The complaint

Mr H has complained about a transfer of his Scottish Widows Limited personal pension to a Qualifying Recognised Overseas Pension Scheme (QROPS) based in Malta on 26 November 2014. Mr H's QROPS was subsequently used to invest in Dolphin Capital (Dolphin), which later became the German Property Group. The investment now appears to have little value. Mr H says he's lost out financially as a result.

Mr H says Scottish Widows failed in its responsibilities when dealing with the transfer request. He says Scottish Widows should've done more to warn him of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance he says was required of transferring schemes at the time. Mr H says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk, if Scottish Widows had acted as it should've.

What happened

In 2014 Mr H had a personal pension policy with Scottish Widows.

On 16 July 2014 Scottish Widows received a request for information from Servatus Limited (Servatus), based in Ireland. A letter of authority (LOA) signed by Mr H on 2 July 2014 was enclosed. Servatus called Scottish Widows on 28 July 2014 chasing the information request. Scottish Widows emailed the information and transfer documentation to Servatus on 7 August 2014.

There's a letter to Mr H dated 2 September 2014 from a Mr W of Servatus. The letter thanked Mr H for having met with a Mr V recently and referred to an enclosed report providing general information on retirement planning and making a recommendation around Mr H's existing retirement plans. Much of the report is about Mr H's former employer's defined benefit occupational pension scheme (OPS). The summary letter said that a QROPS was a suitable product for Mr H and that Servatus was an approved introducer to the Harbour Retirement Scheme (the Scheme) which was a QROPS based in Malta. As Mr H had expressed an interest in a QROPS and investing in Dolphin, information about that investment was given. Mr H had a shortfall in his existing pension funding. If successful, the Dolphin investment would help bridge that gap through higher investment returns. A maximum investment of 50% in Dolphin was suggested with the other half invested of the fund invested in J P Morgan and Jupiter diversified funds.

Mr H completed an application form for the Scheme on 11 September 2014. Amongst other things he said he'd be transferring into the Scheme several existing pension arrangements, including his personal pension plan with Scottish Widows, the approximate value of which was £20,947.86. At section 8 he said his adviser was Mr W whose Servatus email and postal addresses were given.

On 3 November 2014 Harbour Pensions Limited (HPL) wrote to Scottish Widows enclosing signed forms in support of a request to transfer Mr H's fund to the Scheme. HPL asked Scottish Widows to forward an overseas transfer form. HPL enclosed a LOA signed by Mr H on 11 September 2014 authorising Scottish Widows to provide information to HPL. Also included, amongst other things, was a letter dated 9 April 2013 to HPL from HMRC giving the reference number for the QROPS and saying it would be entered on HMRC's list of Registered Overseas Pension Schemes (ROPS).

Scottish Widows received the transfer request on 10 or 11 November 2014. Scottish Widows checked that the Scheme was a registered QROPS with HMRC. On 20 November 2014 Scottish Widows wrote to Mr H confirming a payment of £21,505.60 had been issued to HPL.

Mr H also signed forms to open a SEB Asset Management Bond. SEB Life (SEB) is the trading name of SEB Life International Assurance Company Limited, part of the SEB Group, regulated by the Bank of Ireland. A new business submission form for the portfolio bond with SEB was completed by Mr W on 10 December 2014 with the application form enclosed.

In March 2015 a further £10,175.81 was transferred to the Scheme from another provider. We're also dealing with a complaint about that provider.

On 23 April 2015 £27,272.50 was transferred to SEB for investment in Dolphin.
Further transfers to the Scheme were made. On 15 July 2015 £82,690.07 was transferred from Mr H's OPS. And on 24 September 2015 £39,643.54 was transferred from another provider. Mr H hasn't complained about those transfers. On 22 October 2015 a further £121,381.94 was transferred to SEB for investment.

I've seen a Scheme valuation dated 20 April 2021. It shows a total Scheme value as at that date of £29,440.82, made up of a Rathbone Multi Asset Portfolio valued at £26,236.83 with £3,204 in cash. It appears that the Dolphin investment – in total some £126,000 – had been written down to zero.
The Dolphin investment was a loan note to the company. The loan was for a five year term to be repaid with pre agreed interest from the profits made by the property company. Dolphin later changed its name to the German Property Group who went into administration in 2020 having allegedly failed to use investors' money to develop properties. There's no secondary market for these loan notes and, where they have failed to realise the intended returns, investors are unlikely to get their investment back.

In January 2023, through his then representative, The Claims Bureau, Mr H complained to Scottish Widows. In summary Mr H said Scottish Widows should've made enquiries about the transfer and would've found out he was receiving advice from a regulated firm outside of the UK and the purpose of the transfer was so he could invest in Dolphin loan notes – a high risk, illiquid and unsuitable investment. Those factors should've rung alarm bells. Scottish Widows should've at least provided Mr H with the Scorpion insert and recommended he seek independent advice about the transfer. Scottish Widows had failed to meet its obligations to act with skill care and due diligence and in Mr H's best interests. He'd proceeded with the transfer and the value of his pension had been prejudiced.

Scottish Widows didn't uphold the complaint. In its final response dated 11 April 2023 it said when it received the transfer request from HPL it checked with HMRC that the Scheme was a registered QROPS, which it was. The administrators, HPL, were a Malta regulated provider and at the time authorised by the Malta Financial Services Authority (MFSA) to provide pension and investment services. HPL was acquired by STM Harbour Pensions and the Scheme renamed the STM Harbour Pension Scheme which remains a registered ROPS with HMRC. The QROPS forms Mr H completed included standard warnings. A review of the suitability of the Scheme, the underlying investments or the administration of the Scheme was outside Scottish Widow's remit. Scottish Widows didn't give advice to Mr H. Scottish Widow's view was that, if a customer requested a transfer to a QROPS, that couldn't be blocked and was in line with section 169 of the Finance Act 2004. Although Mr H had said in his complaint that he'd been approached by an unregulated agent who'd advised him on the transfer, Scottish Widows hadn't been contacted by any unregulated firms prior to the transfer.

Our investigator was unable to resolve the dispute informally, so the matter was passed to me to decide. In doing so, I've considered the points made by Mr H, through his current representative, in response to the investigator's view that the complaint shouldn't be upheld.

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 agree with the outcome the investigator reached and the reasons she gave as to why she was unable to uphold the complaint. So my decision and the investigator's view are correspondingly similar.

The relevant rules and guidance

The Pensions Schemes Act 1993 and Personal Pension Schemes (Transfer Values) Regulations 1987 generally give a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme, which is either registered with HMRC for tax purposes or is a QROPS. This came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age.

On 10 June 2011, the Financial Services Authority (FSA) issued a warning about the dangers of "pension unlocking" and specifically referred to consumers transferring to access cash from their pension before age 55. (As background to this, the normal minimum pension age had increased to 55 in April 2010.) The FSA said that receiving occupational pension schemes were facilitating this. It encouraged consumers to take independent advice. The announcement acknowledges that some advisers promoting these schemes were FSA authorised.

At around the same time, TPR published information on its website about pension liberation, designed to raise public awareness and remind scheme operators to be vigilant of transfer requests. The warnings highlighted that websites and cold callers were encouraging people to transfer in order to receive cash or access a loan.

TPR launched its Scorpion campaign on 14 February 2013. The aim of the campaign was to raise awareness of pension liberation activity and to provide guidance to scheme administrators on dealing with transfer requests in order to help prevent liberation activity happening. The FSA, and the Financial Conduct Authority (FCA)which had succeeded the FSA, endorsed the guidance. The guidance was subsequently updated, including in July 2014. I cover the Scorpion campaign in more detail below.

In late April 2014 the FCA started to voice concerns about the different types of pension arrangements that were being used to facilitate pensions scams. In an announcement to consumers entitled "Protect Your Pension Pot" the increase in the use of SIPPs and SSASs in pensions scams was highlighted, as was an increase in the use of unregulated and/or illiquid investments. The FCA further published its own factsheet for consumers in late August 2014. It highlighted the announcement to insurers and advisers in a regulatory round-up published on its website in September 2014.

Scottish Widows was subject to the FCA Handbook and under that to the Principles for Businesses (PRIN) and to the Conduct of Business Sourcebook (COBS). There have never been any specific FSA/FCA rules governing pension transfer requests, but the following have particular relevance:

> Principle 2 – A firm must conduct its business with due skill, care and diligence;
> Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;
> Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and
> COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.

<u>The Scorpion campaign</u>

The Scorpion campaign was launched in February 2013 and the guidance was updated regularly over the next few years. The updated guidance published on 24 July 2014 update is relevant in this case because Scottish Widows received the request to transfer to the Scheme at the beginning of November 2014, over three months after the updated guidance. And the transfer wasn't completed until 20 November 2014, almost four months later.

The materials in the Scorpion campaign comprised:

- An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of pension scams and identifies a number of warning signs to look out for.
- A longer booklet issued by TPAS which gives more information, including example scenarios, about pension scams. Guidance provided by TPR said this longer leaflet was intended to be used in ongoing communications with members so that could become aware of the scam risks they were facing.
- An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "watch out for" various warning signs of a scam. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where a transferring scheme still had concerns, they were encouraged (amongst other things) to contact the member to establish whether they understood the type of scheme they were transferring to and – where a member insisted on transferring – directing the member to Action Fraud or TPAS.

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. Thus, for the bodies regulated by TPR, the status of the guidance was that it provided them with information, education and/or assistance, as opposed to creating any new binding rule or legal duty. Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tenor of the guidance is essentially a set of prompts and suggestions, not requirements.

The FSA's endorsement of the Scorpion guidance was relatively informal: it didn't take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute "confirmed industry guidance", as can be seen by consulting the list of all such FSA/FCA guidance on its website.

I take from the above that the contents of the Scorpion guidance was essentially informational and advisory in nature and that deviating from it doesn't necessarily mean a firm has broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's statutory rights.

That said, the launch of the Scorpion guidance was an important moment in so far it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing transfer requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

In those circumstances, I consider firms which received pension transfer requests needed to pay regard to the contents of the Scorpion guidance as a matter of good industry practice. It means February 2013 marks an inflection point in terms of what was expected of personal pension providers dealing with transfer requests as a matter of fulfilling their duties under the regulator's Principles and COBS 2.1.1R.

<u>What did personal pension providers need to do?</u>

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations. With that in mind, I take the view that personal pension providers dealing with transfer requests needed to heed the following:

1. When TPR launched the Scorpion guidance in February 2013, its press release said the Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in transfer packs to "become best practice". The Scorpion insert provided an important safeguard for transferring members, allowing them to consider *for themselves* the liberation threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.
2. I also think it would be fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process *didn't* involve the sending of transfer packs.
3. The Scorpion guidance asked firms to look out for the tell-tale signs of pension liberation scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The action pack points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.

4. These were additional requirements over and above what a ceding scheme would always have needed to when processing a QROPS transfer. Those requirements included checking whether the QROPS was on HMRC's published list, and ensuring the necessary HMRC forms were completed.
5. The considerations of regulated firms didn't start and end with the Scorpion guidance. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in the Scorpion guidance – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.

<u>The circumstances surrounding the transfer – what does the evidence suggest happened?</u>

At the time of the transfer Mr H was 47, and a vehicle breakdown operative.

Our investigator was able to speak to Mr H to get his recollections of what had happened and how the transfer had come about.

Mr H said that in 2014 he received an email about a pension review. He didn't remember who the email had been from. He responded as the email said he could consolidate all his pensions into one and he'd pay less fees. Mr H recalled a Mr E from Portia Financial (Portia) had been involved. Portia was an unregulated firm. Mr E had come from Liverpool and visited Mr H at home twice. Mr E said for tax reasons it would be better for Mr H to send his money overseas. Mr H said he also transferred an OPS and a third personal pension and he'd been given some warnings (although from what I've seen those were after the transfer from Scottish Widows had been completed). But Mr E had all the paperwork ready for Mr H to sign and so Mr H went along with it – on the basis he could get all the money into one pension with a better provider and improve his retirement provision.

Portia was the introducer but Mr W of Servatus had been the adviser. Mr H said he now knew that Mr W had been unregulated in the UK. Mr H felt he'd been badly let down by the ceding schemes involved who'd let his money be transferred. He wanted to get his money back. Mr W was an adviser and so Mr H assumed he was regulated. And everything was done via the introducer, Portia. Mr H didn't really have any doubts at the time. But he was now worried about how he'd survive in retirement. He was in his 50s and he couldn't get back to where he was. At the time he'd trusted the people he was dealing with, as had many other people who were now in the same position as him.

As I've mentioned Mr H also transferred other pensions. We're dealing with a complaint about one of the other transfers but Mr H hasn't complained about the transfer by a third provider or about the transfer from the OPS. It seems Mr H's previous representative may have looked into those transfers but told Mr H they wouldn't be taken any further forward. Mr H also mentioned a possible claim to the Financial Services Compensation Scheme (FSCS) but we don't have any details about that. It would appear from what Mr H has said that he may have received some warnings from one of the providers and/or the OPS although he didn't think they were adequate and the transfers had still been allowed to go ahead.

I don't have any reason to think that what Mr H has said isn't a reasonably accurate account of what happened. And it's consistent with the contemporaneous documentation we've seen.

<u>What did Scottish Widows do and was it enough?</u>

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information. Sending the insert to customers asking to transfer would've been a simple and inexpensive step for providers to take and one that wouldn't have got in the way of dealing efficiently with transfer requests. Here Scottish Widows didn't send the Scorpion insert to Mr H as it didn't have any concerns about the transfer. That was a failing on Scottish Widows' part and the insert should've been sent in any event.

I've seen a declaration Mr H signed on 22 January 2015 in connection with the transfer from his OPS. Mr H confirmed he'd read a document prepared by the OPS about pension liberation and the enclosed leaflet 'Predators stalk your pension'. That was the title of the original February 2013 Scorpion insert and booklet which were refreshed in July 2014. If Scottish Widows had sent the insert when Mr H's transfer request was received in November 2014, it would've been the updated July 2014 version. So Mr H didn't see the correct, up to date, insert. And in any event, by the time Mr H saw the earlier version of the insert, his transfer from Scottish Widows had already been completed a couple of months earlier.

Due diligence:

In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of pension liberation and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk. Mr H's transfer was completed in November 2014 so I think the updated July 2014 guidance is relevant here.

Scottish Widows' due diligence consisted of checking with HMRC that the Scheme was a registered QROPS which it was. Scottish Widows also noted that the then administrators, HPL, were a Malta regulated provider and at the time authorised by the MFSA to provide pension and investment services.
But, given the information Scottish Widows had at the time, one feature of Mr H's transfer would've been a potential warning sign of a scam: the transfer to a QROPS obviously involved moving money overseas. Scottish Widows should therefore have followed up on that to find out if other signs of a scam were present. Given this warning sign, I think it would've been fair and reasonable – and good practice – for Scottish Widows to look into the proposed transfer and the most reasonable way of going about that would have been to turn to the check list in the action pack to structure its due diligence into the transfer.

The check list provided a series of questions to help transferring schemes assess the potential threat by finding out more about the receiving scheme and how the consumer came to make the transfer request. Some items on the check list could have been addressed by checking online resources such as Companies House and HMRC. Others would have required contacting the consumer. The check list is divided into three parts (which I've numbered for ease of reading and not because I think the check list was designed to be followed in a particular order):

1. The nature/status of the receiving scheme

   Sample questions: Is the receiving scheme newly recognised by HMRC, or is the receiving scheme connected to an unregulated investment company?

2. Description/promotion of the scheme

   Sample questions: Do descriptions, promotional materials or adverts of the receiving scheme include the words 'loan', 'savings advance', 'cash incentive', 'bonus', ‘loophole’ or ‘preference shares’ or allude to overseas investments or unusual, creative or new investment techniques?

3. The scheme member

   Sample questions: Has the transferring member been advised by an ‘introducer’, been advised by a non-regulated adviser or taken no advice? Has the member decided to transfer after receiving cold calls, unsolicited emails or text messages about their pension? Have they applied pressure to transfer as quickly as possible or been told they can access their pension before age 55?

Opposite each question, or group of questions, the check list identified actions that should help the transferring scheme establish the facts.

I don’t think it would’ve always been necessary to follow the check list in its entirety. And I don’t think an answer to any one single question on the check list would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the check list to establish whether a scam was a realistic threat.

Given the warning sign that should’ve been apparent when dealing with Mr H’s transfer request, and the relatively limited information it had about the transfer, I think in this case Scottish Widows should’ve addressed all three parts of the check list and contacted Mr H as part of its due diligence.

<u>What would Scottish Widows have found out?</u>

Scottish Widows didn’t contact Mr H about the transfer. Had Scottish Widows looked into the transfer more closely and contacted Mr H for more information, Scottish Widows would’ve identified a number of warning signs: Mr H was transferring his pension to a scheme not authorised by the FCA; the transfer fund would be invested overseas and, potentially, in unusual investments – half of the (combined) transfer value was to be invested in Dolphin (although I think in the end more was actually invested); and Mr H’s transfer request had come about following an unsolicited approach. But Scottish Widows would’ve also seen that the Scheme wasn’t a recently recognised scheme and wasn’t associated with an unregulated investment company. Nor would Mr H be accessing his pension benefits before age 55 and he hadn’t been offered any loans, savings advances, or cash incentives. Further, and importantly, he was getting advice from Servatus (a firm which was regulated in an EEA member state and had passporting rights to the UK) and he’d have told Scottish Widows that he’d been advised by Servatus.

Scottish Widows needed to consider the overall circumstances to determine if Mr H’s transfer presented a scam risk. Although Scottish Widows would’ve likely (had it conducted thorough due diligence) found there to be some of the pension scam warning signs indicated in the Scorpion action pack, I think it would’ve ultimately concluded the risk was minimal. Mr H would’ve explained that he wanted to transfer to consolidate his pensions and reduce fees and to take advantage of the potential for improved investment performance. And he’d have said he’d taken financial advice.

I accept Mr H wasn’t a sophisticated investor and he didn’t know much about pensions so I can’t see he’d have been interested in transferring to a QROPS – which is an unusual pension vehicle for someone in his circumstances – and investing in Dolphin – which isn’t what might be termed a mainstream investment – unless it had been suggested to him and he’d been given to understand he’d be better off as a result. But the point is that he’d taken financial advice and he’d have told Scottish Widows he’d done that. So, even though there were some warning signs, overall he wouldn't have given Scottish Widows the impression that he was being led through a process by another party acting in a potentially unlawful way – which would be the usual pattern for someone falling victim to a scam. Instead, he was acting on advice from a regulated party. His decisions followed financial advice and Scottish Widows could've reasonably taken comfort from that.

I've considered the fact that Servatus was an overseas adviser. But, as Mr H was transferring to a QROPS, it wouldn't be unusual for overseas parties to be involved. The rules in place at the time allowed firms, that were properly regulated in an EEA state, to have passporting rights to legitimately provide services in the UK. I don't see any reason why Scottish Widows ought to have concluded that advice from a properly regulated firm with passporting rights was inferior to that of a FCA regulated firm. Or that Servatus may not have been acting in Mr H's best interests. Nor would it be reasonable to expect Scottish Widows to scrutinise the advice Mr H had been given. It would've been enough for Scottish Widows to satisfy itself that Servatus was regulated and had passporting rights.

I've also considered whether Scottish Widows should've warned Mr H that it was unusual for him to be transferring to a pension overseas – and checked whether his reason for doing so was because he'd be moving overseas. At the time (unlike today) there wasn't a prospect of a tax charge that had to be levied by the ceding scheme in certain circumstances where someone transferred their pension overseas whilst remaining resident in the UK. I think whether it was appropriate for Mr H, as a UK resident, to be transferring his pension to Malta was a financial planning matter and not something that Scottish Widows should've intervened in. And, as I've said, Scottish Widows would've established that Mr H had taken regulated advice on that.

<u>Would the outcome have been any different?</u>

As I've said, Scottish Widow's due diligence was lacking. But, even if Scottish Widows had looked into Mr H's transfer request more closely, I don't think, for the reasons I've explained, that Scottish Widows would've considered it necessary to provide further warnings to Mr H.

Nor do I think the up to date (July 2014) Scorpion insert on its own would've changed Mr H's mind. It warned about cold calls and being offered a free pension review to lure customers into one-off investment opportunities and to 'scammers'. I don't see Mr H would've thought that might apply to an adviser who was shown on the FCA's register. The insert said more information about pension scams was available on TPR's website. But that still warned about accessing pension benefits early ('cashing in') or being promised more tax-free cash, neither of which applied to Mr H. Seeking advice from a regulated adviser was recommended – which Mr H had done. So I think, in much the same way as Scottish Widows would've been reassured by the involvement of a regulated adviser, Mr H would've also taken comfort from that and that he was doing the right thing by relying on regulated advice.

I've considered the points made by Mr H, through his representative, in response to the investigator's view. It isn't the case that the investigator found that Scottish Widows hadn't complied with the PSIG Code. The transfer was completed In November 2014 which was some months before the PSIG Code was launched. So Scottish Widows' obligations didn't include the PSIG Code.

I've said above that Scottish Widows should've provided Mr H with the Scorpion insert but I've explained why I don't think that would've changed things. I also agree that Scottish Widows should've looked into the transfer and, had it done so, it would've identified a number of risk factors (including that the investment was abroad and Mr H had been cold called). I further agree that it wouldn't have been apparent to Scottish Widows whether regulated financial advice had been given. But the point is that, had Scottish Widows made further enquiries of Mr H, he'd have said that he'd been advised by Servatus and so he'd had regulated financial advice. I've considered above the point about whether a QROPS would've looked to be an unusual product choice for Mr H but, as I've said, I think that was essentially a financial planning matter which was for his adviser, not Scottish Widows, to deal with.

In reaching my findings I've borne in mind what's been said about causation not having been properly addressed. I reach my findings about that – including as to what Mr H would've likely done if Scottish Widows had done all it should've – on the balance of probabilities. That is what I consider is more likely would've happened, taking into account all the available evidence (which might be incomplete, inconclusive or contradictory) and the wider circumstances. Mr H says I've considered a hypothetical situation but that's necessarily what it is. And, even though I've said Scottish Widows didn't do all it should've, that isn't enough to uphold the complaint. I still have to consider what Mr H's position would've been, had Scottish Widows acted as it should've. I base my conclusions about that on Mr H's own particular circumstances – what he would've done won't necessarily be the same as someone else.

I agree that Scottish Widows was the professional party here and a reasonable person would've given weight to any reservations expressed by Scottish Widows. But it isn't the case that I've incorrectly assumed Mr H would've disregarded Scottish Widows' concerns. I've said, for the reasons I've explained, if Scottish Widows had looked into the transfer and spoken to Mr H about it, Scottish Widows wouldn't have considered it necessary to give Mr H any warnings. So the position wouldn't have been that he'd have decided to proceed in the face of warnings from Scottish Widows. So I'm satisfied Mr H wouldn't have stopped the transfer even if Scottish Widows had done more thorough due diligence in line with the Scorpion action pack and when the end result of any such due diligence wouldn't have resulted in any warnings being given to Mr H. And I don't think the mere act of contacting him and asking questions about the transfer would have prompted a change of heart.

It wouldn't be appropriate, if I don't think the outcome would've changed, for me to uphold the complaint against Scottish Widows with an assignment of Mr H's rights against Servatus or to say that Scottish Widows should only be responsible for a percentage of the loss. Essentially my view is that Scottish Widows' failings didn't cause Mr H's losses.

I note what's been said about the suitability of an underlying investment. But the guidance quoted is aimed at financial advisers. And, although I agree that the input of a financial adviser isn't a guarantee, here Scottish Widows would've been reasonably reassured by the fact that Mr H was acting on Servatus' advice. Suitability isn't something which Scottish Widows should've got involved in so I don't think, and taking into account what I've said above, even if the situation might've appeared somewhat unusual, that meant Scottish Widows should've second guessed the advice Mr H had received.

I realise Mr H will find my decision disappointing. I have considerable sympathy for him. But for the reasons I've given I'm unable to uphold his complaint.

My final decision

I don't uphold the complaint and I don't make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 11 March 2025.

Lesley Stead
Ombudsman