DRN-6114300

The complaint

Mr and Mrs H complain that Chandler King (City) Ltd ("CKC") gave them unsuitable advice to make investments. They say the investments were not suitable for them, given their circumstances, and the risks were not fully explained to them. They also believe CKC had a conflict of interest, as its advisor was associated with the businesses that provided the investments. They would like CKC to compensate them for the loss they have suffered as a result of making the investments.

What happened

Mr and Mrs H's complaint is focussed on the actions of an advisor I will call Mr G. Mr and Mrs H say Mr G advised them to make investments with two businesses; Berkeley House Capital ("BHC") and Godwin Capital ("Godwin").

At the time the investments were made, Mr G worked for CKC and Mr and Mrs H had dealt previously with Mr G; when he worked at CKC and, before then, at another business. Both CKC and the former business were general financial advice businesses, authorised by the Financial Conduct Authority (FCA) to give investment advice. Mr G was also associated with at least three unauthorised businesses – the aforementioned BHC and Godwin, and another business called Connaught House Consulting ("CHC").

The events subject to complaint began in late 2018. Mr and Mrs H say they contacted Mr G, seeking advice, as they were concerned about their finances, mainly as a result of the sale of their house stalling and changes to Mr H's occupational pension scheme.

A meeting between Mr and Mrs H and Mr G took place on 30 November 2018. Mr and Mrs H say Mr G arrived at this meeting with surrender forms for some of their existing investments and, during the course of the meeting, they were advised to surrender some of their existing investments and use the proceeds, plus the money they were due to receive from the sale of their house, to invest in BHC and Godwin. Mr and Mrs H say they were asked to sign confidentiality agreements at this meeting.

We have been provided with a copy of a "*confidentiality and non-circumvention agreement*" between BHC and Mr and Mrs H dated 30 November 2018. At the outset, that document says:

"*The Client wishes to receive Confidential Information from the Company in connection with the Proposed Opportunity. This opportunity being the Company Loan arrangement.* "

It goes on to set out the terms under which information will be provided to Mr and Mrs H.

We have also been provided with a copy of a "*confidentiality and non-circumvention agreement*" between CHC and Mr and Mrs H dated 30 November 2018. At the outset, that document says (with CHC being defined as "*the Introducer*"):

"*The Client wishes to receive Confidential Information from the Introducer in connection with any proposed Opportunity. These can comprise of Foreign Exchange, Financial Futures,*

Options, Commodities, Funds strategies, Property deals Funds, Fund Raising for any purpose and anything else that is not specifically mentioned. For the avoidance of doubt anything that is introduced, person or company is covered by this agreement."

Mr and Mrs H set out their recollection of the 30 November 2018 meeting as follows:

"[Mr G] *talked about investments into Berkeley House Capital and Godwin Developments as Chandler King during our financial review on 30 November 2018.*

[Mr G] *said that the loan note with Berkeley House Capital could be rolled over annually, compounding the interest, and therefore in due course could provide an additional income stream, whereas Godwin Developments was a two year fixed note and therefore Berkeley House would be better suited to our needs. He also pointed this out given that* [Mrs H] *was experiencing job insecurity as the charity she was working for part-time had cancelled its main event after summer 2019. He also said this income could augment our pension plans rather than adjusting our pension contributions.*

Throughout the conversation, [Mr G] *continued pointing out the virtues of Berkeley House Capital being guaranteed and said that it was as safe as a bank.*

[Mr G] *said that the funds we had with Old Mutual would be better served in Berkeley House Capital. These were funds he had previously advised us on in 2007 (when it was Skandia) and it was the money set aside for our children's university education. Given the Berkeley House Capital interest of 15%,* [Mr G] *said it was still more profitable than Old Mutual, even the part with an ISA wrapper.*"

"*After signing the NDA,* [Mr G] *showed us the brochures for the loan notes. In the Berkeley House Capital brochure, on page 10, it says that* [Mr G] *is authorised and regulated by the FCA, CII/PFS and EPFA.* [Mr G] *also said that he would ensure that the Berkeley House Capital directors would agree that we could access our money within the year if something should happen to* [Mr H]*.*

[Mr G] *continually referred to the capital guarantee of Berkeley House Capital, and that there was £1,000,000 already in it from one of the other directors and he said it was so safe that he was going to place his mother's money in it as an income stream for her care home.* [Mr G] *also said that the capital guarantee meant that Berkeley House Capital was safer than Godwin, where the capital was secured on property.*"

Mr and Mrs H made the following investments:

- 15-16 January 2019 - BHC, in Mr H's name - £85,000
- 16-18 January 2019 – BHC, in Mr and Mrs H's joint names - £195,000
- 23 January 2019 – Godwin, in Mr H's name - £25,000

There were also a number of later top-ups/roll overs of Godwin investments between 2021 and 2023.

As I set out below, I am only going to consider the £195,000 joint BHC investment under this joint complaint – the remainder will be considered separately.

I have seen the following communications from the period between the initial meeting between Mr G and Mr and Mrs H, and the joint BHC investment being made:

- 30 November 2018 – email to Mr H from Mr G, with the title "*Here is the email address for me*". This email was sent from [Mr G]@berkeleyhousecapital.co.uk

- 1 December 2018 – email from Mr H to [Mr G]@berkeleyhousecapital.co.uk, which included the following:

  "*Just to say* [Mrs H] *and I have been talking about all your advice and in principle are happy with the options. Thank you for the opportunity.*

  Could you let me know what the next steps are?"

- 3 December 2018 – email reply from Mr G, sent from the [MrG]@berkeleyhousecapital.co.uk address, which included the following:

  "*That's great and to proceed I need to know the amounts you want to loan to each company and then I can get the ball rolling my end in terms of the paperwork and bank details you will needed (sic) to send the money to each company*"

- 7 January 2019 – email to Mr H from [Mr G]@connaughthouseconsulting.com, which included the following:

  "*As discussed please find attached the invoice for both BHC loans for your kind attention. I will give you a call probably Thursday to confirm the Godwin loan note*."

- Attached to this email was an invoice for £8,400 (3% of the total amount to be invested in the BHC loans), payable to CHC.

- 9 January 2019 – email to Mr H from a different @berkeleyhousecapital.co.uk address, which included the following:

  "*Thank you for showing interest in the Berkeley House Capital Loan Contract.* [Mr G] *has asked me to send over the loan contract for the sum of £195,000 as requested*."

This email goes on to ask Mr and Mrs H to sign or initial the contract on each page, and to explain bank details will be provided, so Mr and Mrs H can send the investment amount.

Mr H says he has records of a number of voicemails received from, and text messages exchanged with, Mr G over this period, each relating to the arrangement of the BHC or Godwin investments. He has highlighted that the phone number Mr G used was the phone number which had always been associated with CKC.

The investments did not pay the return which had been offered to Mr and Mrs H, and a significant amount of the capital they invested was not returned to them. This prompted their complaint to CKC.

CKC's response to the complaint

CKC did not uphold Mr and Mrs H's complaint. It said, in summary:

- No complaint lies against CKC, as it did not give any advice with respect to the BHC or Godwin investments.

- CKC is a regulated financial advisory firm. Mr and Mrs H have been clients of CKC (and Mr G's former business) for over 20 years and have received advice (in writing) on various financial matters during that period.

- In November 2018, Mr and Mrs H were considering how to use a lump sum in excess

of £300,000. While it would have been open to them to seek regulated financial advice from CKC, Mr G informed them that, if they wished to consider wider options, it was also open to them to utilise the funds elsewhere.

- Mr G explained his involvement with a non-regulated firm (CHC), which passed information about potential loan or investment opportunities on to appropriate investors, such as Certified High Net Worth Investors (which Mr and Mrs H certified themselves to be). The relevant individuals would have to take their own loan or investment decisions but could benefit from higher returns than might otherwise be available.

- Mr and Mrs H both decided that they were interested in the option of dealing with CHC and considering potential opportunities. Any information that they then received was via CHC. They corresponded with CHC and, when they decided to buy loan notes, CHC invoiced for its fee for introducing the opportunities.

- Mr G used the same mobile number for a number of businesses. The fact he used the mobile number in connection with CHC business that he also used for CKC business does not mean CKC is responsible here.

- There was no conflict of interest as Mr G did not encourage Mr and Mrs H or advise them with respect to the investment opportunities relating to Godwin or BHC. Mr and Mrs H received the information about the businesses and took their own decisions.

- CKC had no involvement in the process by which Mr and Mrs H decided to buy loan notes from either Godwin or BHC. It follows that Mr and Mrs H were not clients of CKC in relation to these matters and CKC can have no liability to them.

Our investigator's view

Our investigator concluded that CKC was not responsible for the investments, but CHC. She referred to the confidentiality agreements signed by Mr and Mrs H at the 30 November 2018 meeting, and subsequent email exchanges, as evidence which supported this finding. Accordingly, our investigator's view was that this complaint was not one we were able to consider against CKC.

Mr and Mrs H's response to our investigator's view

Mr and Mrs H did not accept the investigator's view. They have sent a number of submissions. I will not summarise each here but instead provide a single summary of what I consider the be key points:

- On 23 November 2018 their house sale did not complete as planned, after the exchange had already taken place. They had already planned to use the sale proceeds to purchase a property nearer to London, but ongoing mortgage and insurance costs, alongside loss of rental income, were becoming a problem.

- They therefore contacted Mr G to request their annual review with CKC to discuss their investments and plans, and to ask for his advice. Mr G obtained valuations of their investments (Pensions and ISAs) on 27 November 2018 and came to visit them on 30 November 2018.

- [Mr G] of CKC came to their house on all occasions as their IFA from CKC and never in any other capacity.

- After 20 years of relationship as their advisor Mr G was fully aware of their history, and desire to reinvest the modest capital from the intended house sale into another property and be able to support their children through university.

- At the meeting on 30 November 2018 Mr G decided that of all the options available, the best course of action was to advise them to sell a number of existing investments, and provided them with written instruction on how to do this.

- This was clearly premeditated as Mr G brought closure forms and valuations for the existing investments.

- Mr G, with his CKC adviser hat on, provided advice and commentary on alternative investments that could generate 12% and 15%.

- Mr G talked through their pensions and savings before introducing the two investments (i.e. BHC and Godwin) into the conversation. At no time did he make any effort to suggest he was “removing his IFA hat” and introducing CHC.

- They did not ask to invest in BHC or Godwin – they had not, and never would have, heard of either (or CHC) before Mr G recommended them. In their eyes Mr G was continually and consistently acting as their IFA at (and following) the meeting on 30 November 2018.

- Mr G did not manage several conflicts of interest and at times has acted outside of what would or should be deemed reasonable. It could be concluded that Mr G set up this structure deliberately to enable his own enrichment at their cost.

- Mr G continued to provide advice and commentary, and exploited them, for several more years. He was wearing three hats simultaneously and they had no clarity that there was any difference and at all times understood that Mr G, as their IFA, was advising them. Mr G used the same phone number for all communication which further blurred any potential distinction.

- Their belief was that CHC and CKC’s interaction had something to do with Mr G’s divorce, as Mr G’s ex-wife had been a director of CKC.

- Using the capital that they had accumulated specifically to purchase their own property and support their family could never reasonably be considered appropriate for any high-risk investment. Mr G, as a regulated individual, should have been fully aware of this.

- It is inconceivable, and unreasonable, to conclude that they decided to encash their funds and to choose to invest them in BHC themselves.

During exchanges between our investigator and Mr and Mrs H following the view, Mr and Mrs H mentioned that their complaint included advice they say they were given by CKC at the 30 November 2018 meeting to surrender their existing investments, and a data breach they say happened when CKC put their details into the confidentiality agreements with BHC and CHC. In response to this, our investigator said they thought these issues amounted to a separate complaint, which had not been considered by CKC. CKC was, accordingly, asked to respond to these points, and it issued a final response letter. In that letter, it says it did not give Mr and Mrs H advice to surrender their existing investments and did not think there had been a data breach.

I have set out in my findings below my view on how many complaints Mr and Mrs H have made, and what should be considered as part of those complaints.

Further submissions from CKC

Following the investigator's view and responses from Mr and Mrs H, CKC made the following further submissions, in summary:

- Mr and Mrs H are seeking to present a skewed impression of matters, and have not provided any evidence to support their accusations.

- The only substantive evidence there is clearly shows that the loan notes related to Mr and Mrs H's dealings with CHC. They corresponded with that business and paid fees to it.

- Had the matter in any way involved advice from CKC, that business would have produced a formal suitability / advice report, which is what it had done on previous occasions when advising Mr and Mrs H.

Questions to Mr and Mrs H, and their responses

I recently asked some questions of Mr and Mrs H. I will not set out all the questions and answers here, but will quote Mr and Mrs H's further recollections of the 30 November 2018 meeting, as they are in my view key evidence:

"*The meeting was at 9:00am on the 30th of November at our house. As was usual with* [Mr G]*, we talked about our situation.* [Mr G] *already knew the challenges of the* [occupational] *pension system having advised us in 2014 about it.*

We talked about our small income our plans for our daughters to go to university and our hopes and dreams for the future.

We explained to [Mr G] *about our house in* [location] *and that we had visited properties around* [potential new location]*. We explained that we had contacted* [a mortgage company] *regarding mortgages and we had a budget for monthly cashflow and purchase price.*

[Mr G] *already knew the tax status of our primary residence, as we had talked about it.*

We spoke of the risks to [Mrs H's] *job and the decrease in real terms of* [Mr H's] *income.*

We also discussed our future requirements for a house both to rent out in the meantime and to retire to along with the need for the family to have somewhere to go to were something to happen to [Mr H].

[Mr G] *pointed out to us that our Old Mutual investments had not fully recovered to the amounts that were placed in them in 2007.* [Mr G] *noted our concern about future pension from* [employer] *as the main source of income for both of us in retirement.*

We talked about the significant challenge of the changes to [occupational] *pensions, increasing service level from 37 years to 40 years and then 41.5 years and cutting pensions from 2/3rd to 50% of national minimum stipend.*

We talked about the uncertainty of the [location] *house sale and the loss of income for 7 months.*

[Mr G] *said that property prices were likely to be going down in the near future, and* [Mr G] *advised us that there was another investment strategy that would meet our needs and generate annual returns of 12-15%. This level of return would provide us with an additional income, a cash source for pension savings, a source for our children's university costs (commencing in under 3 years' time at this point) and the capital would still be available for the future home purchase.*

[Mr G] *said that one part was a capital guaranteed investment with 15% a year compound return. And the other was an asset backed investment paying 12%, a year, with income deferred for 2 years.*

[Mr G] *advised that the compound nature of the 15% investment would meet our need's* (sic) *as above and allow us the flexibility to still receive our capital back.* [Mr G] *said that the more that was placed into it the better the income would be to cover the uncertainty of* [Mrs H's] *Job, to support our daughters at university and to top up our pensions. Ultimately, we could purchase our home for the future.* [Mr G] *further stated that because of the 15% return it would be better than leaving the money in Skandia (Old Mutual) even including with the ISA wrapper, it should be withdrawn and reinvested here.*

[Mr G] *then said we may wish to place a smaller amount into the other investment of 12%.*

We talked through the sources of the funds where they were, and that we couldn't afford to lose any capital because our daughters university education was coming soon and that our girl's education was coming soon and that [property location] *(or its replacement) was our only house for the future.*

[Mr G] *said that looking at 15% and 12% returns was our best option. We talked of £280,000 in 15% and possibly a further £25,000 in 12%.* [Mr G] *did not talk of any risks associated with this approach.* [Mr G] *also said that this recommendation would come with his usual fee of 3%.*

[Mr G] *then said that to see the details of Berkley House Capital investment we would need to sign an NDA, as it was a new company that* [Mr G] *is involved with. He said that he regularly used NDA's and it was the best way forward.*

Chandler King (City) Ltd now produced:

1) Prospectus for Godwin and other material which I have attached.

2) Prospectus for Berkeley House Capital and other material

3) the NDA for Berkeley House Capital

4) The closure forms for our collective investment and our ISA with Skandia (Old Mutual)

On the advice of [Mr G] *of Chandler King (City) Ltd, we signed the Berkeley House Capital NDA first.*

[Mr G] *then amended a pre-completed address on another NDA which at the time we thought was a duplicate copy. With the benefit of hindsight we now know that what was actually being amended was the NDA for CHC House and not our copy of the Berkeley House one.*

Chandler King (City) Ltd had pre completed the NDA with our details before arriving at the meeting. No other party was invited to our house beforehand, so this again reinforces that

Chandler King (City) Ltd were advising us.

We saw the prospectus and the FAQ for Berkley House Capital and the one for Godwin (attached), neither had any risk warnings.

[Mr G] *continually referred to the capital guarantee of Berkeley House Capital, and that there was £1,000,000 already invested in it in it from one of the other directors.* [Mr G] *stated it was so safe that he was going to place his mother's money in it as an income stream for her care home.* [Mr G] *also said that the capital guarantee meant that Berkeley House Capital was safer than Godwin, where the capital was secured on property.*

[Mr G] *said that the 15% return was with Berkley House Capital and was as safe as a bank with its capital guarantee. The Godwin developments investment was offering the 12% return.*

In the Berkeley House Capital brochure, on page 10, it says that [Mr G] *is authorised and regulated by the FCA, CII/PFS and EPFA.* [Mr G] *also said that he would ensure that the Berkeley House Capital directors would agree that we could access our money within the year if something should happen to* [Mr H].

In the Berkeley House Capital brochure it also says to seek professional advice and [Mr G] *is quoted as stating that he provides financial advice to customers through his regulated business (Copy previously supplied to FOS). We asked* [Mr G] *as our professional advisor from Chandler King (City) Ltd in our house, 'is this what you are advising us to do?' The answer was 'Yes'.*"

My provisional decision

I recently issued a provisional decision. My provisional findings were, in summary:

- There were, in my view, three complaints in total. And I was going to consider one of those complaints – a joint complaint from Mr and Mrs H about the £195,000 BHC investment in their joint names – here.

- I was satisfied Mr G had advised Mr and Mrs H to make the BHC investment during the 30 November 2018 meeting. And that such advice amounted to a regulated activity.

- I was also satisfied that Mr G was acting for CKC when giving the advice. So, the complaint was about a regulated activity carried out by CKC and was therefore one I could consider against CKC.

- The advice CKC gave was unsuitable.

- In the circumstances, it was fair and reasonable to ask CKC to compensate Mr and Mrs H for the loss they had suffered through making the BHC investment.

Responses to my provisional decision

Mr and Mrs H accepted my provisional decision, but asked if the fees they had paid in relation to the investment were included in the compensation I had suggested.

CKC did not accept my provisional decision. A representative responded on its behalf. For consistency, however, I will refer to CKC throughout. The response included Mr G's recollections of the 30 November 2018 meeting which were, in summary:

- There was a general discussion with Mr and Mrs H about their circumstances. It was agreed that their existing Old Mutual Wealth (OMW) investments were underperforming and that this justified a reinvestment of those monies. On that basis, the disinvestment forms for OMW were filled out.

- He then discussed in broad terms how Mr and Mrs H might wish to invest going forward (which would cover the OMW monies, other funds and, potentially the proceeds of the sale of the property). No investment decisions were taken at the meeting (save to disinvest the OMW investments). He highlighted the option of taking regulated advice on relevant investments and also referenced the option of considering other investments that would be available through the CHC proposition. Mrs and Mrs H indicated that they would be willing to receive information about CHC propositions.

- It is at this point that the meeting clearly moved. There was a clear and natural break in proceedings in that he explained that, in order for Mr and Mrs H to be able to receive information from CHC about its propositions, they would need to sign Non-Disclosure Agreements (NDAs) in relation to CHC and the company prospect (in this case, BHC). Mr and Mrs H indicated their willingness to do so and signed the NDAs with him countersigning.

- Following the signing of the documents by Mr and Mrs H, he provided them with the BHC documentation, which they read through together. This summarised the nature of the investment and the aims and objectives of BHC, but was only ever the provision of information as per the document (and the NDA made clear that what was happening was the provision of confidential information). No advice or recommendation was given in respect of any potential investment.

- It is absolutely not the case that he ever suggested that any investment would be “safe as a bank” or similar, nor that he suggested he would be placing his mother’s funds in BHC as an income stream for her care home.

- He strenuously denies that Mr and Mrs H expressly said to him “is this what you are advising us to do” and that he replied “yes”.

- After signing the documentation to allow receipt of information about BHC, and going through that information, no investment decisions had been taken and no advice given (save to liquidate the OMW investments and reinvest in some form – to be decided as liquidation would not be immediate).

- At the end of the meeting, it was agreed that Mr and Mrs H would go away and consider what they wished to do. They had CHC’s details and he also provided them with a BHC e-mail as it was apparent that Mr and Mrs H were very interested in the CHC options. CKC was available to deal with any regulated investment advice, if Mr and Mrs H decided to invest some of their funds on an advised basis. To be clear, this would have required a further meeting with CKC to discuss investment possibilities. He believed Mr and Mrs H would likely invest a sum based on the CHC information, but it was not clear what that sum might be and what split there might be between the BHC and/or Godwin options and a CKC advisory proposition.

And CKC set out, in summary, the following response to my provisional findings:

- The key issue that has to be determined at the outset is whether or not a regulated activity was being carried on and, if so, whether it was being carried on by CKC. In

this latter respect, the key aspect is whether there is reason to suppose that Mr G drew a clear line between the initial CKC part of the meeting and the subsequent CHC part of the meeting.

- There is no substantive evidence of any advisory regulated activity being undertaken in connection with the investment and Mr and Mrs H simply asserting that they received advice, in the circumstances, is insufficient.

- Mr G – an experienced individual who fully understands the parameters of a regulated offering and a non-regulated one - is equally clear that no advice was given. The only advice given related to the disinvestment of the OMW investments. If Mr and/or Mrs H wish to complain about the regulated advice to disinvest the Old Mutual investments that is their prerogative, but that is quite different to asserting that CKC advised them to make the BHC investment.

There is, in fact evidence of a switching of hats between CKC and CHC and drawing of a clear line before there was, or could be, any discussion about the BHC investment. It is a nonsense to suggest that Mr G would go into detail about the BHC investment before having the NDA's in place – that is clearly what they are there for. That break in the meeting and in any discussions in order to require and to allow Mr and Mrs H to review and sign two NDA's before discussing any CHC business is that clear line and switching of hats.

What I've decided – and why

At the outset, it needs to be established what this complaint encompasses. And I have not been persuaded to depart from my provisional findings on this point. The initial BHC investments are separated by ownership; as set out, one of the BHC investments was made jointly, and the other BHC investment, and the initial Godwin investment, made in Mr H's name. There are therefore different complainants (Mr and Mrs H) for the joint investment. The later rollovers into further Godwin investments and any top ups to that investment are also clearly separated from the initial investment into Godwin. These are separate events, relating to separate provisions of financial services. So, overall, my view remains that we should consider three complaints in total:

- One complaint about the £195,000 BHC investment in Mr and Mrs H's joint names
- One complaint about the £85,000 BHC investment and the £25,000 Godwin investment in Mr H's name
- One complaint about the later rollovers or top-ups to the Godwin investment, in Mr H's name.

As confirmed in my provisional decision, this decision deals only with the £195,000 joint investment in BHC. The other complaints will be considered separately.

The investigator took the view that points mentioned by Mr and Mrs H about advice to surrender of their existing investments and a data breach were new complaints and should be considered separately. I remain of the view both these points should be considered as part of this complaint (insofar as they are relevant to the investment under consideration here).

The data breach point is a separate issue, which was not mentioned in correspondence with CKC when the original complaint was made. However, from a practical perspective, given its clear connection with the subject matter of this complaint (both focus on events at the 30 November 2018 meeting), and that it impacts both Mr and Mrs H, I think it ought to be considered as part of this complaint, given CKC has had the opportunity to respond to the point.

The surrender of the existing investments should also form part of this complaint (and also forms part of the complaint about the initial investments made by Mr H). This goes to advice Mr and Mrs H say they received from CKC. Whilst the focus of the complaint initially was on the BHC and Godwin investments, the reference to advice clearly encompasses all the advice Mr and Mrs H say they were given at the 30 November 2018 meeting. The surrender advice they say they were given is bound up with the advice they say they were given to make the investments in BHC and Godwin. It therefore should, in my view, form part of this complaint (and the other complaint about the initial investments made by Mr H).

Having established what is encompassed by this complaint, the next step I need to take is to reconsider whether the complaint is one I can consider. CKC's position says that the complaint cannot be considered against it, as it did not act in relation to the BHC investment; it only introduced Mr and Mrs H to BHC and CHC, CHC introduced the BHC investment to Mr and Mrs H, and they made their own decisions to invest, having been given no advice.

Mr and Mrs H say they were advised by CKC to surrender their existing investments and use the proceeds of that, plus cash on deposit (due following house sale on which contracts had been exchanged), to fund investments, including the joint investment in BHC.

The evidence CKC relies on is the BHC and CHC confidentiality agreements, the invoices issued by CHC, and emails to/from BHC/CHC email addresses. The evidence Mr and Mrs H rely on is (primarily) their recollection of the 30 November 2018 meeting, and their historic relationship with CKC.

So, there remain conflicting positions. CKC says no party gave Mr and Mrs H advice on the BHC investment. Mr and Mrs H say they were given advice, and that advice was given by CKC.

Ultimately, as set out in my provisional decision, I need to make a reasonable finding of fact based on the balance of probabilities, by considering what is likely to have happened, in the circumstances, and determining what weight I should attach to the available evidence.

Having again done this, I remain satisfied the complaint is one I can consider against CKC. I will set my findings out in more detail below.

Regulated activities and CKC's responsibility

We can consider a complaint under our compulsory jurisdiction if it relates to an act or omission by a firm (business) in the carrying on of one or more listed activities, (including regulated activities), or any ancillary activities carried on by the firm in connection with those activities, (DISP2.3.1R).

Complaints about acts or omissions by a business include complaints about acts or omissions in respect of activities for which the business is responsible. So, there are two questions to be considered before I can decide whether this complaint falls within the compulsory jurisdiction of this service:

1. Were the acts about which Mr and Mrs H complain done in the carrying on of a regulated activity, or an ancillary activity carried on in connection with a regulated activity?

2. Were those acts the acts of CKC?

I have considered these questions in turn.

Regulated activity

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the RAO) sets out what activities require FCA authorisation i.e. are regulated activities. It sets out that specified activities, carried on in relation to specified investments, are regulated activities.

CKC's position, in relation to the BHC investment, remains that it only introduced Mr and Mrs H to other businesses - BHC and CHC - and that CHC acted as an introducer to the BHC investment. It now accepts it gave advice to Mr and Mrs H to surrender their existing OMW investments.

Having reconsidered Mr and Mrs H's testimony alongside the other available evidence – including the recollections of Mr G set out in CKC's response to my provisional decision - I remain satisfied of the following:

- Mr and Mrs H did not find the BHC investment of their own volition; they only became aware of it after contacting Mr G.

- Mr and Mrs H contacted CKC seeking advice.

- Mr and Mrs H were not initially seeking to make an investment with the money that was invested – they only decided to make the investment following the meeting with Mr G.

- There is no evidence to show Mr and Mrs H were minded to surrender their existing investments before the 30 November 2018 meeting, and it seems they only decided to do so during the meeting, to which Mr G arrived carrying surrender forms for those investments.

- Mr G explained – by reference to Mr and Mrs H's personal and financial circumstances and his views on the housing market and Mr and Mrs H's existing investment – why an investment in BHC was suitable for Mr and Mrs H.

- Mr and Mrs H agreed to surrender their existing investments, and to make the investment in BHC, because they trusted Mr G, as he had acted as their advisor for a number of years, and were influenced by his assurances as to the suitability of the BHC investment for them, and it offering a better alternative to their existing investments.

- Mr and Mrs H agreed to make the investment in BHC on the understanding they had been advised to do so, as set out in their email to Mr G on 1 December 2018 ("(we) *have been talking about all your advice and in principle are happy with the options"*).

- There was some incentive for Mr G to sell the BHC investment – he was a director and part owner of BHC.

In terms of a specified activity, Article 53 (3) of the RAO provides the following:

"*Advising a person is a specified kind of activity if the advice is—*

(a)given to the person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor; and

(b)advice on the merits of his doing any of the following (whether as principal or agent)—

(i)buying, selling, subscribing for, exchanging, redeeming, holding or underwriting a particular investment which is a security, structured deposit or a relevant investment, or

(ii)exercising or not exercising any right conferred by such an investment to buy, sell, subscribe for, exchange or redeem such an investment."

In terms of the existing OMW investments, as mentioned, this point is no longer disputed - Mr G now accepts he did give advice to surrender the investments. So, he did carry out a specified activity in relation to the OMW investments.

It remains the case that I am not persuaded Mr G – setting aside, for now, questions as to which party he was acting for – acted as a bare introducer in relation to the BHC investment. On this point, I remain of the view that Mr and Mrs H's testimony is plausible and persuasive. I note Mr G's recollections and have carefully considered them. But I remain of the view the recollections of Mr and Mrs H are the most likely explanation for how they ended up making the BHC investment. I think it very unlikely they would have made the investment without a positive recommendation from someone they trusted i.e. Mr G, and that Mr G's acts were broadly as Mr and Mrs H have described them; and therefore went beyond a simple introduction and amounted to advice

I also think the advice to surrender the OMW investments was connected – at least to an extent – to advice to make the BHC investment. I am not persuaded that the advice to surrender the OMW investments was given in a vacuum i.e. without any discussion about what might be done with the money once the surrender was complete. It remains my view that Mr and Mrs H were advised to surrender the OMW investments in favour of investments in BHC and Godwin. They had held these investments for a long time and, although they were seeking a review of their overall finances, I have seen nothing to suggest they would have considered surrendering them without a positive recommendation to do so from Mr G or a plan for the reinvestment of the money. As set out, Mr and Mrs H say they can recall a discussion of the investments' performance, and a comparison between that performance and what the BHC and Godwin investments would offer (in Mr G's view). And that Mr G arrived at the meeting with surrender forms for the investments. All this suggests the surrender advice was given in conjunction with advice to reinvest in BHC or Godwin.

I remain of the view the evidence does not support Mr G having simply given Mr and Mrs H literature for the BHC investment without making any comment about the merits of making (i.e. buying) an investment in it. And that such a scenario is not plausible. Mr and Mrs H had limited investment experience and there is no evidence of them having previously made or contemplated investments in complex esoteric unregulated investments like BHC. I do not therefore think Mr and Mrs H would have expressed an interest in BHC and then have invested a very large sum of money in it without being given a positive recommendation by someone they trusted i.e. Mr G. I think it very unlikely, in the circumstances, that Mr G simply mentioned the fact of the existence of the BHC investment and passed literature to Mr and Mrs H. So, I remain of the view Mr G's discussion of the investment is broadly as described by Mr and Mrs H.

I note Mr G's recollection is that he only discussed in broad terms how Mr and Mrs H might wish to invest, that no investment decisions were taken at the meeting (save to disinvest the OMW investments), and he only highlighted the options of taking regulated advice through CKC or considering other investments that would be available through the CHC proposition. However, I am not persuaded by this.

Firstly, as set out in my provisional decision it seems the BHC investment – with which it appears Mr G was involved in more than one capacity – was one of poor quality, about which statements or claims were made which were vague and highly implausible, and which involved BHC carrying out regulated activities without having any regulatory authorisation to do so. I am therefore cautious about attaching much weight to Mr G's recollections, given his conduct in relation to the BHC investment; particularly in circumstances where Mr and Mrs H

have set out recollections which seem, in my view, to be much more plausible.

Going beyond that, Mr and Mrs H having not made a decision at the 30 November 2018 meeting is not evidence they were not given advice; it is only evidence they did not make a decision to invest there and then. And, as mentioned, I am not persuaded Mr and Mrs H would have invested such a large sum in a type of investment they appear to have never previously considered had they not been given advice on the merits of making the investment.

Overall, I remain satisfied Mr G gave Mr and Mrs H advice on the merits of buying the BHC investment; and therefore carried out a specified activity in relation to this investment as well as the OMW investments. I have therefore reconsidered whether this advice given was given in relation to a specified investment.

It is not disputed that Mr and Mrs H's existing investments were regulated investments i.e. investments of the type specified in the RAO. They were investments in mainstream collective investments, held with a large international investment manager. So, in relation to the existing investments, I remain satisfied Mr G carried out a specified activity in relation to a specified investment.

Turning to the BHC investment, Mr and Mrs H's investment was in a "*corporate loan*" issued by BHC, which paid an annual income. The documents I have seen suggest that BHC was to generate returns by trading foreign exchange contracts using "*proprietary trading technology*" and through "*fixed fee transactional commissions*". It describes BHC as a "*Wealth Management and FinTech Company*", which would act as manager of the money invested with it.

In my view, this amounts to a form of arrangement intended to pool investors' money to fund foreign exchange contract trading. So, it was a specified investment - a collective investment scheme (Art 81 of the RAO).

If that analysis is incorrect, the alternative is that the investment was an instrument creating or acknowledging indebtedness, which is defined as follows (Art 77 of the RAO):

"*Any of the following—*

(a)debentures;

(b)debenture stock;

(c)loan stock;

(d)bonds;

(e)certificates of deposit;

(f)any other instruments creating or acknowledging a present or future indebtedness."

If the investment was not a collective investment scheme it, in my view, falls within this definition, and was therefore a specified investment on that basis.

I therefore remain satisfied the BHC "*corporate loan*" was a specified investment. So, in relation to the BHC investment I am satisfied Mr G carried out a specified activity in relation to a specified investment.

I therefore remain satisfied Mr G carried on the regulated activity of advising on investments.

Acts of CKC

I will now turn again to the question of whether the advice given by Mr G was the act of CKC. Which, in my view, in this case means whether Mr G was acting in his capacity of employee of CKC when giving the advice.

The submissions from CKC refer to a number of businesses:

- BHC
- CHC
- CKC
- Godwin

At the outset of the relevant events, Mr and Mrs H only had a relationship with CKC. And I remain satisfied they contacted Mr G in the first instance in his capacity as CKC's advisor – the capacity in which they had always previously dealt with him.

I therefore remain satisfied Mr G was acting for CKC at the outset of the meeting. So, the question remains; did Mr G "switch hats" at some point during the meeting i.e. did he stop acting for CKC and begin acting for BHC or CHC before giving advice on BHC?

I have carefully considered CKC's response to my provisional decision on this point. Having done so, it remains my view Mr G did not "switch hats" before giving advice on BHC. I say this because:

- I remain persuaded by Mr and Mrs H's recollections on this point and find them to be the most likely explanation of events. Those recollections set out in plausible detail the advice which was given to Mr and Mrs H, and the capacity in which Mr G delivered that advice.

- Mr and Mrs H have no recollection of Mr G "switching hats" i.e. by explaining he was no longer acting as an advisor at CKC but instead representing one or more unauthorised businesses.

- I note Mr G's recollection is that he offered two distinct routes – a regulated one through CKC or an unregulated one through CHC. But I am not persuaded he presented it in this way or that this reflects what happened, in any event.

- The FCA Register confirms Mr G held a Controlled Function at CKC at the time of the 30 November 2018 meeting, and had permissions to give investment advice. He had also, as set out above, previously given investment advice to Mr and Mrs H whilst working for CKC. He did not have permission to give investment advice in any other capacity.

- Mr and Mrs H did not contact CHC or BHC to seek financial advice – there is no evidence they knew of those business' existence before the 30 November 2018 meeting (I note Mr G has asserted that they knew of CHC before the meeting, but has provided no evidence to support this). On the other hand, Mr and Mrs H had an established relationship with CKC. Mr and Mrs H had made various investments on the advice of CKC, and saw CKC as their financial advisor. And, as mentioned, I am satisfied they approached CKC seeking advice, ahead of the 30 November 2018 meeting.

- CKC was also the advisor on Mr and Mrs H's existing investments. CKC (and only CKC) had access to the detail of these investments by virtue of it being the advisor associated with them. Neither CHC or BHC were engaged to provide advice on these investments (nor did they have any regulatory authorisation to do so).

- It is unlikely Mr G would have held out he was acting for BHC or CHC, rather than their trusted advisor, CKC at the point of giving them advice. Mr G would have been motivated to sell the investment – he was a part owner and director of BHC – and therefore keen to leverage his existing relationship with Mr and Mrs H, which formed the basis of their trust in him. So, I think it likely he continued in the role in which Mr and Mrs H knew him and was therefore likely to be the most impactful i.e. as an advisor for CKC.

In its response to my provisional decision, CKC says there was a "switching hats". It refers to the confidentiality agreements (which it describes as NDAs), what it considers to be dividing lines drawn in email correspondence sent from CKC/CHC to Mr and Mrs H and to the invoice sent to Mr and Mrs H from CHC for a fee associated with the BHC investment. I am not persuaded by these submissions.

The two confidentiality agreements signed by Mr and Mrs H on 30 November 2018 are very similar. The only real difference being that in one agreement (the BHC one) Mr and Mrs H are asked to agree not to disclose any details of that particular investment and in the other (the CHC one) Mr and Mrs H are asked to agree not to disclose the details of *any* investment they were introduced to. Neither BHC nor CHC undertake to provide any service to Mr and Mrs H in the agreements. The agreements simply say that BHC or CHC agree to provide information about investments. So, I do not think they are evidence of responsibility for advice being handed off to BHC or CHC. Rather, they simply appear to be a step taken to allow the providers of investments to relay information about them to Mr and Mrs H, rather than to document them having given or agreed to provide advice.

I again acknowledge Mr G provided Mr and Mrs H with a BHC email address on which to contact him, following the 30 November 2018 meeting. And also that email correspondence following that meeting was from that BHC address, a different BHC address, or a CHC address. However, I remain of the view this is evidence the investment was likely arranged by BHC or CHC rather than evidence that CKC did not give the initial advice to make it.

The fee invoice from CHC that CKC has referred to simply says it is a "*Fee for Berkeley House Capital Loan Note*". It is not therefore evidence that CHC was paid a fee for the advice given on the BHC investment and that such advice was therefore given by CHC rather than CKC. In a similar vein to the email correspondence, I think it is evidence the investment may have been arranged by BHC or CHC rather than evidence that CKC did not give the initial advice to make it.

I again note there was no advice set out in writing by CKC. But I remain of the view that is only evidence that CKC did not want to set its advice out in writing, not evidence that it did not give advice at all. I note Mr G's submission that he was an experienced advisor, familiar with the regulatory rules and standards of good practice and would not have acted as I have found he did. However, I do not think it would be reasonable to base my findings on an assumption that Mr G, when acting for CKC, would have always followed the regulatory rules and standards of good practice when there is evidence I mention above (and explore in further detail below) about the nature of the BHC investment which suggests he did neither of these things in relation to that investment.

Generally, although it seems Mr G made some efforts to distance CKC from the investment after the advice had been given, I remain unpersuaded such efforts were made before or

during the advice being given. So, I remain unpersuaded any switching of hats took place before the advice was given.

Overall, I remain satisfied that Mr G was acting for CKC when giving Mr and Mrs H advice to make the BHC investment. And this complaint is therefore about a regulated activity carried on by CKC. So, it is one I can consider against CKC. I have therefore proceeded to reconsider the merits of the complaint.

What is fair and reasonable in the circumstances?

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

CKC has made no submissions on the merits of the complaint. So, as I remain of the view set out in my provisional decision, having reconsidered my findings, I see no reason to depart from my provisional findings and have repeated those findings below.

Suitability of the advice

As the authorised business, CKC, was giving advice to Mr and Mrs H and its regulatory obligations required it to take reasonable steps to ensure the recommendation of the BHC investment was suitable for Mr and Mrs H. The relevant rules are set out at COBS 9.2.1 R**:**

"*(1) A firm must take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client.*

(2) When making the personal recommendation or managing his investments, the firm must obtain the necessary information regarding the client's:

> *(a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;*
>
> *(b) financial situation; and*
>
> *(c) investment objectives;*

so as to enable the firm to make the recommendation, or take the decision, which is suitable for him."

I have read the 17 page "*Fixed Income Loan presentation*", which sets out details of the BHC investment. Having done so, I have reached the view CKC ought to have concluded the investment was clearly not a suitable one for Mr and Mrs H.

The content of the literature suggests the investment was a high risk one which might be poor quality. It makes several unsubstantiated statements, offers an extraordinarily high return, is vague about how that return will be generated, makes clearly misleading statements about risk, and makes claims of a multiple year track record, despite BHC only having been incorporated in May 2018.

The literature explains that only 3% of the capital invested will be traded. And Mr and Mrs H were offered a return of 15% per year on the total capital invested. So, £5,850 is being traded to generate a 15% return on £195,000 (i.e. £29,250 per year). BHC was therefore essentially offering to generate a 500% return on the money it was trading.

At the same time BHC held the arrangement out to be "*simple and secure*", having "*full*

capital protection", "*a very low risk from a transactional perspective*", following a "*low risk strategy*" and offering a "*fixed return*". The literature also claims BHC can trade foreign exchange on margin to generate such extraordinarily high returns whilst "*almost guaranteeing a gain*" and following "*extremely risk averse trading strategies*".

Any competent investment professional would recognise such statements or claims to be highly implausible.

The literature is also very vague about how the returns offered would be generated. It includes a vague description of a foreign exchange trading strategy which seeks to follow "*established trends*" and to use trading software. It also refers "*the most innovative financial technology products currently on the market*" and "*tiny margins*" with "*super low costs*" and "*not a single months loss in three years*". But, as with the claims made elsewhere in the literature, there is no detail provided or anything to substantiate them.

Furthermore, the literature describes BHC, an unauthorised business, as a wealth manager; and the investment description, although vague, clearly sets out that it will involve BHC trading securities on behalf of investors. Which suggests the unauthorised business, BHC, will be carrying out regulated activities, which it was not allowed to do.

Overall, any competent investment professional would recognise that the literature lacks basic professional standards and makes a series of claims which, on the face of it, appear too good to be true. And that the investment was therefore potentially a poor quality one, and certainly one which carried a high level of risk.

Mr and Mrs H were investors with limited experience. The money they invested was a significant portion of their total assets, and either came from the sale of their home (and was therefore needed for Mr and Mrs H to purchase a new home). Or from existing investments held in moderate risk mainstream investments with a large international investment manager.

It is clear Mr and Mrs H did not want to (nor could afford to) take significant risks when investing. CKC's advice to Mr and Mrs H to surrender their existing investments and use the proceeds, plus some of the money from the sale of their home, to make a large investment in BHC was therefore clearly unsuitable. I do not think CKC should have advised Mr and Mrs H to invest in BHC *at all*.

In my view, Mr G exploited his existing relationship with Mr and Mrs H as their advisor at CKC to recommend the BHC investment (and the associated surrender of their existing investments) to Mr and Mrs H. And, in doing so, put his interests above Mr and Mrs H's. I am satisfied that, in such circumstances, it is fair and reasonable to ask CKC to compensate Mr and Mrs H for the loss they have suffered through making the investment.

Data breach

Mr and Mrs H say that, during the advice process, CKC committed a data breach by sharing their details with CHC and BHC, without their permission.

I note CKC says it simply inserted Mr and Mrs H's details into the confidentiality agreements, ahead of the 30 November 2018 meeting, to allow them to have discussions with CHC if they so wished. And that the agreements would have been destroyed, had Mr and Mrs H not wanted to proceed. However, I have not seen any evidence to show that Mr and Mrs H agreed CKC could share their details with third parties. And CKC having put those details into the agreements did, in my view, amount to Mr and Mrs H's details being shared with BHC and CKC

Given what I say above about the suitability of the advice, and what I say below about how Mr and Mrs H should be compensated for that, I do not think any data breach, in itself, has caused Mr and Mrs H a financial loss. But I think it would be fair to consider some compensation for any distress any breach caused Mr and Mrs H.

Putting things right

In assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs H as close to the position they would probably now be in if they had not been given unsuitable advice. Were it not for the unsuitable advice, Mr and Mrs H would not have invested in the BHC investment. I think Mr and Mrs H would have acted differently.

Mr and Mrs H had some risk-based investments, which were surrendered. These investments may not have been surrendered, if CKC had not given unsuitable advice. But I cannot be certain that would be the case. Mr and Mr H may also have gone ahead and purchased a new property, or may held money on deposit, pending a property purchase.

Overall, it is not possible to say precisely what they would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr and Mrs H's circumstances and objectives when they invested.

What should CKC do?

To compensate Mr and Mrs H fairly, CKC must:

- Compare the performance of Mr and Mrs H's investment with that of the benchmark shown below and pay the difference between the fair value and the actual value of the investment. If the actual value is greater than the fair value, no compensation is payable.

- CKC should also add any interest set out below to the compensation payable.

- Pay Mr and Mrs H £500 for the upset caused by the loss of a significant amount of their investment and sharing their data without their permission.

Income tax may be payable on any interest awarded.

Portfolio name	Benchmark	From ("start date")	To ("end date")	Additional interest
BHC Investment	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date of my decision	8% simple per year on any loss from the end date to the date of settlement

Actual value

This means the actual amount paid from the investment at the end date. In this case, I think it fair to simply run this calculation to date, rather than attempt to establish a date at which the investment ended. I think this is the fairest way to establish the loss Mr and Mrs H have

suffered to date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, CKC should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any income paid by the BHC Investment should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if CKC totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

To confirm, the investment amount used in the calculation should include any fee paid to CHC in relation to the investment.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mr and Mrs H wanted to invest some of their money for capital growth, and likely would have done so with some risk to his capital.

- The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

- The average rate for the fixed rate bonds would be a fair measure for money kept on deposit.

This does not mean I think that Mr and Mrs H would have invested 50% of their money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the loss Mr and Mrs H have likely suffered.

My final decision

For the reasons given, I uphold the complaint.

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £195,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £195,000, I may recommend that Chandler King (City) Ltd pays the balance.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that Chandler King (City) Ltd should pay the amount produced by that calculation up to the maximum of £195,000 (including distress or inconvenience but excluding costs) plus any interest on that amount as set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £195,000, I recommend that Chandler King (City) Ltd pays Mr and Mrs H the balance plus any interest on the balance as set out above.

If Chandler King (City) Ltd does not pay the recommended amount, then any investment currently illiquid should be retained by Mr and Mrs H. This is until any future benefit that he may receive from the portfolio together with the compensation paid by Chandler King (City) Ltd (excluding any interest) equates to the full fair compensation as set out above.

Chandler King (City) Ltd may, at its cost, request an undertaking from Mr and Mrs H that either he repays to Chandler King (City) Ltd any amount Mr and Mrs H may receive from the portfolio thereafter, or if possible transfers the investment to Chandler King (City) Ltd at that point.

The recommendation is not part of my determination or award Chandler King (City) Ltd doesn't have to do what I recommend. It is unlikely that Mr and Mrs H could accept a final decision and go to court to ask for the balance and Mr and Mrs H may want to get independent legal advice before deciding whether to accept my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 26 March 2026.

John Pattinson
Ombudsman