

The complaint

Mr C is unhappy that Montage Portfolio Management Ltd was no longer prepared to provide a Discretionary Fund Management (DFM) service for his self invested personal pension (SIPP).

Mr C's dealings were with Montage Wealth Management, a trading name of Montage Portfolio Management Ltd. For ease I've just referred below to Montage.

What happened

Mr C is a former employee of Montage. A SIPP with Carey Pensions was set up into which employer and employee pension contributions were paid. The SIPP application form was headed '*The Carey Pension Scheme Application for Clients who have not taken Professional Financial Advice*'. At section 7, dealing with investments, Montage's details were inserted as the DFM who'd be managing Mr C's pension fund. The SIPP was held on an investment platform and invested in one of Montage's model investment portfolios. When Mr C's employment ended his SIPP remained with Carey, on the same platform and in the same portfolio with Montage remaining as the DFM.

In January 2018 Montage sent Mr C a letter which included the following:

'We are moving all our Carey SIPPs for clients and employees away from Carey and therefore wanted to keep you informed of this change. As we do not provide financial planning advice on your pension we recommend that you seek financial advice for your pension with a view to moving away from Carey.'

Mr C completed Carey's transfer out form and sent it to Carey, requesting a transfer to a named SIPP provider. Carey emailed Mr C to say the form had been received but they'd had no confirmation from the new provider that a SIPP had been set up. Mr C sent Carey's email to Montage, asking Montage to action it. Montage didn't reply.

Mr C complained and Montage issued a final response letter on 22 June 2018. Montage said, amongst other things, if Mr C wanted to transfer his SIPP, he'd need to take financial advice and have a recommendation to transfer which Montage hadn't provided as Mr C wasn't a client and hadn't been an employee for some time. Montage said its letter had been sent solely out of courtesy to let Mr C know that Carey's fee structure was changing and he should take financial advice. Mr C didn't take any further action and his SIPP remained with Carey as before.

Montage sent an email to Mr C on 17 March 2022 setting out the existing arrangements and charges. It said the SIPP was held on an investment platform and invested in Montage's MPM investment portfolio. There was no wealth management charge but there was a DFM fee of 0.36% pa for the Montage portfolio, fund manager charges for the investments held and the platform provider's fee of 0.25% pa, which were special terms, plus any fees charged by Carey for the SIPP.

The email went on to say, as Mr C was no longer an employee, Montage was unable to continue to offer the plan on the basis set out as it was unable to confirm its ongoing suitability. At the end of March 2022 Montage would remove the plan from its agency and delink the platform account from the model portfolio. That would stop the DFM fee and remove the Montage special terms with the platform provider. The funds currently held would remain in the platform provider's account, without Montage's DFM service, for Mr C to continue as he wished. He could take over the agency of the SIPP with his new employer or transfer the SIPP to another plan.

In response Mr C said it wasn't fair to give him less than two weeks' notice and when Montage had had several years to take such action. He also felt Montage's reasons weren't in keeping with their regulatory obligations to treat customers fairly. He didn't pay any advice fee and Montage wasn't under any obligation to assess suitability, which Mr C said was his responsibility and he was happy the product was suitable for his needs. He didn't want to move his SIPP given current market volatility and he didn't authorise Montage to take any of the actions set out in Montage's email.

Montage replied saying, amongst other things, that the email hadn't said Mr C must move his SIPP or the underlying investments. But Montage was no longer willing to provide a DFM service. Montage would delay the change until the end of April to give Mr C more notice. Montage didn't think we'd be able to consider Mr C's complaint.

Mr C did however refer the matter to us. Amongst other things he said he'd transferred an existing personal pension worth about £100,000 to the SIPP to consolidate his pension arrangements. After he'd left his employment he'd received a letter from Montage about some changes with his investments (I assume Mr C is referring here to Montage's January 2018 letter) and asking him to complete a form to continue with those changes. Despite returning the form and five chaser emails Montage didn't respond or make the changes requested. Mr C complained but Montage dismissed the complaint saying Mr C wasn't a client. Mr C didn't agree but chose not to take matters further.

He later received Montage's March 2022 email. He was unhappy with the tone and that he was only given two weeks' notice to move his investments at a time of market volatility. He said his letter of complaint was ignored and he only got a response when he said he was referring the matter to this service. Mr C was unhappy with the tone and content of Montage's further replies and which left him upset and distressed. He didn't think Montage was acting in line with the regulator's rules and the Treating Customers Fairly (TCF) requirements.

He wanted Montage to confirm he hadn't been disadvantaged over the last several years by any actions taken without his knowledge or instruction and, if he had been, reimburse his pension fund. He also wanted Montage to continue to manage his fund as before. He was happy to move to Montage's standard charging basis and which would allow him to decide when and if to move his pension fund, given he'd suffer charges of around 3% of his fund and when he had a limited time until retirement.

Our investigator didn't agree with Montage that we couldn't investigate Mr C's complaint. She said Mr C was a consumer and Montage had provided regulated services. But she didn't uphold the complaint. Her main points were:

- The SIPP had been set up as part of Mr C's employment with Montage. It benefitted from a reduced administration charge and there were special terms for the platform and DFM services. When Mr C had left his employment with Montage he was no longer entitled to the special terms and benefits but these had remained in place.
- In 2018 Montage had written to Mr C to let him know it was moving all clients' and

employees' pensions away from the SIPP provider due to an increase in charges. Montage could make changes to the way in which it provides services so long as the consumer is informed. It isn't for this service to tell a business how to run its affairs.

- Mr C's transfer to a new SIPP provider in 2018 wasn't completed. He'd asked Montage to complete the transfer on his behalf at the time. But Montage couldn't help as it needed Mr C to seek financial advice. Mr C hadn't followed through on the transfer and his SIPP remained under Montage's DFM until 2022.
- Although Mr C was no longer entitled to any employment benefits and, despite having said in 2018 that it would stop providing DFM services, Montage continued to provide such services and took a fee. Montage stopped taking the DFM fee and ceased managing the SIPP fund from April 2022. That would've given rise to a loss of expectation. But Mr C had continued to enjoy the benefit of reduced charges and special Montage terms which he wasn't entitled to after he'd left his employment. It wasn't reasonable to ask Montage to reinstate the special terms and DFM services.
- Two weeks' notice wasn't sufficient time but, after Mr C had complained, Montage had agreed to give a further four weeks which was fair and reasonable.
- Mr C had said he'd incur a large adviser fee if transferred his SIPP. He could authorise a SIPP transfer himself without financial advice. Although he'd like Montage to continue managing his SIPP as it had done, the previous terms were a perk of Mr C's employment with Montage. If he wanted Montage to provide DFM and other services, he'd need to get in touch with Montage direct and enquire as a new client.

Mr C didn't agree with the investigator's view. I've summarised Mr C's main points:

- Montage had written to him in January 2018 informing him of a necessary move to a new SIPP provider due to lower charges being available. Within the letter Montage recommended that he move to the new SIPP provider. He accepted that recommendation and sent back the required completed forms. Montage had failed to move his SIPP to the new provider, despite his request and so his SIPP was left with the old provider incurring higher charges.
- Montage had dismissed his complaint saying that their letter just gave information, despite using wording that they were recommending that Mr C make the move. The investigator's comment that Montage couldn't be held responsible for the higher charges on his SIPP because it's a business decision ignores the fact that he is being subject to higher charges because Montage had failed to carry out his instruction to move to a lower charging SIPP.
- The investigator had said Montage hadn't completed the transfer because they required that Mr C seek financial advice before actioning his instruction. He didn't need financial advice before accepting a clear recommendation to act. Montage had provided advice in their January 2018 letter and he'd accepted that. Montage treated him unfairly by not carrying out his instruction. Montage had all the required information and the completed forms to make the transfer but chose not to do so.
- Although it wasn't for us to dictate how a business runs its affairs, where a firm was treating customers unfairly, we had a duty to put things right. The investigator had found he was a client. The situation had arisen because he hadn't been treated as a client and so he'd been treated unfairly.
- His complaint wasn't about charges. He'd never asked Montage to continue to offer the same level of service for the reduced fees he was entitled to as an employee and he was happy to pay the same fees and charges as any other customer would pay for the same level of service. He just wanted to be treated like any other client of Montage, to have his pension managed properly and not be disadvantaged because of Montage's spurious determination that he isn't a client and as such doesn't deserve to be treated fairly and appropriately.
- Montage removed his funds from their management in April 2022 and left them

languishing at the vagaries of the stock market and we'd taken over a year to determine his complaint. Removing a customer's funds from active management without offering an alternative charging structure wasn't fair treatment. It takes longer than a couple of weeks to transfer a SIPP to another provider. Saying he could do so without advice seemed like we actively encourage execution only transfers. And we'd ignored his transfer of over £100,000 of his own personal pension monies into the SIPP when he was given advice but wasn't provided with a written record of that advice or a recommendation letter.

The investigator responded to Mr C's comments. But she didn't change her view. Amongst other things she said she hadn't seen anything to show that Montage had advised in connection with a transfer to the SIPP or about consolidating Mr C's pension arrangements. She was satisfied Mr C had been treated fairly by Montage. He'd continued to enjoy preferential terms for Montage's DFM services until April 2022. He was now paying higher charges for the SIPP because it had remained with Carey. But the SIPP hadn't been provided by Montage. The SIPP provider is a wholly separate entity to Montage who'd only provided DFM services.

Mr C remained unhappy and reiterated that he wanted the matter referred to an ombudsman.

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.

Mr C was unhappy that the investigator replied to the points Mr C had made in response to her view and when Mr C had asked for the matter to be referred to an ombudsman. But that's in accordance with our usual procedure. We'd generally expect the investigator to try to deal with any points made by the consumer (or indeed the business) in response to the investigator's view and seek confirmation that a referral to an ombudsman was still required.

I'm sorry that Mr C feels that he was given insufficient time to respond to the investigator's view when Montage had been given up to four weeks earlier in the process to provide information. I think where information needs to be gathered we generally allow more time – records may have been archived, personnel may need to be interviewed and information may be held in more than one location. When the investigator issues a view, it's an attempt to summarise things and bring all the relevant points together and give the parties an opportunity to respond. And we'd always consider a request (from either party) that more time should be allowed.

I can see that Mr C feels very strongly about what's happened and that Montage hasn't treated him fairly as a customer. Montage's position was that Mr C wasn't a customer and so we couldn't consider his complaint. But I agree with the investigator that Mr C was Montage's customer and that we can consider a complaint made by him in that capacity.

We're governed by the Dispute Resolution (DISP) rules set out in the regulator's Handbook. DISP 2.7.1R says we can only deal with complaints brought by or on behalf of an eligible complainant which include a consumer. I'm satisfied that Mr C is a consumer. DISP 2.7.6R also says that to be an eligible complainant Mr C must also have a complaint which arises from matters relevant to one or more of the relationships with the respondent listed. The first is that the complainant is or was a customer of the respondent.

Mr C's relationship with Montage started off as one of employee/employer. But, after his employment ended, Montage remained in place and continued to provide DFM services to

Mr C. And he was paying for those services – a fee of 0.36% pa was mentioned in Montage's email of 17 March 2022. That may have been a discounted fee arising from Mr C's period of employment. But, as he's said, it wasn't his fault if Montage continued to charge him a reduced fee. And I accept he'd have been happy to pay Montage's usual charges for its DFM services. But the fact of the matter is that Mr C was paying for a service which Montage was providing. I think it's clear that he was Montage's customer.

We can consider a complaint under our compulsory jurisdiction if it relates to an act or omission in carrying on certain activities. The relevant one here is regulated activities. These are set out in the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 (as amended) and include dealing in investments as agent, managing investments and advising on investments (the definition of which includes a personal pension scheme).

All in all, I'm satisfied we can consider Mr C's complaint. He's an eligible complainant as a consumer and his complaint arises out of matters relevant to his relationship with Montage as a customer. And he's complaining about acts or omissions by Montage in carrying on regulated activities. I've approached Mr C's complaint from the basis of whether Montage treated Mr C fairly as a customer.

I've looked first at what happened when Montage wrote to Mr C in January 2018. Mr C says what Montage said was advice – a recommendation that he switch SIPP providers. I don't agree. Although, as I've said, Mr C was Montage's customer, not all communications with a customer or client, even those which refer to the client taking some action such as moving to an alternative product, will amount to advice or a recommendation. I don't think what Montage said amounted to advice or a personal recommendation that Mr C move away from Carey. And any recommendation would be incomplete as no alternative provider was named by Montage. I agree that Montage was just giving Mr C information.

I can see Mr C's argument that, if he was a client of Montage's, his SIPP should've been switched to a new provider – and when Montage had said it was moving all clients and employees away from Carey. But sometimes different treatment won't mean a particular customer has been treated unfairly. Mr C was only Montage's customer by virtue of being a former employee. And Montage did make the position clear – the letter went on to say that Montage didn't provide financial planning advice on Mr C's pension and suggested he seek financial advice with a view to moving away from Carey.

I don't think Montage was at fault in not acting on Mr C's request to transfer his SIPP away from Carey. Montage wasn't Mr C's financial adviser. I've referred above to the SIPP application form and from which it was clear that Mr C didn't have a financial adviser. Mr C's relationship with Montage was limited to Montage being Mr C's DFM. The SIPP was a separate entity and Montage wasn't responsible for it. It was up to Mr C if, going forwards, he wanted to avoid Carey's increased fees, to find a new SIPP provider, with or without financial advice. It wasn't for Montage to action Mr C's 'instruction' to switch and when, as I've said, I don't agree Montage had made any recommendation. So I don't agree Montage should be responsible for the difference in the higher charges Mr C paid to Carey and the lower charges he'd have paid with a different SIPP provider. But I think it would've been helpful and courteous for Montage to have replied to Mr C's request and explained at that stage why Montage was unable to deal with it. Montage acknowledged that in the final response letter it sent on 22 June 2018 and apologised.

Mr C's SIPP remained with Carey and with Montage as the DFM until March 2022 when Montage decided they were no longer prepared to provide DFM services to Mr C. I can understand why Mr C was unhappy – he's made it clear he wanted to continue with Montage as his DFM and he didn't expect any preferential treatment and was prepared to pay the same fee as Montage charges other clients. Mr C's position is that Montage should've

offered that and by failing to do so Montage isn't treating him – as a customer – fairly. Mr C has referred to Montage's TCF obligations and to the regulator's Principles for Businesses. These include, for example, Principle 6 – customers' interests – and which says a firm must pay due regard to the interests of its customers and treat them fairly.

But I don't think there's anything which says a firm must continue to act for a client even where the relationship has broken down or has become dysfunctional. And provided that the client is given adequate notice that the firm's services are being withdrawn so that the client can make alternative arrangements.

Montage didn't want to continue to act for Mr C and I think it was open to Montage to terminate the relationship. Mr C may think he's been treated unfairly as a result of Montage's decision not to continue to act for him (and even though Mr C happy for Montage to remain as the DFM and is prepared to pay the usual charges) I don't think it would be productive to say that Montage should continue to act for Mr C as a customer in circumstances where Montage clearly doesn't want the relationship to continue.

I've also looked at the Client Agreement that Montage would normally ask clients to sign. I know Mr C didn't sign an agreement but I've said that he was Montage's client and I think it's fair to look at what Montage normally agreed with clients and, in particular, what provisions were in place about terminating the relationship. The client agreement said that it should be read in conjunction with the Terms of business. And, under the heading, Commencement and Termination of Agreement, the client agreement referred to page 62 of the Terms of Business. That page said that the client may terminate the agreement at any time, without penalty, on giving notice of termination in writing. And that Montage may terminate the agreement by giving the client at least 20 business days' written notice.

Mr C didn't think the time given was sufficient and the investigator agreed that the original deadline wasn't fair. But it was extended by Montage and the time given was in line with what Montage's Client Agreement and Terms of Business said. Despite what Mr C has said I think that was sufficient time for Mr C to decide what he wanted to do and make the necessary arrangements. I'd point out that his pension fund remained invested in the existing funds so he wasn't out of the market for any period even if he no longer benefited from Montage's DFM services. And there was no obligation on Mr C to change SIPP providers unless he wanted to. All that was changing was that Montage would no longer be managing the SIPP fund for Mr C.

Mr C has mentioned that he transferred another pension fund, worth about £100,000, into his SIPP. Mr C says that was on advice from Montage but that he didn't get any written advice or recommendation. I don't know if Mr C is just pointing out that the funds subject to Montage's DFM services weren't limited to the employer/employee contributions made into the SIPP during Mr C's employment with Montage. Or if Mr C considers any advice to switch his other pension fund into the SIPP was unsuitable. I note he seems to have been happy with the SIPP and the performance of his funds under Montage's DFM and in fact wanted that to continue. So it's unclear what loss, if any, he might have suffered as a result of the transfer. Further, I don't know if Montage accepts that it gave Mr C such advice. This point hasn't been addressed as part of this complaint. I think, if Mr C wants to pursue this aspect of the matter, he'd need to make a further complaint.

Mr C's current complaint concerns Montage's withdrawal of its DFM service. I'm unable to uphold that complaint. I think Montage could withdraw its DFM services even though Mr C was a customer and although he wanted to continue with Montage as DFM and was prepared to pay Montage's normal fee.

But, as I've noted above, Montage shouldn't have simply ignored Mr C's request in 2018 to action a switch to a new SIPP provider. Although I don't agree that Montage had any obligation to act on Mr C's request, Montage should've replied and explained its position. I've considered if any award for distress and inconvenience should be made and taking into account that Mr C also says he was upset not just by the content of Montage's communications but by the tone too.

But I don't think the communications were such as would reasonably be viewed as likely to cause Mr C upset. And , although I accept that Mr C was disappointed that Montage was no longer prepared to continue as DFM, I've explained that Montage was entitled to reach that decision and gave Mr C sufficient notice. Further Mr C has benefitted from reduced fees (I think that's Montage's fees for its DFM services and a discount on the platform provider's fees) for some years after his employment with Montage ended. In the circumstances I'm not making any award for distress and inconvenience.

My final decision

I don't uphold the complaint and I'm not making any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 September 2023.

Lesley Stead
Ombudsman