

## **The complaint**

Mrs H complains that Mercer Limited formerly trading as JLT Investment Management Limited (“Mercer”), caused delays in the service it was providing to her which cost Mrs H the opportunity to transfer her defined benefit pension (as an insistent client) because Mercer withdrew from the insistent client process. Mrs M says that consequently she was unable to reduce her mortgage or her working hours as intended.

## **What happened**

Mrs H wanted to cash in an occupational (defined benefit) pension (“the scheme”) at age 55 because she was moving house (and didn’t want to have to increase her mortgage) and because she was also planning on reducing her working hours. So she contacted Mercer to discuss how she could go about doing that. She told Mercer she wanted to cash in the benefits from the scheme in full.

Mrs H had an introductory call with a financial adviser in May 2020 after which she was sent a client information pack. During that first meeting, Mercer told Mrs H that it was unlikely it would recommend she transfer from a defined benefit pension which had valuable guarantees but that if she disagreed with the advice she received, she could be treated as an insistent client and the transfer would still be able to go ahead. There were forms to complete and return before the advice process could proceed.

Mercer received the forms from Mrs H in early July 2020 and Mercer requested the transfer value from the scheme a couple of weeks later. Mercer received the transfer value and scheme information in the first week of August 2020 and on the same day it then requested a Transfer Value Analysis and comparator which it received on 24 August 2020. Mrs H understood that Mercer would advise against her transferring from the scheme but was also aware she was entitled to do so if she insisted.

Mercer told Mrs H on 22 September 2020 that her financial analysis was ready for her but it also said it was very busy so she would have to wait for her advice phone call.

On 5 October 2020, Mercer sent Mrs H a letter to let her know that she was being assigned a new adviser as a result of it merging with JLT Investment Management. A phone call with the new advisor took place on 14 October 2020 during which Mrs H was advised that Mercer, from 1 October 2020, was no longer processing applications on an insistent client basis. There was an initial advice call the following day and a further advice call on 19 October 2020. Mercer sent Mrs H a Pension Recommendation Report on 29 October 2020 advising against the transfer.

Mrs H was unhappy that by the time she received the advice phone call and her report Mercer had withdrawn from the insistent client process and wouldn’t facilitate the transfer. As she felt she had been left in a bad financial position she complained to Mercer.

Mrs H told Mercer that she was unhappy about the delays in progressing her pension case. She said that when she first spoke to her financial adviser (in May 2020) about the transfer she explained that her house move was intrinsically linked to being able to access funds

from her pension. She said she checked at the outset that if she paid the £3,000 advice fee that she could proceed with the transfer even if it was against Mercer's advice to do so. She said she was told that she could. Mrs H said she had told Mercer to progress with the pension transfer as a matter of urgency as she had had an offer accepted on a new house and had been told the pension transfer process could take up to 3 months. Mrs H said she'd emphasised that it was urgent because she didn't want to have to take out a larger mortgage.

Mrs H said that in the end she applied for a larger mortgage with a view to reducing it once she had got the money from her transferred pension. And Mrs H said she had been reassured that the merger of JLT Investment Management with Mercer would have no impact on her plans for her pension at all.

Mrs H said she felt unfairly treated and the impact of the delays had had a significant effect on her wellbeing. Mrs H said her mortgage was now £600 more per month than it had been previously and she couldn't now reduce her working hours either. She explained that at 55 she had a far larger mortgage than she was comfortable with.

Mercer looked into Mrs H's complaint and issued its final response letter in November 2020. It apologised for the delays Mrs H had experienced which, it said, were due to its advisers' case load and the internal restructuring that it had recently gone through. It acknowledged that Mrs H was part way through an insistent client application and that she wanted to use her pension to reduce her mortgage. Mercer also said it advised against her transferring from a scheme, like hers, that included underlying guarantees and, it said, it was highly unlikely it would ever recommend she do so.

Mercer went on to state that a number firms were also moving away from the insistent client process. It said that whilst it understood that Mrs H had taken out a larger mortgage and was unable to reduce her working hours, its recommendation not to transfer was made in line with the Financial Conduct Authority's guidelines and was given to protect her best interests. Mercer said the financial impact of cashing in a defined benefit pension would be serious.

Mercer said Mrs H could seek advice elsewhere and that it would cover the cost of her seeking a new transfer value should she wish to do so. For any distress and inconvenience she'd been caused, it said it would pay her compensation of £150.

Unhappy with the outcome of her complaint to Mercer, Mrs H complained to this service. She said she found Mercer's offer of compensation insulting and that she wanted it to transfer her funds as she'd requested as she'd made the request when it still offered an insistent client service.

Our investigator looked into the complaint but didn't recommend that it was upheld. She explained that the starting point was that such transfers were unsuitable unless it could be clearly demonstrated to be in a client's best interests. Our investigator noted that Mercer explained in its recommendation that the transfer was against Mrs H's best interests. She also said that Mrs H could take advice elsewhere or seek a provider who would be willing to process the transfer on an execution only basis. Our investigator said that she was unable to make Mercer facilitate the transfer because its view was that it was unsuitable and not in Mrs H's best interests. But she said Mercer hadn't prevented Mrs H from transferring her pension (with another provider). Our investigator said Mrs H had suffered a loss of expectation due to Mercer's withdrawal from the process but that Mercer's offer to pay her compensation of £150, waive its advice fee and pay for the cost of obtaining another transfer value if needed, was fair and reasonable in the circumstances.

Mrs H disagreed with our investigator's findings. She said the crux of her complaint was about the delays she experienced which cost her the opportunity to transfer her pension despite making it clear to JLT in July 2020 that she needed it done urgently. She also thought that compensation should be based on the loss she suffered which Mrs H felt was more in the region of £50,000, which, she said, was at least the amount she had to increase her mortgage by. Mrs H said she didn't fully understand what options were open to her now.

Our investigator thought about what Mrs H had said but wasn't persuaded to change her mind. She told Mrs H that this service was unable to provide financial advice. Mrs H told our investigator that she had since tried to arrange her transfer on an execution only basis with a number of reputable pension providers but none of them would accept the transfer without providing supporting advice. So she said she was back to the start, having to seek advice from another financial adviser which would cost her in the region of £5,000.

Mrs H said she'd been paying an increased mortgage for over 7 months and was unable to consider reducing her working hours all of which had impacted her health and wellbeing. She said she wanted to be completely clear that her complaint wasn't about challenging Mercer's advice to her, it was about the delay in it processing her request ahead of its withdrawal from the insistent client process on 1 October 2020. Mrs H said that at the very least she should be compensated for the cost of paying for more financial advice (about £5,000) plus the additional mortgage costs she'd incurred as both were the result of Mercer not acting in a timely manner.

The complaint was passed to me to consider and I asked our investigator to contact the parties to obtain some additional information. In response to our enquiries, Mrs H told us that she had indeed managed to transfer her DB pension to a self-invested personal pension ("SIPP") and that the transfer had taken place in August 2021. Mrs H also said she hadn't had to pay for any additional advice for the transfer as she had done it herself in the end. And she said she hadn't been able to reduce her hours at work yet as she was unable to do so before the mortgage was reduced.

Mrs H said she had completed on her new home on 9 November 2020. She sent us a copy of her current mortgage statement showing that she was paying £763.50 a month but hadn't yet paid off the additional mortgage because it was on a fixed deal with her lender until September 2022. The balance outstanding on 15 June 2022 was £93,196.

I asked our investigator to ask Mercer why it had taken a month to tell Mrs H that her financial analysis was ready for her and a further month before an advice call was made to discuss it. Our investigator also asked Mercer to explain why, when it had known for a number of months that Mrs H wanted to avail herself of a process it was about to withdraw it made no attempt to prioritise or expedite her advice phone call. Mercer was also told that I'd listened to a phone call between Mrs H and her adviser that had taken place on 19 October 2020 in which he told her that the transfer could indeed have been processed before the insistent client process was withdrawn.

In response, Mercer provided a lot of generic information and repeated other information previously provided. It also said the removal of the insistent client process was a decision taken by senior management and would've been implemented with immediate effect and without prior warning to its advisers. It said when it started the transfer process for Mrs H in July 2020 it had no idea that the process would be withdrawn. And it said it was under no obligation in any event to carry out a transaction it deemed to be unsuitable. Nor was there any guarantee that the transaction would be carried out before the TVAS deadline.

Mercer said there was no correlation between its merger with JLT (which took place in April 2019) and the withdrawal of the insistent client process. It said the withdrawal was a

commercial decision that would probably have taken place in any event. Mercer said it was unable to clarify its adviser's comments to Mrs H as he was no longer employed. Finally it reiterated that its withdrawal of its invoice and offer of £150 as compensation was fair and reasonable in the circumstances.

The complaint was passed to me and I issued my provisional decision in July 2022 recommending that it was upheld. I made the following provisional findings:

*"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 think this is a complaint that should be upheld. I'll explain why.*

*This is not a complaint about the suitability of advice to transfer a DB scheme. Mrs H fully understood from the outset of her engagement with Mercer that it would advise her that transferring her DB scheme was unsuitable. Mrs H has been very clear throughout that she's complaining about the delays in the transfer process that cost her the option to transfer out of her scheme by using the insistent client process and achieve her stated objectives of moving home without having to increase her borrowing and reducing her working hours.*

*The scheme Mrs H wanted to transfer was worth £3,180 per year at age 60 if the maximum tax-free cash was also taken (predicted to be £21,202). But it wasn't her only pension provision. In addition to the maximum state pension at 67, Mrs H had another occupational defined contribution scheme which had a predicted fund value at retirement at age 60 of £148,454 and another DB scheme with another former employer worth £7,968 per year from age 60.*

*Mrs H told Mercer that she wanted to fully encash the scheme to fund her house move and was prepared to incur the tax charge doing so would generate. The CETV of the scheme was £130,904.*

*Mercer doesn't dispute that Mrs H's journey was subject to delays; in its final response letter to Mrs H it apologised for the delays she'd experienced which it said were due to its advisers' case load and the restructuring. So, whilst Mercer has recently told us that there was no correlation between its merger with JLT and the withdrawal from its insistent client process, there was clearly a correlation between the merger and the delays Mrs H experienced.*

*I appreciate, as Mercer has stated, that advising on pension transfers is a complex and time-consuming exercise,. But whilst Mercer also says that there can be data queries post TVAS and it could take an average time of 4-6 weeks to produce these, it doesn't say that this is what happened with Mrs H's case. So, it is reasonable to think that but for the delays caused by the merger and the workload of its advisers, Mrs H's transfer – albeit against Mercer's advice – could've been arranged before the insistent client process was withdrawn on 1 October 2020. That's because there was a period of over five weeks between receipt of the Transfer Value Analysis and comparator from the scheme and the withdrawal of the process during which it is reasonable to assume it could've been facilitated.*

*And whilst I note that Mercer says it didn't have to process a transfer it'd advised against, I take into account the fact that it at no time made that clear to Mrs H. I think, if that was going to be its intention, it was unfair not to make that clear to Mrs H at the outset of its engagement with her. Rather its adviser told her on several occasions that if she wanted to go against Mercer's advice then she could use the insistent client process. If it had no intention of letting her do so (and I refer here to the period where it still offered it) it should have made that clear from the start but what Mercer said to Mrs H was that it was unlikely to ever advise such a transfer would be suitable but she could use its insistent client process if*

*she wanted to go against that advice. And that was the basis on which she proceeded. It at no point told her that if it advised her against the transfer it could also decline to transact it.*

*So it follows that I think that Mercer unfairly delayed Mrs H's pension transfer, the consequence of which was that she was unable to utilise its insistent client process before it took the decision to withdraw it. I think, for the reasons I've given, that it should've been possible for Mercer to arrange the transfer prior to its withdrawal from the process. I've listened to all the calls between Mrs H and Mercer and I note that Mercer's adviser said it should've been possible too. I know Mercer says he is no longer employed so it can't 'clarify' this with him but I can't reasonably ignore what he said. It is a contemporaneous comment that, it is reasonable to say, carries greater weight than a comment applied with the benefit of hindsight. And given the timings involved, I think it's reasonable to accept the comment on face value.*

*As I think that Mercer should have facilitated Mrs H's DB transfer I now have to consider what should've happened had all proceeded as it should and what, if any, financial loss flowed from Mercer's omission. The Transfer Value Analysis and comparator from the scheme was available to Mercer from 24 August 2020. So I think it's reasonable to assume that, but for the merger and the fact its advisers were busy, Mercer should have carried out its advice call with Mrs H by 15 September 2020. From the chronology of events I've set out above, and the urgency Mrs H displayed throughout, I'm satisfied that she would've acted quickly and used the insistent client process.*

*I appreciate that it can take a good few weeks for schemes to release funds so I think assuming Mercer, having obtained Mrs H's authority to do so, requested them by the end of September, they would have been released by the middle of November.*

*Mrs H completed on her house on 9 November 2020 so I think it is fair to say that, even had her transfer proceeded without delay then there would've been a short period of time where she would've had to pay for additional borrowing on her house. She could not have been sure when exactly the funds would have become available so in order to make sure she could complete on her house I think she would always have had to have arranged a mortgage.*

*Mrs H has told us she borrowed £100,000 on a two-year fixed deal. Mrs H pays the mortgage on the 5<sup>th</sup> of every month. So I think it would be reasonable to say she would always have had to pay the first instalment – on 5 December 2020 – before she had the funds available to clear the balance even had the transfer gone according to plan. As I said, I think its reasonably likely that the funds would've been released by the scheme by mid-November 2020 but there may well have been a further short delay whilst a new pension was set up and Mrs H was able to drawdown funds.*

*But the monthly mortgage instalments Mrs H has had to pay thereafter were a result of Mercer's delay in processing her transfer. So, the interest paid on this borrowing after 5 January 2021 is a financial loss suffered by her as a result of Mercer's failings. And whilst Mrs H did eventually arrange the transfer of her scheme it took her until August 2021 to do so. So I think it is reasonable to assume that Mrs H could've cleared her second mortgage before her monthly mortgage repayment was taken on 5 September 2021.*

*Mrs H has told us though that she hasn't cleared the balance of her additional mortgage yet because doing so before the expiry of the two-year fixed deal will incur an early repayment charge. I understand that fixed deal to be expiring on 30 September 2022.*

*Mrs H is under a duty to mitigate her loss however. Since September 2021 she has paid 11 mortgage interest payments. It is possible that if she had repaid her mortgage before the*

September 2021 repayment the early repayment charge would have been less than the total amount of interest Mrs H paid over the subsequent 11 months. If that was the case, and given Mrs H's duty to mitigate her loss, I would be unable to agree that it was reasonable for Mrs H to continue to incur the monthly mortgage payments when she could have cleared her mortgage (as she had always intended). But if the early repayment charge as of 1 September 2021 was greater than the total of the subsequent 11 months of interest repayments then clearly it will have been better for Mrs H to have continued with the mortgage repayments until the expiration of the 2-year fixed deal period.

#### *Putting things right*

Whilst I think that the December 2020 mortgage repayment would have fallen for Mrs H's account in any event, I think that the January 2021 to August 2021 repayments (a total of 8 repayments) were incurred as a direct result of Mercer's failings. Mercer should reimburse Mrs H for the interest she paid on the sum borrowed during this period and pay interest\* at this service's usual rate of 8% simple per year from the date each payment was made to the date it settles my award.

Mercer should liaise with Mrs H's lender to ascertain the amount the early mortgage repayment charge would have been on 1 September 2021 and the total amount of interest she has paid between September 2021 and July 2022. Whichever figure is the lower should be paid to Mrs H. I appreciate that Mercer may seek to argue that Mrs H needn't have taken out a mortgage that was subject to an early repayment charge. But Mrs H has told us that the priority was to keep the cost of the monthly repayments as low as possible and that the two-year fixed deal she arranged (with its introductory rate of 1.3%) was the cheapest way of achieving that aim. So I can't say her actions in this respect were unreasonable. Mercer should liaise with Mrs H's lender to ascertain what this charge would have been.

I also require Mercer to pay interest on whichever of these amounts it ends up paying Mrs H. Whilst Mrs M hasn't been out of pocket for paying any early repayment charge, she has had to continue to meet her monthly mortgage repayments. So, I think Mercer should pay interest on the early repayment charge figure from a notional payment date of 1 September 2021 until the date it settles my award. If however, the total of the interest paid on the mortgage between September 2021 and July 2022 is the lower of the two figures, Mercer should pay interest at this service's usual rate of 8% simple per year from the date each payment was made to the date it settles my award.

Mrs H has told us that she didn't, in the end, have to pay for any more advice as she was pointed in the direction of a firm that assisted her to make the transfer herself. So there is no fees for me to require Mercer to pay Mrs H. I note that Mercer has already agreed to waive its advice fee which I think, in all the circumstances, was a fair and reasonable action for it to take.

Mrs H has explained to us how Mercer's failings have caused her additional trouble and upset. A pension transfer is always going to attract a certain degree of stress and time to arrange; that's to be expected. But where a firm, through its words or deeds, makes an already stressful situation worse, then this service can require it to pay compensation to a consumer. Here, the delays in Mercer's process cost Mrs H the opportunity to achieve the very objectives she had approached it to facilitate. And as a consequence of Mercer's failings she was put to some considerable trouble and upset. She was unable to reduce her working hours in order to look after her grandchildren as intended; she also ended up with a mortgage far larger than she was comfortable with and a reduced monthly income as a result, and she has put to the considerable inconvenience of arranging the scheme transfer herself.

*I think that total compensation of £500 more fairly reflects the degree of trouble and upset Mrs H has experienced as a result of Mercer's poor service and failings and is more in line with awards made by this service in complaints with similar circumstances. If Mercer has already paid Mrs H £150 it need only pay a further £350 now but if not then it should pay her the full £500."*

Mrs H replied to my provisional decision to say that she accepted it. Mercer replied and said:

- It was of the view it wasn't responsible for the ERC because Mrs H would always have had to pay it as she had no other choice but to take out the mortgage in order to secure the purchase of her house. It said that it was always her intention to pay the ERC to clear the mortgage and cease the payments. Mercer said that even if the transfer had taken place in November 2020 Mrs H would have paid her advance and also the associated ERC.
- It accepted liability for the interest from January 2021 to August 2021 but, it said, the increase in the CETV she received as a result of the delay (it increased from £130,904.70 in August 2020 to £132,956.12 in August 2021) should be offset against it;
- It didn't charge Mrs H for the advice, but if the transfer had gone through on an insistent client basis then it would have done so. It said I should take this into consideration.

Before issuing this final decision I asked our investigator to respond on my behalf to the points Mercer had raised. Our investigator said:

- That I didn't think it was certain that Mrs H would always have had to pay her lender an ERC even if everything had gone smoothly and that there were many permutations of what actions Mrs H could have taken in the circumstances had all proceeded to plan – for example she may have thought, if she was about to receive her funds, that she should take out a further advance on her lender's standard variable rate (with no ERC), although any such payments would have been larger. Given she was about to complete on her house and it wasn't looking like the pension transfer was going to happen in time, Mrs H had to make a decision about what to do. Our investigator went on to explain that my view was that the decision Mrs H took wasn't an unreasonable one in the circumstances. She said that I accepted that it isn't possible to know for certain what Mrs H would have done had all proceeded to go to plan, but I had taken all the circumstances of this complaint into account and had endeavoured to find a fair and reasonable resolution to it;
- That I had noted and considered Mercer's comment about offsetting the increased CETV Mrs H actually received in August 2021 against any monetary award I was now asking it to pay. She said that this wasn't something I had previously considered but having now done so I was not persuaded that I'd seen enough to allow me to be able to reasonably conclude the CETV Mrs H would have received in late November 2020 would have been lower than what she actually received in August 2021. She explained that the CETV Mercer obtained for Mrs H was valid only until 6 November 2020. Accordingly it was unlikely, even had all gone according to plan, that the transfer would have taken effect before it expired. It is therefore not unreasonable to think that Mrs H's CETV would have been subject to an adjustment at the date of payment. She went on to say that it followed that it can't be known for certain whether Mrs H would have gained any advantage by not taking her CETV until 9 months later because the CETV of Mrs H's pension in late November 2020 (had all proceeded smoothly) may have been more than the CETV Mercer obtained in August 2020 or the one she obtained herself in August 2021.
- That I had already commented provisionally on the fact that Mercer hadn't charged Mrs H for the advice it gave her.

Mercer responded to our comments to say that whilst it still didn't agree with my provisional findings it recognised that this complaint had been ongoing for some time and in order to bring it to a close it agreed to accept the provisional decision. That said, Mercer said it wasn't in agreement with the redress methodology I had used provisionally. It said it didn't think it was fair and reasonable because it left Mrs H better off than if the delays hadn't occurred. It reiterated that it had agreed to waive its £3,000 advice fee, offered her a compensation payment of £150 and offered to pay for her to obtain another CETV if she decided to get advice elsewhere.

Mercer said it still disagreed that it was in any way liable for the ERC. It said that was because it was clear from Mrs H's phone call with Mercer's adviser that she must have already arranged the additional borrowing before the insistent client process was withdrawn on 1 October 2020. If that was the case it didn't agree it was liable for it as it had always been her intention to take additional borrowing.

Mercer also said it still thought the enhanced CETV Mrs H received in August 2021 should be taken into consideration by me when deciding redress. It said if the opposite had happened and the CETV had decreased then I would have expected it to compensate Mrs H for that loss. It said when calculating loss it compared what happened with what should have happened and to aim to place the consumer in the position had things been done correctly.

It also said that Mrs H was only able to arrange the transfer itself because of the advice it had given her. It said it is a regulatory requirement that whenever a consumer wishes to transfer out of a DB scheme they must take advice from an FCA registered adviser if the CETV is worth more than £30,000. So it was only because Mrs H had received advice about the transfer from Mercer that she was able to facilitate the transfer herself.

Mercer said it wanted all these factors taken into account when calculating Mrs H's loss. With the waiving of the advice fee and the enhanced CETV, Mrs H had benefitted to the tune of approximately £5,000 which I should take into account when calculating redress.

The complaint was returned to me for a 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.

Having done so, and after considering Mercer's responses to my provisional decision, I remain of the view that this is a complaint that should be upheld. I'll explain why.

Given that Mrs H's 2-year fixed rate deal with her lender ends on 30 September 2022 I don't doubt that she did arrange her additional borrowing before Mercer withdrew from the insistent client process on 1 October 2020, or before the date (14 October 2020) she knew it had withdrawn from it on. That she did so however, doesn't in my view absolve Mercer from liability for paying for the ERC Mrs H would have incurred. I say this because before the mortgage started Mercer had already told Mrs H that her financial analysis was ready for her but that it was very busy and she would have to wait to receive her advice call. So it's reasonable to think that by this point at the latest Mrs H had realised she had to act if she was to secure her new home. I've seen no evidence to suggest that Mercer told Mrs H how long she would have to wait, only that she would. So I don't think the step Mrs H took in the circumstances – to arrange additional borrowing on the cheapest possible rate – was an unreasonable one for her to take.



So, whilst I accept it isn't possible to know for certain what Mrs H would have done had all proceeded to go to plan, I've taken all the circumstances of this complaint into account and have endeavoured to find a fair and reasonable resolution to it.

Mercer also said it still thought the enhanced CETV Mrs H received in August 2021 should be taken into consideration by me when deciding redress. It said if the opposite had happened and the CETV had decreased then I would have expected it to compensate Mrs H for that loss. It said when calculating loss it compared what happened with what should have happened and to aim to place the consumer in the position had things been done correctly.

I can't say with any certainty what I would have done had Mrs H CETV decreased by the time she received it. To do so would be speculative. I can only look at the facts of this complaint as they are before me now and reach a fair and reasonable conclusion about what actually happened. I appreciate Mercer's strength of feeling about this issue, and I've thought about what it has most recently said about it. But I refer it back to my thoughts on the issue as set out above and as recently communicated to Mercer by our investigator. I still haven't seen enough evidence to persuade me that the CETV Mrs H would have received in late November 2020 would have been lower than what she actually received in August 2021. As the CETV Mercer obtained for Mrs H was valid only until 6 November 2020 it was unlikely, even had all gone according to plan, that the transfer would have taken effect before it expired. This means a new CETV would have needed to have been obtained and I can't know for certain whether Mrs H would have gained any advantage by not taking her CETV until 9 months later because the CETV of Mrs H's pension in late November 2020 (had all proceeded smoothly) may have been more than the CETV Mercer obtained in August 2020 or the one she obtained herself in August 2021.

It follows that I don't think it is reasonable to take the 'extra' £2,052 Mrs H received on her CETV in August 2021 into account when considering what redress Mercer should pay her.

I acknowledged provisionally that Mercer had offered to waive its advice fee following Mrs H's complaint to this service. Mercer has recently said that fee was £3,000 but on reviewing the recommendation report it provided to Mrs H I can see that its advice fee was actually £1,950 plus a further £250 for the Pension Transfer Analysis and £50 for a comparison against a lifetime annuity. I make that a total of £2,250. There is a fee of £750 mentioned for implementing the transfer but as Mercer never did, I can't see how this can be fairly included in the fee it waived.

It was Mercer's decision to offer to waive its (£2,250) advice fee. It did so in response to Mrs H's complaint to this service. As I commented provisionally, I thought that was fair. And I remain of that view particularly as Mercer was unable to provide Mrs H with the service she had approached it for. I don't disagree with Mercer however that the advice it provided to Mrs H enabled her to facilitate the transfer herself. It was indeed a regulatory requirement, given the size of the pension she was seeking to transfer, that she take advice. Mercer implies that it's unfair for Mrs H to benefit from free advice but it was Mercer's offer that has meant Mrs H has had free advice. And having made the offer I don't think it's fair to withdraw that offer or offset it against any mortgage interest and ERC Mrs H is fairly and reasonably due.

I acknowledge that it is hard to put things exactly right for Mrs H here – there are many factors to take into account, and it is not possible for me to say with absolute certainty what position Mrs H would've been in if things had progressed as they should have. However, I'm satisfied that what I've recommended Mercer should do to put things right for Mrs H is fair compensation for the actual financial loss she has suffered, and the trouble and upset the matter has caused her.

As another month has now elapsed, it follows that the calculation of the total amount of interest Mrs H has paid since September 2021 should extend until August 2022 rather than July 2022.

### **Putting things right**

I require Mercer to do the following:

- Pay Mrs H the sum equivalent to the interest she paid on the mortgage borrowing from January 2021 to August 2021 inclusive;
- Add interest at this service's usual rate of 8% simple per year on each instalment from the date it was paid by Mrs M to the date it settles my award;
- Pay Mrs H either an amount equivalent to what her mortgage early repayment charge would have been on 1 September 2021 together with interest on this amount at this service's usual rate of 8% simple per year from the same date until the date it settles my award or, if lower, it should pay Mrs H a sum equivalent to the total amount of interest she has paid on her mortgage between September 2021 and August 2022 together with interest at this service's usual rate of 8% simple per year on each instalment from the date it was paid by Mrs M to the date it settles my award.
- Mercer should liaise with Mrs H's lender in order to obtain this information.
- Pay Mrs H compensation of £500 for the distress and inconvenience its shortcomings in service caused her. If Mercer has already paid Mrs H £150 it need now pay only a further £350.
- If income tax is to be deducted from the interest, appropriate documentation should be provided by Mercer to Mrs H for HMRC purposes.

### **My final decision**

My final decision is that I uphold this complaint and require Mercer Limited to take the steps I have set out in the *'putting things right'* section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 28 September 2022.

Claire Woollerson  
**Ombudsman**