on MIL's advice.

As noted above, in October 2022 MIL confirmed that their advice with regard to Mr H's pension was "a transfer via a UK Personal pension into your Australian Superannuation fund once, and if, it has been accepted by HMRC that you are willing to abide by their conditions of being a Qualifying Recognised Overseas Pension Scheme (QROPS)".

So, based on MIL's own timeline they had the ability to complete all the necessary work regarding Mr H's tax status, and then provide advice on the Utmost pension, by October 2022.

Ultimately the delay in this case is not in relation to Mr H's complex tax affairs, but due to MIL not conducting sufficient research into the Utmost pension at an early enough stage in the process.

I do not consider it unfair to state that it was reasonable for Mr H to assume MIL had checked that they could provide advice on his pension before commencing work on establishing the tax implications of transferring / encashing it.

Had MIL correctly established they did not hold the relevant permissions to provide advice on the Utmost pension, they could have referred Mr H to an appropriate adviser much earlier, allowing that adviser to prepare their advice whilst MIL continued their assessment of the taxation implications (should Mr H wish). This would have significantly reduced the delay period and allow Mr H to access his pension earlier.

Based on this conclusion I am intending to uphold this complaint. The redress instruction below are changed from those previously provide by our investigator to take into account the fact that the evidence on file suggests the Utmost pension was in fact encashed, rather than transferred to a new provider."

I additionally asked all parties to provide any further commentary or evidence they would like taken into consideration before I issued my final decision.

What I've decided – and why

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

In response to my provisional decision Mr H simply stated he was happy to accept the outcome and proposed redress.

MIL provided significant additional commentary and evidence which I have considered below.

MIL have questioned why my provisional decision did not analyse the work undertaken with regard to Mr H's tax affairs, pointing to a Financial Services Authority (now the Financial Conduct Authority) letter from 2008 and the new Consumer Duty regulations, which they believe stress the importance of such work.

I would like to state that I fully agree with the content of that 2008 letter and would also agree that the Consumer Duty rules require a business to ensure good customer outcomes. Financial advice should be based on all the relevant information and the taxation implications of any recommended course of action are a key part of ensuring advice is suitable.

As I have stated above in my provisional decision, the taxation work undertaken by MIL has not been the subject of complaint by Mr H. As such, no assessment of this work is required in this decision.

This is also true of the other areas of work included in the "description of tasks" document referenced above. No complaint has been made about the work completed by MIL in these areas and as such I have not considered or assessed them here.

I would again like to note that the lack of assessment of the wider work undertaken by MIL is not an attempt to downplay the time taken in completing this work, nor its significance to Mr H's wider circumstances.

I accept that Mr H's taxation affairs would be more complex than might be considered usual given his Australian residency, and that consideration of the taxation implications of any pension advice provided to Mr H would be required. However, key here is the fact that MIL were not authorised to provide advice on Mr H's pension.

COBS 19.1 sets out the requirements for advice relating to pension transfers, conversions, and opt outs for scheme with guarantees such as Mr H's Utmost pension, and whilst I accept MIL's point that Mr H did not seem to want to consider any course of action other than a full encashment of the policy, this would still fall under the "conversion" element of COBS 19.1. Additionally, for Mr H to proceed on an insistent customer basis, he would still need to be provided with full, suitable advice from an appropriately authorised person before acting.

Whilst MIL could assess the taxation implications of a chosen course of action, advice regarding the fate of the Utmost pension itself was not something MIL were authorised to do.

MIL have again said that they were not tasked with providing pension transfer advice, pointing to the content of the "description of tasks" document which refers to which "direction" Mr H should take, stating that direction and advice are different.

Mr H for his part has stated he was expecting to receive advice on the pension. In considering this difference in what both parties were expecting to happen, a key piece of

evidence is the MIL suitability letter issued to Mr H in October 2022. Within this document MIL do provide Mr H with advice regarding his Utmost pension, advice they were not authorised to provide, and which was ultimately rejected by Utmost. As per MIL's suitability letter, their advice was not to cash in the Utmost pension and to transfer to a QROPS instead.

In line with what I have said above, I agree that the taxation implications of retaining, transferring or encashing the pension are a key consideration within any advice process however I remain of the opinion that MIL should have identified they could not provide Mr H with the advice he required at an earlier stage.

This would not have required significant work or assessment on MIL's part, they would have been aware of their own authorisations and Mr H had the necessary policy paperwork from Utmost.

Had this been done, Mr H and MIL could have had a fully informed conversation around what could be expected, with the need for the involvement of another (appropriately authorised) advice firm discussed at a much earlier stage. As I explained in my provisional decision above, this would have allowed Mr H to engage a second advisor sooner and ultimately allowed the pension advice / encashment to be finalised sooner.

Overall, I have considered all of the additional evidence and commentary provided by MIL, but I do not believe the outcome or redress documented in my provisional decision should be changed. As such I am upholding this complaint. The redress instructions below are in line with those outlined in my provisional decision.

Putting things right

Fair compensation

My aim is that Mr H should be put as closely as possible into the position he would probably now be in if he had MIL acted differently.

I think Mr H's Utmost pension would have been encashed much sooner than it ultimately was. Whilst I cannot be certain exactly when the pension would have been encashed had MIL identified that they could not provide the advice required, I am satisfied what I have set out below is fair and reasonable.

What must MIL do?

To compensate Mr H fairly, MIL must:

- In line with the timeline provided by our investigator, MIL must obtain a notional surrender value of the Utmost pension as at 18 November 2022. This is when I believe it is reasonable to conclude that the Utmost pension would have been surrendered had MIL identified that they could not give advice on this type of pension. This is based on the actual time Firm B took to arrange the encashment and assumes MIL realised they could not provide Mr H with the advice he required on 14 July 2022 – the point at which he paid their fee.
- Mr H was deprived of this encashment value between 18 November 2022 and 21 February 2023 (when the encashment was actually enacted). As such 8% interest (simple per year) should be added to the notional value between these dates.
- The actual encashment value realised should then be deducted from the notional value (plus interest).

- If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.
- If there is a loss, then this amount, plus further interest (again at 8% simple per year) should be added to this loss amount from 21 February 2023 to the date of settlement.
- Given the commentary on file indicates that the Utmost pension was encashed, payment should be made directly to Mr H.
- The payment should be notionally reduced to take into account any tax which may have been payable on this higher amount upon encashment. It may be necessary here for MIL to contact Firm B and/or Utmost to establish an appropriate tax rate based on the original encashment.
- In line with what our investigator said, MIL should pay Mr H £350 to cover the distress and inconvenience this issue has caused.
- I have considered carefully whether the £2,500 fee paid to MIL by Mr H should be refunded in full. Mr H was anticipating being able to use MIL's advice to facilitate the encashment of the Utmost pension, however it is also clear that MIL did conduct other work (as identified on the description of tasks document) which Mr H agreed to and as such it is reasonable for them to be paid for this work. As such I have concluded that 50% of the fee paid by Mr H should be refunded.
- I wish to be clear that this refund amount does not seek to make a judgement on MIL's fee structure or the value of the respective elements of their work, simply that, in my opinion, Mr H (at least in part) paid the fee on the basis he would receive advice he ultimately did not get from MIL.

My final decision

In line with the commentary above I have upheld this complaint and require Montfort International Limited to calculate and pay redress in line with the methodology outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 June 2025.

John Rogowski
Ombudsman