DRN-3404287

The complaint

Miss S has complained to Mercer Limited, trading as Mercer Jelf Financial Planning, about her pension funds being moved twice, which she says happened without her knowledge, and that this has caused her financial disadvantage.

As a result of the initial move, her additional pension contributions weren't invested. And once the second move had happened, Miss S's contributions continued to be paid to the previous managed portfolio.

And when Mercer terminated its agreement with Ms S in December 2019, Miss S says that it didn't make her aware that her pension funds would be moved into cash.

Miss S has also said that the fees levied on her pension funds have been higher than was agreed.

What happened

Miss S had been a client of Jelf Financial Planning since 2005, which then became Mercer Jelf Financial Planning from 2015 (and was then fully integrated into Mercer Limited in February 2018, albeit operating under the same trading name).

Under Jelf's discretionary fund management (DFM) service, which it called the Managed Portfolio Service (MPS), Miss S's funds were invested in accordance with her objectives and attitude to risk.

When Jelf Financial Planning became Mercer Jelf Planning in 2015, it changed the company it used as a platform provider, but the DFM remained the same and Miss S was invested in the "Mercer Jelf 6 Portfolio" (MJ6P). Unfortunately, due to the change of platform provider, Miss S's contributions weren't invested and, having complained about this, Miss S was compensated for this accordingly.

As part of the transfer of Jelf Financial Planning into Mercer in 2018, the DFM was then undertaken "in house", which meant that the MJ6P was replaced and Miss S's pension funds were moved to the Mercer Jelf Managed Portfolio Service 6 (MJMPS6). The risk profile and strategy of the portfolio remained the same, but there was a change to the underlying assets.

Miss S's additional contributions then continued to be invested in the MJ6P rather than the MJMPS6 for three months. The misdirected payments were moved to the latter portfolio, and Mercer initially offered Miss S a small amount of compensation in respect of the financial loss this had caused - £19.05. But Miss S didn't accept this and also expressed concerns about the level of service she was receiving.

This was dealt with as a formal complaint, and Mercer replied in late March 2019 saying that a review of the matter had demonstrated that Miss S had in fact made a gain of £167.57 through the incorrect investment of her contributions in the previous portfolio. But it maintained its offer of £19.05 as a gesture of goodwill.

Miss S continued to express dissatisfaction at the findings in response to her complaint, and Mercer issued a further response in November 2019 to address the remaining areas of concern.

In December 2019 , Mercer issued 30 days' notice – by letter - of its intention to cease providing services to Miss S. It said that the advice and DFM services would be removed, but that she could continue to hold her current range of collective investment funds on the same platform.

This information was repeated in an email of 14 February 2020, and it added that whilst some of Miss S's investment could remain as they were, others couldn't be retained on the same platform. These would automatically be sold and the proceeds paid into a cash account. But this email was unfortunately redirected to Miss S's "spam" mailbox.

Miss S logged into her account in late March 2020 and realised that a significant proportion of her pension funds – nearly 79% - had been disinvested into cash.

Miss S's complaint, as set out above, was referred to this service, and one of our investigators considered the matters. He said the following in summary:

- He thought the issue to determine was whether the changes to Miss S's portfolio were made with her knowledge and consent and whether they resulted in financial disadvantage to her.

- He initially addressed the 2015 migration, setting out the different roles undertaken by the various parties involved. He also said that when the merger occurred in 2015, Miss S's pension funds would continue to be managed by the same entity, following the same principles, and maintaining the same risk profile. It was simply an administrative change.

- There was, overall, a small net reduction in charges as a result of the migration, and so Miss S hadn't been financially disadvantaged. He also said that no additional costs had been incurred and the issues surrounding the direct debit error were resolved in 2017.

- He then assessed the transfer to Mercer in 2018, saying that although Mercer had sent Miss S a letter telling her about this, and that she'd received it, it had become clear from speaking to her that she hadn't understood its relevance. Miss S had said that she first became aware of changes when she received a letter dated 31 October 2018 which informed her that her direct debit contributions were still being directed to the previous portfolio.

- It was also apparent that Miss S hadn't signed the new terms of business or portfolio management agreement – as confirmed by Mercer in an email to her on 4 February 2020.

- The investigator therefore concluded that Miss S had been unaware of the move to the "in-house" DFM and that it had been implemented without her signing a new agreement. And that Mercer hadn't explained the changes in a way which Miss S could understand. And he therefore didn't think it was unreasonable for her to be reluctant to sign new contracts in October 2018, especially given the mistakes which had previously been made.

- He then considered whether there'd been a material detriment to Miss S as a result of the change of DFM service. He said that, as far as he could tell, the service provided was broadly the same, and that the portfolios were operated on similar principles and with the same objectives and risk profiles.

- However, he also noted that the £750 misdirected into the old portfolio grew by over £167.57 in the six months it was held in it, compared to its notional performance in the new portfolio – a difference of 22%. And so he thought it was understandable that Miss S had queried whether the move of portfolios was in her best interests.

- Miss S had said that, had she been aware of the changes, and given her existing dissatisfaction with the service provided, she would have taken this opportunity to look for an alternative adviser and investment management service.

- The investigator then considered the termination of services which Mercer had conveyed to Miss S on 20 December 2019. He said that this happened with reference to a particular clause of the terms of business, but that Miss S had never signed those terms of business with Mercer Limited.

- Although the letter said that Miss S would continue to hold the current range of collective investment funds, this wasn't accurate, and the majority of her investments were disinvested into cash. The investigator said that Mercer should have made Miss S aware of this.

- However, Miss S would have been responsible for the reinvestment of her pension funds once she'd become aware of the situation, he said.

The investigator summarised by saying that it was understandable that Miss S lost confidence in Mercer due to what had happened and that, when her pension funds were disinvested after the termination of the service agreement – which she hadn't signed – it was possible that she'd suffered financial loss as a result.

He recommended that Mercer undertake a calculation to determine whether any loss had been caused to Miss S by firstly comparing the performance of the MJMPS6 with that of the MJ6P from when the switch happened in February 2018 to a point three months hence – saying that this would have been sufficient time for Miss S to have found an alternative service provider.

The investigator said that a further calculation should be undertaken comparing the actual performance of Miss S's pension funds with one of our benchmark indices from that point three months after the portfolio switch, up to 31 March 2020, as this was when Miss S became aware that most of her investments had been moved into cash.

He also said that Mercer should pay the additional sum of £500 to Miss S for the poor service she'd received and the inconvenience she'd suffered.

In response, Mercer requested a letter of authority so that it could seek the required information to undertake the recommended calculation.

It then contacted the investigator to say that, on the basis of its calculation it had determined that there had been a gain of £8,876. It also didn't think that it should pay the amount of £500 in respect of the service provided to Miss S, as it had already addressed this. Following further contact between the investigator and Mercer, however, it agreed to pay that further amount.

Miss S didn't agree that that the calculation had been undertaken correctly and questioned it in the following terms:

- The comparison between MJMPS6 and MJ6P was supposed to have been for six months from the switch date, but the latter seemed to be from 8 February 2018 to 27 July 2018.

- In the investigator's view, he'd said that the difference between the two portfolios would have been 22% in favour of her remaining in the MJ6P over the first six months alone. So she'd been unable to reconcile this with Mercer asserting that she would have been better off by £8,876 through the move into the MJMPS6.

- It didn't look as if Mercer had shown the growth calculation on the basis of her pension funds still being invested in the MJ6P – rather, it had simply added the contributions.

- She further enquired as to why no calculation had been done for six months from 3 March 2020 when her pension fund was disinvested into cash without her knowledge. This time period was appropriate as, due to the pandemic and the national lockdown, she was unable to source an alternative financial adviser to try to resolve the matter.

- Miss S also said that the fees in the calculation were recorded as being 1.11%, whereas they should have been 0.2% from February 2018.

Th investigator said that, although this service wasn't able to check Mercer's calculation, he'd been able to check the inputs and these seemed aligned to what he'd asked Mercer to do.

He also confirmed that, with regard to "step one", he'd asked Mercer to compare the performance of the MJMPS6 and the MJ6P for a period of three months, rather than six months.

He further said that he'd asked Mercer to end the second part of the calculation on 31 March 2020, as this was when Miss S became aware that much of her pension fund has been disinvested into cash. He appreciated what Miss S said about the effects of the pandemic, but said that financial advisers were still available, albeit remotely rather than in person.

The investigator concluded that, if Miss S wasn't happy with the outcome, it would now be best for the complaint to be referred to an ombudsman, but that if Miss S maintained that the calculation hadn't been undertaken properly, she was free to have it independently checked.

Miss S remained concerned about the outcome, saying that Mercer had used figures for a fund called MMPS rather than MJMPS6. Miss S requested the details for MJMPS6 so that she could employ the services of an actuary to check Mercer's calculation.

Miss S also maintained that she wouldn't have been able to resolve the issue of her pension funds being held in cash immediately. She said the disinvestment happened on 3 March 2020, but she didn't learn of this until 31 March 2020.

And lastly, Miss S repeated her point about the fees she'd been paying, saying that the calculation stated them as being 1.11%, but they were meant to be 0.2% from February 2018.

Miss S said that once she'd received the requested information, she would then arrange a calculation and then decide whether she wished to refer the matter to an ombudsman.

The investigator acknowledged this, and said that he would ask Mercer to provide the requested information. But he also said that his view on Miss S's ability to reinvest her funds held in cash, and the timescale for that, remained the same and if Miss S still disagreed, it would be best for the matter to be referred to an ombudsman.

As to the matter of the fees charged, he said that the fees for the investment itself may have been 0.2%, but Miss S was also paying Mercer for its services.

Miss S agreed that the matter of when she would have been able to reinvest her funds held in cash should be referred to an ombudsman. And with regard to the fees, she referred the investigator to the file which she said clearly demonstrated that she was never paying a fee of 1.11% for Mercer's services. It was 0.75%, reduced to 0.25%.

The investigator referred the points about a different portfolio being used in the calculation and the matter of the fees to Mercer.

In response to the first point, Mercer said that the name of the MJMPS was changed to MMPS (Mercer Model Portfolio Service) in 2020. The two terms were used interchangeably to refer to the same portfolio once the Jelf trading name was dissolved.

It said that the underlying assets within the portfolios weren't affected by the change and it provided the asset allocation for MMPS6 (previously known as MJMPS6) as at 31 March 2018.

The investigator conveyed this information to Miss S. As to the charges, he said he'd reviewed the letters and the email which Miss S had provided. The email from Mercer said that the service fee would reduce from 0.75% to 0.25% but only if Miss S signed a new client agreement. As she didn't, the fee remained at the higher rate.

But he agreed that the letter from Mercer dated 6 March 2018 confirmed that the discretionary manager charge had reduced to 0.2%. This produced an overall charge of 0.95% before VAT, and 1.11% once VAT had been applied.

He confirmed that he'd begun the process of referring the matter to an ombudsman for review, and that he would keep Miss S updated on the complaint's progress.

In response, Miss S requested the funds in which the MJ6P had been invested, as she only had those for MJMPS6.

As to the proposed reduction in the fees, she agreed that she hadn't signed anything, but that Mercer "still did it" and so as far as it was concerned, the fee reduced to 0.25%.

Miss S further said that 0.95% with the addition of VAT at 20% resulted in a fee of 1.14% rather than 1.11% - and so the figures still didn't make sense.

The investigator questioned Mercer's assertion that the underlying funds had been the same between the two portfolios. Referring to a fund factsheet for the MJ6P from October 2017, he noted that the funds were quite different. He also said that the difference in performance between the two funds couldn't readily be explained if the two funds were identical.

The investigator also queried the matter of the fees further with Mercer. It provided a "charges summary" document from the platform provider. This set out the charge of 1.11%, which was made up of the "fund charge" of 0.78% and the "platform charge" of 0.33%. Mercer said that Miss S may be confusing the 0.2% charge it applied to anyone invested in the MMPS with the total charge on her investments.

The investigator conveyed this information about the fees to Miss S, also saying that he was awaiting further information from Mercer about the funds within the portfolios.

The complaint was then referred to me for review.

I noted that the information relating to the differences between the two portfolios was outstanding. But I didn't think this was now relevant, for reasons which I explained in a provisional decision on the complaint dated 24 January 2022.

In summary, I said in that provisional decision that the complaint should be upheld and that Mercer should undertake a loss calculation to determine whether Miss S had lost out financially by her pension funds being disinvested into cash. My detailed provisional findings are set out below:

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

I note that Mercer has made no comment on the investigator's findings relating to the merits of the complaint, other than to initially object to the proposed further payment of £500 to Miss S in respect of what he said was the poor quality of service provided to her.

I've nevertheless looked at the matters afresh, but have reached broadly the same conclusions as the investigator in terms of what has happened here, albeit with some slightly different conclusions. I think it's not disputed that things have gone wrong, notably in terms of where Miss S's contributions have been invested, but also the disinvestment into cash without her being aware that this was happening.

And I agree with the investigator that Mercer needed to take steps to put matters right. These are addressed below.

<u>Initial switch from one managed portfolio to another</u>

The first of these steps was to establish whether Miss S suffered a loss when the portfolio switched from MJ6P to MJMPS6 and her contributions were invested in the former instead of the latter. It was in fact demonstrated that Miss S's contributions performed better in the original fund than they would have done in the "in house" portfolio.

And this rightly gave Miss S pause for thought as to whether the switch from MJ6P to MJMPS6 for her pension funds had been in her best interests. And when she was asked as to what she would have done, had she been unambiguously aware of what was being proposed as part of the merger in February 2018, Miss S said that this would likely have prompted her to take the opportunity to look for an alternative adviser and investment management service.

I've thought about this carefully, but have reached a slightly different conclusion to the investigator. To explain, Miss S was of course free to seek another adviser and investment management service at any time throughout her relationship with Mercer, and if this were to happen, it might reasonably be expected that this would be when she'd realised that contributions hadn't been invested as they should have been, or when declining to sign new client agreements. But Miss S, for whatever reason, didn't look elsewhere.

And so I think it might be reasonable to assume that, had the merger and proposed transfer into a new portfolio, but with the same risk rating and strategic aims as the original, been properly communicated to Miss S, there would have been little that she would have found objectionable about this. And so I think it's more likely than not that she would have *accepted that proposal and her funds would in any case have transferred over to MJMPS6.*

There may have been a financial benefit in remaining in the MJ6P, but this is only known with the benefit of hindsight, and there are indications in the calculation undertaken by Mercer that the MJMPS6 may ultimately have performed better.

But notwithstanding this, I don't think I could reasonably conclude that the move to MJMPS6, given its description, was obviously contrary to Miss S's best interests at the time, or that she wouldn't have accepted it as a reasonable proposition.

And as there was no loss through her misdirected contributions being invested in the MJ6P instead of the MJMPS6 for the short period they were invested in the former, I don't think that Mercer needs to take any additional action in that particular regard.

<u>Termination of services</u>

Turning then to the termination of services, my views on this are aligned with those of the investigator. Even if it could reasonably be concluded that Mercer had given Miss S sufficient notice of this, it nevertheless conveyed the impression that the majority of her investments would remain as they were. The reality, however, was that she'd been largely disinvested into cash.

But I've also thought about the date at which it's been proposed the redress calculation in respect of this should be capped, i.e. the date at which Miss S became aware that her funds had been switched into cash. And I think Miss S has a point here. The investigator has rightly noted that it was possible to seek financial advice remotely, if not face to face, during the initial "lockdown" in 2020.

But I don't think that Miss S would have been able – at least with immediate effect - to fully appreciate what had happened here, seek alternative financial advice, consider this, and then instruct whatever fund switches she'd decided upon. The act of seeking, and then the provision, of alternative financial advice itself, done remotely as would likely have been necessary, with the probable fact finding and research undertaken by a new firm of advisers, would realistically have taken several weeks, if not longer, especially at a time when all businesses were adjusting to the new realities of the pandemic.

And so I think a more reasonable timeframe for calculating whether Miss S suffered financial loss by being disinvested into cash would be from the point at which Miss S's investments were moved into cash until 30 May 2020. I think this would be a more realistic period of time in which Miss S could have arranged alternative investments.

But I think it's quite possible that this will demonstrate no loss to Miss S. Financial markets declined significantly between February and March 2020, and so if her pension funds had been moved into cash just before this, this may well have worked in her favour, especially for the suggested period of calculating whether loss has been incurred.

<u>Fees and charges</u>

I can see that, following the investigator's confirmation of the fees which were applicable, Miss S hasn't submitted further comment on that matter. And my understanding is that Miss S was being charged the 0.2% - which she believed to be the case - by Mercer for its ongoing service, and that the 1.11% was in respect of the separate fund and platform charges.

But if Miss S wishes to make further submissions on that matter, she may do so in response *to this provisional decision.*

Putting things right

As I've set out above, my current view is that the loss calculation should reflect the period of time during which Miss S's funds were disinvested into cash – up to the point that she would reasonably have been able to put that situation right.

I think it's also reasonable to assume that Miss S's pension money ought to have remained in funds similar in nature to those from which they were disinvested. This is, after all, the impression Miss S had been given by Mercer.

And so, rather than using one of our benchmark indices to determine whether loss was sustained through the disinvestment into cash, my current view is that Mercer should compare the notional position of Miss S's pension funds had they remained invested as they were, as at 30 May 2020, with their actual position on the same date.

This should be a relatively straightforward calculation, but Mercer should nevertheless set out the results in a clear and understandable manner – rather than a simple spreadsheet - so that Miss S should be able to appreciate the comparison.

As I've said above, I think it's likely that this will determine a no loss position. But if there was a loss, that percentage loss should be applied to Miss S's current pension funds, as at the date of any final decision along these lines, so that they are increased to the correct value. For example, if the pension funds had suffered a loss of 10%, and Miss S's current pension funds were worth £90,000, that value should be increased by a factor of 1.11 to make them up to £100,000.

That payment should ideally be made to Miss S's pension policy to make it up to the correct amount, taking account of any annual allowance issues, available tax relief, charges, and protections which might be in place.

If payment into Miss S's policy isn't possible, or there are protection issues or other reasons why this cannot be done, the payment should be made directly to Miss S, but with a notional deduction for the income tax which she would likely pay in retirement. I've assumed that this would be 20%, and so also on the assumption that Miss S would take maximum tax free cash, the notional deduction from any payment directly to Miss S should be 15%.

I've also noted what's been said by the investigator and Mercer about the proposed additional payment of £500 in respect of the overall level of service provided to Miss S.

I think it goes beyond that here. Mistakes have undoubtedly been made, but from my reading of the file I can also see - and understand – Miss S's frustration with what has happened, and over a period of several years. It will, in my view, have caused Miss S no small amount of concern, and likely distress, when she learned that quite significant monthly contributions hadn't been correctly applied.

If I'm to add to that the additional concern she'll have had when she realised that her funds had been disinvested into cash in early 2020 – notwithstanding any potential position of no actual financial loss – I think the additional payment of £500 is warranted here. I note that this has also been accepted by Mercer."

In response, Mercer requested that we ask Miss S for a letter of authority so that it could undertake the loss calculation.

Miss S made further submissions, as follows:

- The email of 14 February 2020 had been sent by Standard Life rather than Mercer. As Standard Life had never contacted her by email before, this was why it went into her "spam" folder.
- I'd said that Miss S had been free to move to another adviser at any point in her relationship with Mercer, and that if this were to happen it was likely that this would have been when she later realized that her contributions had been misdirected. And so there was no reason to assume that she would have done so when her funds were moved from MJ6P to MJMPS6 in February 2018. But Miss S said that the only reason she hadn't moved to another adviser when she'd realized her contributions were being misdirected was that she'd already made a complaint, and she was under the impression that she couldn't leave whilst the complaint was ongoing.
- And so Miss S challenged my finding that, as she hadn't moved later when it was discovered that her contributions were being misdirected, it was reasonable to assume she wouldn't have objected to the proposed portfolio move, given that the new portfolio had the same strategic aims and risk rating. She queried where the evidence was for this conclusion, saying that having been moved before without notice and poor customer service, she definitely would have looked to move financial adviser at the time.
- With regard to my finding that the MJMPS6 may have subsequently outperformed the MJ6P, Miss S said that the comparison previously provided by Mercer had been proved to be false. This was also illustrated by the monthly contributions still going into the MJ6P increasing by 22%. Miss S said that she didn't authorize or know anything about Mercer moving her from one portfolio to another.
- As to the issue of the fees, Miss S said that she hadn't commented further on this previously as she'd been told that her case had been referred to an ombudsman to review. But she still disputed the rates and fees applied, as per the letters and emails from Mercer which showed them being lower from 2018.
- Lastly, Miss S said that she didn't think that a timescale of two months in which to reinvest her funds which had been placed into cash was fair. She said that the UK was in lockdown from 23 March 2020, and no one knew that this would continue for five months, during which she couldn't engage with financial advisers. Then when she could, the ones she wanted to work with weren't taking on new clients as they couldn't see them face to face, although finally she was able to engage with them over a video call.

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.

Having done so, I'm sorry to disappoint Miss S, but I haven't been persuaded to change my conclusions on the matter.

I've noted what Miss S has said as to why she hadn't picked up the email of 14 February 2020, and I'm grateful for her clarification on that.

With regard to Miss S's next point, I acknowledge what she's said about being under the impression that she couldn't leave Mercer whilst a complaint was ongoing. But I'm afraid I'm not necessarily persuaded that it would be a natural or expected assumption that a consumer couldn't find an alternative adviser if they were dissatisfied with their current arrangement, or that they would somehow be tied to them until a complaint was resolved.

But even if I was to accept this, I think if miss S had been keen to leave, it would have been relatively straightforward for her to have clarified this with it.

However, it's additionally the case that this was also Miss S's sentiment once it had been discovered that the contributions hadn't been properly invested in the new portfolio. There was nothing to suggest dissatisfaction with the prospect of being moved from one portfolio to another in February 2018. And this is my point – there's no reason to believe that Miss S would have objected to this move, and the evidence to support this is that the risk rating and strategy of the new portfolio was the same as the pre-existing one. I can't see why Miss S would have thought this to be unreasonable, or would have thought that this meant she needed to move to a new adviser.

And further evidence that Miss S wouldn't have been prompted to change adviser by the change of portfolio was that she'd already complained about the misdirected contributions in 2015, and hadn't decided to change her adviser once that complaint was resolved.

Miss S believed, after the fact, that she would have been better off by remaining where she was, on the basis of the growth on the contributions which were still directed to the old portfolio. But this isn't something which could have prompted her to object to the portfolio move in February 2018 as this wasn't yet known. And on the basis of the stated similarities between the portfolios, I remain of the view that this would more than likely not have been accepted by Miss S, rather than representing cause for concern.

I've further noted Miss S's point about the calculations provided by Mercer to date, and that they'd been incorrect. Miss S has referenced the higher growth in the old portfolio, but although that may have been the case for those months, other calculations run by Mercer suggest that the new portfolio may have performed better since. But either way, given my view, for the reasons set out above, that Miss S is more likely than not to have accepted the portfolio move, rather than deciding to change advisers, a further comparison of the two portfolios is unnecessary.

And this same principle applies to Miss S's next point, that had her pension remained in the initial portfolio, it would have been subject to enhanced growth. Miss S said that she didn't know anything about the change in portfolio, nor had she authorised it.

Mercer's position is different, in that this was discussed in the review meeting of October 2017, and it was then reiterated in its mailing of 6 March 2018. But even if it could reasonably be argued that Miss S wasn't aware of the change of portfolio, I still think she would likely have accepted this, for the reasons set out above.

Turning then to the matter of fees, Miss S has said that she still disputes this, and has referred to the lower fees she was told would be applied from 2018 onwards. The letter in which the discretionary fund management charge reduction from 0.25% to 0.2% to which I think Miss S has referred is the same letter which notified her about the change in portfolio management – that of 6 March 2018. And as set out in my provisional decision, my understanding is that this is the discretionary fund management charge which has applied since. The separate charge was levied in respect of the separate fund and platform charges.

But I've nevertheless sought further clarification from Mercer on the issue of charges which have been levied and whether these were consistent with the information which was provided to Miss S. I asked Mercer to explain the fees, what they were in respect of and how they've changed over time, along with the letters in which they were originally set out and explained to Miss S, and any amendments since.

Unfortunately, Mercer has simply told us that in relation to the adviser charges, this was comprised of a 0.75% fund charge and a 0.33% platform charge. It said that Miss S was offered a move to a different level of service which would have meant a reduction in fees from 0.75% to 0.25%, but Miss S didn't sign the agreement which would have facilitated this. I'll address the issue of fees levied further below.

Lastly, Miss S has said that the timescale of two months to reinvest her cash funds once she became aware that the previously held funds had been disinvested wasn't reasonable, given what she's said about the situation at the time. But I do think it ought to have been possible to have sought and received advice as to the right type of fund for Miss S. And failing that, I think she could have arranged for the funds to be moved into ones similar to those previously held, pending further formalised advice.

But I do also need to reiterate my point relating to the falls in financial markets from the end of February 2020, at which point the FTSE 100 didn't regain its previous value until around the end of 2020. And so, I don't think it really makes too much difference as to whether it is assumed that Miss S reinvested at the end of May 2020, or later in the same year.

Putting things right

Mercer should undertake the calculation as set out in the provisional decision, and pay any resulting loss as directed in that decision. The application date of any percentage loss should be the date of this final decision.

If payment isn't made within 28 days of Mercer being notified of Miss S's acceptance of this decision, then interest at the rate of 8% simple pa should be applied to any loss amount from the date of this decision to the date of payment.

Mercer should also pay Miss S £500 as set out in the provisional decision.

In terms of fees levied on Miss S's pension funds, Mercer hasn't provided the information requested of it, which would have enabled me to determine whether the correct level of fees has been applied.

As such, Mercer should itself also determine the fees which have been applied from the outset of its relationship with Miss S and compare these with the agreed fees, or changes in fees about which Miss S has been notified over the years, to ensure that the correct level of charging has occurred.

If the fees levied have exceeded any level agreed by Miss S, or about which she was notified, then these should ideally be repaid to Miss S's pension plan, or to Miss S directly with a notional deduction for income tax in the same way as for the loss calculation above. Mercer may either choose to reconstruct the value of those fees in Miss S's current plan by reference to what they would now be worth had they not been removed. Or for ease, it may simply add 8% simple interest pa to them, from the date that they were incorrectly levied up to the date of settlement.

And it should explain the outcome of this exercise to Miss S in a clear and understandable format.

My final decision

My final decision is that I uphold the complaint and direct Mercer Limited, trading as Mercer Jelf Financial Planning, to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 26 April 2022.

Philip Miller
Ombudsman