

The complaint

Mr C, with the help of a claims management company (CMC), has complained about a transfer from his Scottish Widows Limited (Scottish Widows) pension to a Qualifying Recognised Overseas Pension Scheme ("QROPS") in Malta in November 2014. The QROPS was subsequently used to invest in, amongst other things, Dolphin Capital Loan Notes and the investment now appears to have little value. Mr C says he has lost out financially as a result.

Mr C says Scottish Widows failed in its responsibilities when dealing with the transfer request. He says that it should have 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 C 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 have done.

What happened

Available documentation relating to the transfer shows the involvement of the following firms:

- Servatus Ltd (Servatus) – an advisory firm regulated by the Central Bank of Ireland and an approved introducer to the Harbour Pensions QROPS. Servatus was at the relevant time also shown on the Financial Conduct Authority's (FCA) register as authorised in the UK with passporting rights.
- Harbour Pensions (Harbour) – a pension trustee regulated by the Maltese Financial Services Authority.
- SEB Life (SEB) - the trading name of SEB Life International Assurance Company Limited, part of the SEB Group, regulated by the Central Bank of Ireland. It is a life assurance company incorporated and regulated in Ireland, engaging in the cross-border distribution of insurance-based investment products.
- Portia Financial Limited (Portia) – There is no exact match on the Financial Conduct Authority's (FCA) Financial Services Register. There is a record of Portia Financial Services but this firm ceased to be authorised in 2007. There is also an entry for a Portia Financial Services Ltd and this firm was, for a while, an appointed representative of Quilter Financial Services Ltd (a firm regulated by the FCA). However, it ceased to be regulated as an appointed representative on 16 March 2011, well before the transfer in this case took place.
- Dolphin Capital (Dolphin) (now called German Property Group) – a German business which offered high yielding Loan Note investments often offering over 10% investment returns per year. Its underlying business was described as the renovation of derelict properties in Germany to provide residential accommodation. Dolphin Capital is now in insolvency proceedings in Germany, having collapsed in 2020 owing significant amounts to investors. There has been a total loss on all non-matured Loan Notes.

In 2014 Mr C held a personal pension plan with Scottish Widows. His CMC has said that he was called by Portia and offered a free review of his pension. Mr C was told this was a result of him completing a questionnaire at an airport some time before. The CMC has said that

Mr C was then referred to a firm called Servatus who visited him at his home and then conducted the review of his pensions and subsequently advised him to transfer away from Scottish Widows and into the Harbour Pensions Retirement Scheme QROPS (the scheme) based in Malta and invest in an overseas property investment scheme, the German Property Group - formerly known as Dolphin. Mr C says they told him he would make more money on his pension than if he left it where it was.

At the time Mr C was 57 years of age and was employed.

From the information that has been provided I can see the following took place:

- A letter of authority (LOA) and a request for information about Mr C's pension dated 9 June 2014 was sent to Scottish Widows from Servatus.
- Scottish widows provided the required information to Servatus on 12 June 2014
- Mr C completed the QROPS application form on 22 July 2014. In this document Servatus was recorded as Mr C's professional adviser.
- A suitability letter prepared by Servatus dated 11 July. This report referred to Mr C's meeting with Portia and stated the report provided general information on retirement planning as well as a recommendation around his existing retirement plans. The report set out Mr C's financial position and addressed Mr C's personal pension arrangements and an alternative option – the QROPS. It also included information on a "high yielding" investment in Dolphin Capital. As well as this it explained some of the risks involved in making the recommended investments, including the risk of investing in loan notes, which didn't require licensing or registration with the regulator, the risks of not being able to recover the original investment and general risks of investing into property including liquidity currency and legal risks.
- Mr C signed the recommendations letter on 27 July 2014.
- Harbour wrote to Scottish Widows in a letter dated 15 October 2014 requesting the transfer of Mr C's pension and included the signed and completed discharge forms and other relevant document required to enable the transfer.
- In a letter dated 11 November 2014 Scottish widows wrote to Harbour and Mr C separately to confirm the transfer of the pension to the QROPS of around £32,000.

Following the transfer Mr C took his tax free lump sum payment of around £8,000. The remainder was sent to SEB to be invested in an SEB Asset Management Bond – just under £9,000 was invested in Dolphin Loan Notes, and the remainder was invested into a variety of funds within another portfolio. Mr C appears to have encashed further sums from the QROPS over the following year.

The Dolphin investment is now illiquid with the company being placed in administration in 2020.

From statements issued in 2018 it appears that aside from the Dolphin investment the bond still contains some liquid funds, all be it somewhat eroded in value.

In July 2020 Mr C through his representative complained to Scottish Widows. Briefly his complaint is that Scottish Widows ought to have spotted and told him about a number of warning signs in relation to the transfer including, but not limited to, the transfer being overseas and what this meant in terms of any protections available to Mr C; the catalyst for the transfer was an unsolicited call; and that he had been advised by an unregulated business.

Scottish Widows didn't produce a final response letter but in response to the assessment made by the investigator it stated that the Scorpion insert which the investigator had

concluded should have been sent wasn't relevant to Mr C's transfer because it only focused on pension liberation which Mr C wasn't doing. So even if it was sent it wouldn't have changed Mr C's mind about the transfer.

I issued a provisional decision in October 2024 where I set out my reasons why I wasn't intending to uphold the complaint. An extract of this is set out below and forms part of this decision:

The relevant rules and guidance

Before I explain my reasoning, it will be useful to set out the environment Scottish Widows was operating in at the time with regard to pension transfer requests, as well as any rules and guidance that were in place. Specifically, it's worth noting the following:

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.

A QROPS must already be an overseas pension scheme, defined in short as being one which is subject to specified regulatory and taxation restrictions in the country of establishment. Then it must be recognised, meaning that it meets specified tests applied by HMRC, including on minimum retirement age and the application of tax relief.

To be a QROPS a scheme must notify HMRC that it is a recognised overseas pension scheme, provide appropriate evidence of this to HMRC, undertake to adhere to HMRC's requirements and not be excluded by HMRC from being a QROPS. Schemes that have notified HMRC of this are included in a published list on HMRC's website.

On 10 June 2011 and 6 July 2011, the Financial Services Authority (FSA) issued two announcements in quick succession to consumers about the dangers of "pension unlocking" and "early pension release schemes". At around the same time TPR put up a notice on its website termed 'pension liberation', referring to websites and cold callers that encouraged people to transfer in order to receive cash or access a loan. However, it was designed to raise public awareness about pension liberation, and remind trustees of their duties to members, rather than introduce any specific new steps for transferring schemes to follow.

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 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.

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.

The Scorpion campaign

Overview

As I have said above, the Scorpion campaign was launched in February 2013 and the guidance was updated regularly over the next few years. The guidance published in 2013 and the 24 July 2014 update are relevant in this case because, from enquiry to completion, the process by which Scottish Widows transferred the pension to Harbour ran from June 2014 until November 2014 (almost three months after the July 2014 update).

The 2013 Scorpion campaign comprised the following:

- *A Pensions Advisory Service insert (the 'Scorpion insert'). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies the following warning signs: being approached out of the blue by phone or text; pushy advisers or 'introducers' who offer upfront cash incentives; companies offering loans, saving advances or cash back from a pension; and not being informed about the tax consequences of transferring. It concludes by recommending actions that can be taken to avoid becoming a victim of such activity. These included background searches online, pointing out that any financial advisers should be registered with the FCA. TPR said at the time it wanted to see the use of the Scorpion insert in transfer packs become best practice.*
- *A longer insert issued by The Pensions Advisory Service (TPAS) which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the time said this longer insert was intended to be sent to members who had queries about pension liberation fraud.*
- *An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "look out for" various warning signs of liberation. If any of the warning signs applied, the action pack provided a checklist that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.*

The 2014 update to the Scorpion campaign

This update reiterated much of what was stated in the 2013 version. There was again an insert which was to be sent to members requesting a transfer of their pension and an action pack which provided guidance to scheme providers on what to look out for. And there was a larger booklet which could be provided to members if they wanted more information about the matter.

However, the main change was that the 24 July 2014 update widened the focus from pension liberation specifically, to pension scams. The action pack for trustees and administrators was entitled "Pensions Scams" whereas the action pack from 2013 was entitled "Pension Liberation Fraud". And, on the front page of the 2014 insert that was to be sent to members, it said "Pension scams. Don't get stung". The 2014 update also made references throughout to "scammers" and made comments in relation to a member losing their lifetime savings as a result of being scammed, as opposed to being subject to potential tax charges which could occur as a result of liberating a pension.

Other features of the 2014 guidance:

- It stated pensions scams in the UK were on the increase. With one-off pension investments, "pension loans" or upfront cash being used to entice savers.
- Trustees, administrators and pension providers had to ensure that members received regular and clear information about the risk of pension scams and how to spot a pension scam.
- It asked for the Scorpion insert to be included in the member's annual pension statement or in any other member communications.
- It highlighted some common features of pension scams such as phrases like "one off investment opportunities", "free pension review", "legal loopholes", "cash bonus" and "government endorsement".
- It stated that consumers being approached out of the blue over the phone, via text messages or in person door-to door was a common feature of a scam. Transfers of money or investments overseas, were also highlighted as something to watch out for and it explained this was because the money would be harder to recover.
- It said that if any of the warning signs applied, the action pack provided a checklist transferring schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request.
- If transferring schemes still had concerns, they were encouraged to contact the member to establish whether they understood the type of scheme they were planning on transferring to and to send them the pension scams booklet.
- It also encouraged transferring schemes to speak to the member at risk – over the phone, via email or letter – this could help the transferring provider to establish answers to more of the questions on the checklist; or to direct the member to Action Fraud or TPAS if the provider thought it was a scam; or if the member insisted on proceeding the provider could contact Action Fraud itself.

The 2014 action pack also included two examples of real-life scams where the individuals concerned lost most or all of their pension savings. One of the examples involved an individual under the minimum pension age who wanted to access some of her pension early. And the other concerned an individual (again under the minimum pension age) who had been approached out of the blue with an offer for a free pension review who had been offered a "unique investment opportunity" for his pension savings specifically in a property development overseas.

The status of the Scorpion guidance

When it was launched in February 2013, the Scorpion guidance was described as a cross-government initiative by Action Fraud, the City of London Police, HMRC, TPAS, TPR, the SFO, and the FSA/FCA, all of which endorsed the action pack, allowing their names and logos to appear in the action pack and Scorpion insert.

So far as TPR itself was concerned, it issued the guidance under the powers at s.12 of the Pension Act 2004, which provides:

“12 Provision of information, education and assistance

(1) The [TPR] may provide such information, education and assistance as it considers appropriate to those involved in –

(a) the administration of work-based pension schemes, or

(b) advising the trustees or managers in relation to such schemes as to their operation.”

So, 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. Likewise, by and large, the contents of the action pack are framed in a way that is consistent with its stated purpose, namely as points to note or suggested actions a firm might take. For example, rather than telling firms they are expected to spot the warning signs of pension liberation fraud, the action pack lists “some of the things to look out for”; and, rather than say that the presence of a warning sign requires the firm to run through the checklist, it states: “If any of these statements apply, then you can use the checklist ...”

The language arguably strays into the imperative under the heading “Next steps if you have concerns”, stating “Contact the member to establish whether they understand the type of scheme they’ll be transferring to. Then “speak to the member at risk”. But, overall, the tenor of the document is essentially a set of prompts and suggestions, not requirements. And this remained the same for the updated version of the Scorpion guidance that followed in July 2014.

Also, it would seem inconsistent to view the Scorpion guidance as representing a binding rule or legal duty on personal pension providers regulated by the FSA/FCA when such a duty didn’t extend to those bodies that came under the regulator that drafted the guidance, the TPR. Furthermore, 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 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 all the above that the contents of the action pack were essentially informational and advisory in nature and that deviating from the action pack 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 February 2013 Scorpion guidance was an important moment in so far as 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. And this remained the case with all its subsequent updates. The campaign and guidance were 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 guidance.

So, taking all of this into account, I do think it's fair and reasonable to conclude providers should have recognised that the environment had changed, and more was now expected of transferring schemes. 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.

Therefore, whilst I don't think personal pension providers had to follow all aspects of the Scorpion guidance in every transfer request, 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 to expect pension providers at least to follow the substance of those recommendations. I look at what this means in practice in the next section.

What did personal pension providers like Scottish Widows need to do?

TPR said it wanted to see the use of the Scorpion insert in transfer packs become best practice. Sending the insert to customers asking to transfer their pensions was 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. I therefore think it reasonable for the Scorpion insert to have been sent by pension providers to transferring customers as a matter of course with transfer packs.

The contents of the Scorpion insert were directed towards consumers themselves and contained warnings about dishonest intermediaries who might be trying to scam them. It would have defeated the purpose of the insert if, instead of sending it to their customer, pension firms sent the insert to an intermediary in the hope that that intermediary would then share the insert with their client. I therefore consider it fair and reasonable to say the insert had to be sent direct to the member rather than, say, to an unregulated introducer. Under the 2014 Scorpion action pack, firms were asked to look out for the tell-tale signs of pension 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 scam warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, as above, 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.

Furthermore, 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.

The circumstances surrounding the transfer – what does the evidence suggest happened

In communications with the investigator Mr C provided the following information:

- *He had completed a questionnaire at Tenerife airport and then received a call a couple of months later.*
- *He was told he would be able to take some money from his pension if he transferred it. And he received around £8,000 from the transfer and was told this was his tax free lump sum.*
- *He wasn't told anything about the nature of the investments other than it would*

generate more money from his pensions. He was told that he'd get £8,000 in five years.

- The people came to his house and had a chat with him. He said they seemed professional and told him his family would be able to get a lump sum out of the transfer when the pensions matures.
- He used the tax free lump sum to pay some outstanding bills and debts.
- He had no doubts about transferring at the time – they were professional and had the decency to contact him after he completed the questionnaire in Tenerife. The way they worded everything put him at ease.
- He found out after the transfer that the investments were held overseas.
- When presented with the Scorpion insert he said that had he seen this at the time he would have asked for a bit more time before deciding and would have done some background checking. He would have gone on the internet and looked at reviews. He said it would have given him pause for thought rather than stopping the transfer entirely.

In considering Mr C's recollections I have no reason to doubt what he has said. There is nothing contentious in there. And they are plausible in my view as they match the account of many other investors in similar circumstances and is consistent with what we know as a service about the way these types of investments were promoted.

What did Scottish Widows do, and was this enough?

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.

Mr C has said he never received the insert and Scottish Widows hasn't been able to confirm that it sent Mr C the Scorpion insert so for the reasons outlined above I think this was a significant failing on Scottish Widows' part.

I know Scottish widows has said that if it had sent the insert it would have been the one from the 2013 Scorpion guidance which was focused on accessing pension benefits before the age of 55 and therefore wouldn't have resonated with Mr C. But this is largely irrelevant because TPR guidance made it clear that it was good practice to always send the insert when the request for information was submitted (for the specific time of this transfer). So while I agree the insert is unlikely to have made a difference to Mr C Scottish Widows still should have sent it.

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.

From the little information I have from Scottish Widows it would appear that it went ahead with the transfer without conducting further due diligence because it had seen the scheme was a QROPS recognised by HMRC.

However, in my view, the mere fact Harbour was registered and recognised by HMRC wasn't enough to negate the need for Scottish Widows to make further enquiries. I say this because Scottish Widows knew that Mr C wanted to transfer his pension into an

overseas pension scheme. In October 2014 Harbour wrote to Scottish Widows providing all the completed forms required to facilitate the transfer and these documents clearly set out the scheme was a QROPS based in Malta. So, it was clear at this point in time that Mr C was intending to transfer his pension to an overseas scheme, which very likely would have involved overseas investments.

The 2014 Scorpion Action Pack listed overseas investment as a possible warning sign of a scam. Whilst the update had taken place nearly two months before Scottish Widows received the transfer, I think it was reasonable for Scottish Widows to have been familiar with the changes to the guidance after the update and to have applied it to Mr C's transfer before it completed in November.

It's worth bearing in mind that the 24 July 2014 update to the Scorpion guidance shifted the focus away from just pension liberation to pension scams in general. This gave more prominence to overseas investments. And the potential for a QROPS to facilitate investments which were at risk of a scam in that wider sense, rather than liberating funds back to the member, was greater.

Overall, I'm of the view that in exercising reasonable due diligence in line with its obligations under PRIN and COBS, Scottish Widows should have followed up on the warning sign apparent to it at this time – namely that Mr C was planning to transfer his pension overseas which was a common theme of pension scams to understand more about the transfer. The most reasonable way of going about this would have been to turn to the checklist, from the 2014 action pack, to structure its due diligence in regard to Mr C's transfer. This provided a series of questions to help transferring schemes assess the potential threat of a scam by finding out more about the receiving scheme and how the consumer came to make the transfer request. Some items on the checklist could have been addressed by checking online resources such as Companies House and HMRC. Others would have required contacting the consumer.

The checklist is divided into three parts (which I've numbered for ease of reading and not because I think the checklist was designed to be followed in a particular order):

1. The nature/status of the receiving scheme

Sample questions: Is the receiving scheme newly registered with HMRC, is it sponsored by a newly registered employer or a dormant employer, is that employer geographically distant from the transferring member and 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' 'one-off investments', 'free pension reviews' or allude to overseas investments?

3. The scheme member

Sample questions: Has the transferring member been contacted 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?

Opposite each question, or group of questions, the checklist listed actions that should help the transferring firm establish the facts.

I don't think it would always have been necessary to follow the checklist in its entirety. And

I don't think an answer to any one single question on the checklist would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the checklist to establish whether liberation or a scam were realistic threats. However, given the warning sign that should have been apparent to Scottish Widows when dealing with Mr C's transfer request, and the relatively limited information it had about the transfer, I think in this case Scottish Widows should reasonably have addressed all three parts of the checklist and contacted Mr C as part of its due diligence.

What would Scottish Widows reasonably have discovered?

From a few simple questions directed to Mr C, Scottish Widows would have discovered a number of facts about the transfer. Under the first section of the checklist Scottish Widows would have likely found that the prompt for Mr C to transfer his pension to the QROPS was a cold call all be it as a result of completing a questionnaire about his retirement options sometime earlier. In my view his assertion is plausible because Mr C wasn't a sophisticated investor – information gathered at the time suggests he had no knowledge or experience in investing in unregulated investments nor of how to invest in an overseas investment. This was an unusual arrangement for someone in his circumstances and I think it unlikely he would have become aware of such an option without a different party highlighting it to him. It was also not unusual that consumers were contacted in this way for a review of their pensions in order to get them to invest in Dolphin.

I also think it's likely Scottish Widows would have learned from Mr C that he wasn't planning to move abroad and that he had been told by one of the parties he was in contact with about the high returns on an overseas property investment and that he would be able to access a cash sum.

In addition to this, under the third section of the checklist (as above) had Scottish Widows used this to find out more about Mr C's transfer I think it would have discovered that Mr C had spoken to a number of related firms about this transfer and that he would have explained that he had been advised to make the transfer.

It therefore follows that it would have been reasonable for Scottish Widows to have asked Mr C who was giving the advice. In these circumstances, I think Mr C would have named Servatus as being his adviser. I say this because this is what Mr C has said when making his complaint submissions and also because it was recorded on the application for the QROPS that Servatus was providing Mr C with ongoing advice and Servatus also produced a suitability report for Mr C setting out its advice to transfer to the QROPS and the subsequent investments along with the rationale behind the advice. I appreciate Scottish Widows wouldn't have seen this at the time, but given my reasoning is based on what I think is likely Mr C would have told Scottish Widows had it asked him (as it should have) I think it more likely than not that Mr C would have told Scottish Widows that he was advised by Servatus because it appears this is how it was presented to him.

The Scorpion checklist recommends that, in order to establish whether a member has been advised by a non-regulated adviser, the transferring scheme should consult the FCA's online register of authorised firms. Scottish Widows should have taken that step, which is not difficult. Had it done so it would have discovered that Servatus appeared on the FCA register as a firm that was passported from Ireland to the United Kingdom. This means that for UK purposes throughout the period of this transfer Servatus was an authorised person under s.31(1)(b) of the Financial Services and Markets Act (FSMA) 2000 and Schedule 3 to that Act.

It is therefore reasonable to suppose that if Scottish Widows had made these inquiries, the

presence of Servatus, as an authorised person advising Mr C, would have suggested that the transfer was unlikely to be a scam and that Mr C would enjoy some regulatory protections in the unlikely event it turned out to be one – not via the UK's complaints and investor protection institutions, the FOS or the FSCS. But through its own regulator, The Republic of Ireland which also has a complaints system, financial services and pensions ombudsman and a statutory investor compensation scheme, which EU countries are required to have under the EU's Investor Compensation Directive. Furthermore, as a firm that was regulated (albeit by a home-state regulator in another EU jurisdiction) the regulatory protections included the fact that Servatus would have been held to a high standard, mandated throughout the EU, by its own regulator. And as an authorised firm, Servatus would have had to follow the applicable European regulatory standards and conduct its practice in accordance with those standards. Its operations would have been under some oversight by its regulator to ensure it was acting in the best interest of its client. It therefore would have had to meet certain required standards in all of its dealings and be subject to regulation and to investor recourse under the Irish system. So in light of this it isn't unreasonable to me that Scottish Widows could (and would if it had checked up on Servatus' regulatory standing) have been reassured that Servatus was regulated to EU standards that were accepted for the purpose of authorisation under United Kingdom law.

What should Scottish Widows have done and would it have made a difference?

Scottish Widows needed to check for the risk of pension liberation and scams in a way that was proportionate to the warning signs. I think the knowledge Mr C was being advised by a properly authorised adviser, in this case, reasonably would have given Scottish Widows comfort the transfer was unlikely to be a scam or unauthorised pension withdrawal. In the circumstances, it would have been proportionate for Scottish Widows to undertake no further due diligence. Nor would Scottish Widows have had reason to provide Mr C with explicit warnings, nor to delay the transfer further.

Having said this, Mr C ought to have received the general warnings about pension scams included in the Scorpion insert at some point during his transfer process. As I have said earlier this should have been when he first requested the transfer, and this would have been the 2013 insert. However, this insert only concerned pension liberation so I don't think Mr C would have thought it relevant to him.

Even if Scottish Widows had gone further and sent the 2014 insert to Mr C later in the process, I don't think this would have changed his mind about proceeding with the transfer. The insert warned again about cold calls and offers of a pension review to lure customers into one-off investment opportunities which Mr C might have recognised as warning signs in his transfer. The insert referred to more information being available about pension scams on TPR's website. However, the information at the time on that website for customers still warned of accessing pension benefits early ('cashing in') or being promised more tax-free cash, both of which didn't apply to Mr C. And the recommendation was to seek advice from a regulated adviser. So, I think Mr C, just like Scottish Widows, would have taken comfort from the fact that a regulated adviser had advised him.

So, I think it's unlikely the contents of these documents, had Scottish Widows sent them to Mr C, would have changed his mind about transferring.

Summary

In summary, therefore, I am of the view that Scottish Widows didn't fulfil its obligations under PRIN and COBS, nor did it follow the guidance set out in the Scorpion information – in not sending Mr C the Scorpion insert. This should have been sent directly to Mr C as a matter of

course. *Scottish Widows also should have made further enquiries when it was evident the transfer was going overseas.*

However, if Scottish Widows had done that, I think it would have been reassured by the presence of a regulated firm which was advising Mr C on the new arrangements for the investment of his pension. Upon discovering Servatus gave Mr C advice to transfer to the QROPS and discovering it was a regulated firm that was passported from Ireland into the UK, Scottish Widows could have reasonably assumed that Mr C's regulated adviser was acting in the best interest of Mr C, its client, and would have made him aware of the relevant risks and issues. I therefore am of the opinion, given ceding schemes had to undertake proportionate due diligence, it would have been reasonable for Scottish Widows not to have raised a concern with Mr C that he might be the victim of a scam, once the presence and role of Servatus was discovered. Even if Scottish Widows had taken all the steps I've said it should have taken, those steps would not have resulted in Scottish Widows needing to give him further warnings. And I consider Mr C would have gone ahead with the transfer.

Scottish Widows agreed with the findings of the provisional decision and didn't provide any comments.

The CMC representing Mr C didn't agree with the provisional decision. It provided detailed comments – the salient points of which I have summarised below. The words in quotation marks and italicised are the CMC's own terminology:

- The provisional decision wasn't clear on which version of the Scorpion guidance Scottish Widows should have sent to Mr C.
- If Scottish Widows had sent the "*July 2014 short form warning*" the finding that there were only two relevant scam warnings in the document isn't accepted. It said the "*short form Scorpion warning*" said, on its second page "how to spot the warning signs" and then referred to at least four signs that were present in Mr C's situation - "a cold call", "overseas transfer of funds", "convincing marketing materials promising returns of over 8% on the investment", and "a proposal to put money in a single investment. In most circumstances, financial advisers will suggest diversification of assets". Further, the leaflet did not, just refer Mr C to the TPR website as the provisional decision says. It recommended not being rushed into a decision, calling TPAS and also visiting www.pension-scams.com.
- The provisional decision doesn't accurately reflect the content of the July 2014 "*short form Scorpion warning*". And that there were numerous warning signs as described that would have resonated with Mr C.
- If Scottish Widows had sent the "*long form Scorpion warning*" given more detail was provided in this document, it was even more likely that Mr C would have picked up the relevance of the warnings contained in this document to his own situation.
- It doesn't accept the findings that between September and November 2014 the information on TPRs website only warned consumers about the risk of accessing their pension early or being promised more tax-free cash. It said that if this is the case then despite specifically widening the scope of the Scorpion guidance in July 2014 TPR failed to update their website at the same time.
- Mr C strongly believes that if he had received any of these documents he would have re-considered the transfer decision. He would have gone on the internet and looked at reviews. He said it would have given him pause for thought rather than stopping

the transfer entirely. And the finding Mr C would instead have gone only to the TPR website (which the provisional decisions says carried out-dated advice at the time) isn't consistent and is therefore not a fair and reasonable decision on causation.

- Mr C wasn't aware he could take his tax-free cash without needing to transfer to the QROPS so it is highly likely that if he had done this he would have seen that he was able to take this from his pension without needing to transfer overseas. He had been given the clear impression by Servatus and Portia that this was an advantage particular to their proposal. In turn, this would have led him to have significant concerns about the probity of their advice and that the presence of the other warning signs identified serious risks for his only pension, and ultimately, the only fair and reasonable conclusion is that he would not have gone ahead.

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.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this case. I've taken into account relevant law and regulations, regulatory rules, guidance and standards, codes of practice, and (where appropriate) what I consider to have been good industry practice at the relevant time.

Where the evidence is incomplete or inconclusive (as some of it is here) I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened, given the available evidence and wider circumstances.

Most of the submissions after my provisional decision have focussed on what Mr C would have done if he had received Scorpion materials in the version of July 2014. As a side note I would like to point out that the provisional decision did correctly reflect the content of the 2014 materials. The CMC has mistakenly quoted the warning signs in the 2015 Scorpion insert.

However, it's important to make clear that in my provisional decision I made the finding that:

Mr C ought to have received the general warnings about pension scams included in the Scorpion insert at some point during his transfer process. As I have said earlier this should have been when he first requested the transfer, and this would have been the 2013 insert.

The decision also makes it clear under the heading *Scorpion Campaign - Overview* that it was the Scorpion insert (which is a short version) that TPR envisaged providers to send with transfer packs. The longer insert (sometimes also referred to as booklet) which gives more information, including example scenarios was intended to be sent to members who had queries about pension liberation fraud. So I think it was clear that I meant the short insert should have been sent to Mr C.

Given the request to transfer took place in June 2014 the correct insert that should have been sent to Mr C was the one from 2013 as the 2014 update hadn't happened yet. And there was no need for a provider to send the updated 2014 insert if the transfer process encompassed the date the insert was updated. All it had to do was ensure it kept the update in mind when processing the transfer.

The 2013 insert only focused on pension liberation. It noted the following as things to look out for:

- Being approached out of the blue
- Pushy advisers or introducers who offer up-front cash incentives
- Companies that offer a loan savings advance or cash back from your pension
- Not being informed about the potential tax consequences.

Therefore, had this one been sent to Mr C, as it should have been, given the focus was on liberation rather than the wider issue of scams its very unlikely any of the points highlighted in the insert would have resonated with him as they bore very little similarities the specifics of his transfer at the time.

And even though the CMC has said that if Mr C had been sent the 2014 updated insert it would have resonated with him, as I have already said, Scottish Widows didn't need to send the updated insert unless the transfer request was made after the update on 24 July 2014, which in this case it wasn't. So I won't comment on this hypothetical scenario any further.

The CMC has said Mr C was a careful individual who would have read and followed the guidance on the Scorpion literature. I don't doubt that, however, as I have already explained the 2013 insert wouldn't have caused Mr C to be concerned therefore, I don't think he would have felt the need to act if he had received it.

I do acknowledge that Mr C told our investigator that receiving the insert would have given him pause for thought and he would have carried out some research. However, it isn't clear exactly what information Mr C would have found out by this. And while he could have found out he could access his tax-free cash without having to transferring his pension, from the way the complaint had been described in the submissions by the CMC I am not persuaded that accessing his tax-free cash was Mr C's sole reason for transferring his pension and really it was also the prospect of making better returns that attracted him to the transfer. In any event however, given the evidence I don't think he would have carried out in-depth research because I don't think he would have had cause for concern given the content of the 2013 insert. In effect he had no reason to be worried about the transfer.

In summary, as set out in my provisional decision Scottish Widows didn't do all it should have – it should have provided Mr C with the 2013 version of the Scorpion insert when he requested the transfer. However, my findings are that even if Scottish Widows had done this it wouldn't have changed Mr C's mind because the insert focused on liberation so wouldn't have resonated with him. And the presence of Servatus, being a regulated firm, all be it by a home-state regulator in another EU jurisdiction, was at this point in time enough to give Scottish Widows the comfort that Mr C was working with a regulated adviser.

It's important to note that Scottish Widows needed to check for the risk of pension liberation and scams in a way that was proportionate to the warning signs. And the knowledge Mr C was being advised by a properly authorised adviser in this case would have given Scottish Widows comfort the transfer was unlikely to be a scam or an unauthorised personal withdrawal.

Furthermore, a ceding pension scheme is not expected to act as a general pension adviser to a member who tells it he wants to leave their scheme. The Scorpion guidance is aimed at spotting and averting potential pension transfer scams against the member, rather than delivering general advice about the merits of different regulatory systems or high risk investments. So for it to be reasonable to expect a ceding scheme to have concerns and raise these with its member there must, viewed overall, appear to be a real risk the member is falling victim to a scam. For Mr C's transfer viewed overall in that way and if Scottish Widows had taken the steps I think it should I don't consider that would have been the case.

My final decision

My final decision is that I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 9 January 2025.

Ayshea Khan
Ombudsman