

The complaint

Mr and Mrs H say they were told by a representative of Chrystal Capital Partners LLP (Crystal) that it was acting as broker for a Canadian company that was seeking to raise money before going public when great profits would then be made. Mr and Mrs H bought shares in the company, but it did not go public and Mr and Mrs H have lost their money. Mr and Mrs H feel they have been 'swindled' out of their money which they want Crystal to repay to them.

What happened

Mr and Mrs H say that in August 2018 a representative of Crystal told them Chrystal was acting as broker for a company I will refer to as the Unlisted Company. The Unlisted Company was involved in the legal marijuana business in Canada.

Mr and Mr K have said they were introduced to the investment by a representative of Chrystal I will call Mr K.

On 23 August 2018 Chrystal emailed Mr H. Its email included:

"The round is closed and we raised US\$22m. Nevertheless – I am seeing if we can include you but need confirmation on the amount. As mentioned the only way would be if it's large enough – you mentioned £400K min?"

[The Unlisted Company] operates in South America and intends to become the largest producer and extractor of low cost, high grade medical marijuana product in the world...

The industry is entering a new phase, marked by an increasing number of countries, across all parts of the globe, legalising medical marijuana. This will cause a step change in demand, which large scale, low cost, producers in South America are best positioned to supply. [The Unlisted Company] intends to be market leader in South America, supplying users globally with high quality oils and extract.

It's a fascinating story in a new and fast-growing market where we believe early stage investors are going to do extremely well. Chrystal is investing USD\$750,000 of its own capital into the deal."

Mr and Mrs H say they were told they had to act quickly if they wanted to join the opportunity.

As I understand it, Mr and Mr H returned the signed subscription agreement to Chrystal on 29 August 2019.

Mr and Mrs H say this was the first investment they had made of this type and that they had only previously invested in property.

Chrystal has said that Mr and Mrs H discussed the investment with their financial adviser, a man I will call Mr D. In response (to our investigator) Mr H said:

“[Mr D] was not my financial advisor. He was a lawyer in our community who I asked to look at legal documents.”

Mr and Mrs H decided to go ahead with the investment. They signed documents to confirm they were high net worth investors – because, they say, of a recent inheritance – and invested nearly 600,000 Canadian Dollars which they say was their entire inheritance.

In July 2020 Mr and Mrs H contacted Chrystal to see if it was interested in helping to raise funds for an investment opportunity they were aware of. Chrystal has provided a copy of an email dated 20 July 2020 which is written in the first person, without any covering explanation, so it seems to be saying that Mr H had the opportunity to acquire a controlling interest in a “Stock Exchange quoted European financial institution” capitalised at 30 billion euros. The thrust of the email was that the company was not currently making the most of its potential and that the writer wanted to acquire a substantial interest in the company for three billion euros and had financing arranged for two billion and was looking to raise a further one billion. The prospects for the business were also discussed.

Mr H says he:

“approached Crystal on behalf of a community member who was seeking to fund a business start-up and having heard from [Mr K] how Chrystal raises so many millions I figured they may be able to help.”

(This potential investment did not proceed as between Mr and Mrs H and Chrystal.)

The Unlisted Company got into difficulties. I do not know all the details, but, apparently, as well as a crash in the value of medicinal cannabis which affected the sector there was an issue with alleged mismanagement in the Unlisted Company and the removal of its CEO and some board members. As I understand it, all (or most) shares issued in the earlier fund raising in which Mr and Mrs H (in effect) took part were effectively cancelled or written off as part of a restructuring of the company.

Some investors started to explore what action could be taken against the Unlisted Company. The investors obtained legal advice and for some investors things progressed to the point where they instructed solicitors to write a letter of claim and complaint to Chrystal. This letter was written on behalf of seven clients, including Mr and Mrs H as a single investment.

The solicitors wrote to Chrystal on 6 March 2024. They said Chrystal promoted the investment in the Unlisted Company without clearly explaining the risks and without checking matters such as their clients’ investment experience or assessing the suitability of the investment. They also said that any assessment of whether the client was a high-net-worth investor was made after the investment had been promoted. And if Chrystal had complied with the regulatory obligations on it, Mr and Mrs H (and the other client investors) would not have invested.

Chrystal did not reply straightaway.

Although the letter from the solicitors threatened legal proceedings, legal proceedings were not issued. Instead, Mr and Mrs H referred their complaint to the Financial Ombudsman Service in May 2024. Two other investors referred essentially the same complaint at the same time.

Chrystal responded to the solicitors on 3 June 2024. It made a number of points including:

- Chrystal does not have an existing relationship with the Unlisted Company.
- It understands the Unlisted Company is still solvent and still trading.
- Mr and Mrs H (and the solicitors' other clients) are not and have never been clients of Chrystal.
- A number of the solicitors' clients have invested with Chrystal's clients having confirmed their sophisticated client status.
- Chrystal followed Financial Conduct Authority (FCA) rules and guidance applicable at the time.
- Numerous warnings were given in relation to the investment.
- Each investor confirmed they should be treated as a sophisticated investor.
- The investment was in a start-up business in the cannabis industry operating in South America and any reasonable investor would regard this as a risky investment.
- The solicitors' clients were all known to each other and have invested in multiple deals together and have invested in other investments with similar risk profiles.
- Chrystal does use introducers who are paid commission. It also has FCA regulated representatives who will speak to potential investors.
- In Mr and Mrs H's case they made their investment after speaking with their financial adviser.
- Mr H and Mrs H are serial property investors. They also asked Chrystal in 2020 to help raise funds for a European listed entity with multibillion market capitalisation.
- Mr and Mrs H are sophisticated investors.
- Mr and Mrs H should contact the Unlisted Company for an update on their investment.

Mr and Mrs H's complaint was considered by one of our investigators. He thought the complaint should be upheld. He made a number of points including:

- Although the complaint had been made more than three years after Mr and Mrs H first became aware he had cause for complaint, the complaint was nevertheless made within six years of the events the complaint is about. The complaint had therefore been made within the relevant time limit.
- There is insufficient evidence to show that Chrystal advised Mr and Mrs H to make the investment.
- The complaint is about the regulated activity of arranging deals in investments under Article 25(1) Regulated Activities Order ("RAO") and so relates to an activity we can consider.
- Chrystal provided the service of arranging deals in investments to Mr and Mrs H. They are therefore clients of Chrystal and are eligible complainants.
- The investment (shares in an unlisted company) was a non-readily realisable security.

- Chrystal should not have promoted the investment to Mr M unless certain conditions applied. One of the conditions was that the client was a high-net-worth client (or a sophisticated client), and the second was that the rules relating to appropriateness had to be complied with.
- Chrystal had not complied with the rules relating to appropriateness.
- If Chrystal had carried out a reasonable assessment it would have concluded that the investment was not appropriate for Mr and Mrs H and the promotion would not have been made and they would not have invested.
- The appropriateness rules did allow Chrystal to warn clients that the investment was not suitable (and they could still choose to invest) but things reasonably would not have progressed to that stage.

Chrystal does not agree with the investigator. It has made a number of points in response including:

- It agrees with the investigator on the following points:
 - Mr and Mrs H were correctly categorised as high-net-worth clients.
 - It did not advise Mr and Mrs H to make the investment.
 - The assessment of the complaint should not be approached in terms of the suitability rules (COBS 9).
- Mr and Mrs H were not clients - they were corporate finance contacts.
- Chrystal did not carry on the regulated activity of arranging deals in investments since its acts were not causally connected to the investment.
- Chrystal did assess appropriateness, and Chrystal is entitled to rely on the representations made to it by Mr and Mrs H.
- Mr and Mrs H are sophisticated investors who manage and act as consultants to an investment group at their place of worship.
- They had said they were considering investing £1million. They reduced that investment to £346,000 after talking with another investor, Mr J, about the investment.
- Mr and Mrs H have been inconsistent in the account they have given to the investigator and have said for example that they lost all their inheritance when they told Chrystal the source of the investment money was from releasing equity.
- Mr and Mrs H's loss was caused by their own conduct in choosing to make the investment.

As a result of points made by Chrystal the investigator asked Mr and Mr H some further points and their responses included the following:

"We are not (and never have been) members of any investment group nor are we consultants or managers to any investors or groups..."

The [place of worship] we are connected with is a house of prayer, there are no investment groups affiliated with [it]...

"In 2017 [a close relation] died and left a house which would eventually ...leave us approx. £260K"

"At the same time we had in our account approx. £396k. This came from an equity release. We needed the majority of these funds for the refurbishment of one of our investment properties this left a significant sum for investing we also knew we would soon be receiving the inheritance money so we sought advice for how to invest, it was at this point that we turned to [Mr K] (whom I had met at a spiritual ceremony) he told us that the [Unlisted Company] was going public at which point the investment will double and if they acted very quickly he can "try to get us in".

At no point did we consider investing a million dollars as we didn't have this amount. However, initially [Mr K] said the only way to join this unique opportunity at such a late stage was to come in at a million minimum. As such we thought that maybe we can convince other family members to also invest and thereby achieve that sum. [Mr K] later said that it was fine to come in at the lower sum which is what we did.

*I have only ever spoken with [Mr J] **after** [original emphasis] the investment. I had felt that it was all done in a rush and under duress and pressure from [Mr K]. I mentioned my concerns to [Mr K], he said that [Mr J] was a billionaire and that he invested much more than us and as such I can be certain that this was a solid investment, I met [Mr J] simply to confirm he was indeed invested at the higher level. (I later learned that [Mr J] was on the board and controlled the company and as such was not exposed to risk. I only understood this afterwards).*

I only turned to [Mr D] after the funds were already sent when I realised it was done under duress, [Mr K] said that it was too late to get the money back at that stage and [Mr D] suggested I contact lawyers in Canada to see if I can get my funds back since the paper work wasn't finalised, I did not follow his advice because I was since 'reassured' by having met [Mr J]."

As the parties had not reached an agreement the complaint was referred to me and I issued a provisional decision. My provisional decision included the following:

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

I'm required to determine this complaint by reference to what I consider to be fair and reasonable in all the circumstances of the case. When considering what is fair and reasonable in the circumstances, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

I've considered all the points made by the parties. I have not however responded to all of them below; I have concentrated on what I consider to be the main issues.

The Financial Ombudsman Service is an informal dispute resolution process. Bearing that in mind I will not deal with each point relevant to my overall determination in detail given the view I come to below on what I consider to be a crucial point.

Before I can consider the merits of Mr and Mrs H's complaint there are two jurisdiction points I need to consider: whether the complaint relates to an activity we have jurisdiction over, and whether Mr and Mrs H are eligible complainants. (These points are considered and decided on the basis of the applicable rules not on the basis of what is fair and

reasonable in all the circumstances.)

Activity:

Like the investigator, I do not consider there is evidence that Chrystal acted in a way that amounted to advising Mr and Mrs H to invest in the shares of the Unlisted Company. While I appreciate that Mr and Mrs H felt encouraged to invest by Chrystal I also note that Mr and Mrs H have said they were introduced to the investment by Chrystal and that does seem to be what happened.

Chrystal was clearly involved in promoting the investment to Mr and Mrs H as an investment opportunity for them to consider - one it was hopeful would be a successful investment. But promoting an investment opportunity to a potential investor is not the same as advising them to make the investment and I have seen no evidence that Chrystal crossed the line into giving advice to Mr and Mrs H.

There is however still the regulated activity of arranging deals in investments. In my view it is clear from the subscription agreement and from the email correspondence between Mr and Mrs H and Chrystal that Chrystal had a central role in the process that led to the investor buying and receiving the shares. UK based investors had to apply for the shares via Chrystal. It was arrangements involving Chrystal that brought about the deal. These arrangements included the promotion of the investment, providing the subscription agreement document, receiving the completed applications, checking them, carrying out checks on the potential investor, passing vetted applications onto the Unlisted Company and making arrangements with the investor for payment for the shares (even though in practice those payments were not made to Chrystal itself).

In my present view Mr and Mrs H's complaint relates to the arranging activity by Chrystal under Article 25(1) or (2) RAO and is a complaint about an activity we may consider.

Were Mr and Mrs H customers of Chrystal?

Chrystal argues that Mr and Mrs H were not clients. While the point is noted, our jurisdiction is based on the undefined (in the rules) word 'customer' not the defined term 'client'. I do however accept that the two words are similar in meaning and are likely to overlap to a large degree.

Under the FCA's COBS rules part of the definition of the term client is a person to whom a firm provides or has provided a service in the course of carrying out a regulated activity. But guidance in the rules says that a 'corporate finance contact' is not a client. The guidance says this is the case because a firm does not provide a service to such a contact.

And Chrystal argues that Mr and Mrs H are not clients because they are corporate finance contacts.

Without getting bogged down in the detail, corporate finance business is where a regulated firm carries on investment business relating to the offer of securities by the issuer of those securities helping the issuer to raise capital. In these situations the issuer is the firm's client. And the regulated firm typically engages with corporate finance contacts – the investors to whom the investment is promoted for the issuer client.

However, this does not mean that the people to whom such investments are promoted must be corporate finance contacts and cannot be clients of the regulated firm. Corporate finance contact is a defined term and the requirements of that definition must be satisfied

for the investor to be a corporate finance contact.

The definition of a corporate finance contact in the FCA's rules is as follows:

“(when a *firm* carries on *regulated activities* with or for a *person* in the course of or as a result of either carrying on *corporate finance business* with or for a *client*, or carrying on *corporate finance business* for the *firm's* own account) that *person* in connection with that *regulated activity* if:

(a) the *firm* does not behave in a way towards that *person* which might reasonably be expected to lead that *person* to believe that he is being treated as a *client*; and

(b) the *firm* clearly indicates to that *person* that it:

(i) is not acting for him; and

(ii) will not be responsible to him for providing protections afforded to *clients* of the *firm* or be advising him on the relevant transaction.”

Again, without going into detail, I am not satisfied that all the requirements of the above definition were satisfied. In my view Mr and Mrs H's dealings with Chrystal were such that it did not make things clear that it was not acting for them in arranging their investment.

In my present view Mr and Mrs H were not corporate finance contacts, and they were clients for the service of arranging their purchase of the shares in the Unlisted Company. I also consider that Mr and Mrs H were therefore customers of Crystal in relation to the matter about which they complain. And as Mr and Mrs H were, when making the investment, acting for purposes outside their trade or profession etc, they were consumers (for the purposes of our jurisdiction rules) and so they are eligible complainants.

I am satisfied that Mr and Mrs H's complaint can therefore be considered.

The investment in the unlisted shares:

Although I have said that I do not think Mr and Mrs H were corporate finance contacts, it is still the case that this was not a routine investment made in a normal way. And in my view Mr and Mrs H did know that. This is an important point that I will return to.

As this was not a normal advised investment the normal rules about the suitability of advice in COBS 9 do not apply. This is also an important point. It was not Chrystal's role to ensure the investment was suitable for Mr and Mrs H.

The shares in the Unlisted Company were however a non-readily realisable security and the appropriateness rules in COBS10 do apply.

Appropriateness:

A first point to make is that appropriateness is not the same as suitability – it is not an assessment of whether the proposed investment is suitable for the investor's objectives, attitude to risk etc. An appropriateness assessment is a determination of whether the client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service offered or demanded (COBS 10.2.1(R)).

It is not clear that Chrystal did carry out an appropriateness assessment as required by

COBS 10 in a formal and structured way although I accept that some form of assessment did take place. Mr K has said that he met with Mr and Mrs H at a non-investment related event but that they talked about investment matters and Mr K understood from that conversation that Mr and Mrs K were likely to be high net worth and sophisticated investors.

It should also be noted that an appropriateness assessment does not necessarily mean that only investments of a type an investor has made before are appropriate. The crux of the issue is about understanding the risks involved in the investment.

In this case the investment under consideration was an investment in shares in an unlisted company in Canada that was involved in medicinal marijuana production in South America. The company had no track record and the sector was an emerging or developing area. This was an obviously high-risk investment and I consider it implausible that Mr and Mrs H would not have been aware that the investment was high risk. I also consider it implausible that Mr and Mrs H will not have understood that in the worst case scenario they could lose all of the money they invested – although I accept they will have considered that outcome unlikely.

But in the event Mr and Mrs H do seem to have lost all the money they invested in the shares. This was apparently because of the following factors:

- A “crash” in the medicinal marijuana sector affecting all businesses in the sector.
- Alleged mismanagement within the Unlisted Company.
- The Unlisted Company’s action in “writing off” all the shares issued in the fund raising in which Mr and Mrs H’s invested. (This was apparently justified on the basis it was necessary to save the company although some investors suspect the power was misused.)

It is my view that Mr and Mrs H were aware that the process around the investment they were considering was not normal. It was something they were being invited to take part in as a special opportunity. That is not normal. Nor are very large minimum investment sums. Nor is getting lawyers to check potential investment documents a normal step for unsophisticated investors.

Also although I note that Mr and Mrs H say they are not members of any investment groups or consultants to any investment groups I note two points that seem partially inconsistent. First, Mr and Mrs H at least thought about the possibility of investing as a group with other family members when they thought the minimum investment might be \$1 million.

The other is that a community member with a very high value investment proposition apparently thought it worthwhile to discuss it with Mr and Mrs H, who, in turn contacted Chrystal. Although this was after the investment in the Unlisted Company shares it might indicate a greater interest in investment matters than Mr and Mrs H suggest. As too does their willingness to discuss such matters at a non-investment event with someone (Mr K) they had just met for the first time.

In the circumstances, if Chrystal had carried out a formal and structured assessment of Mr and Mrs H it *might* have concluded that they had the necessary knowledge and experience to understand the risks involved in the investment. But that said Mr and Mrs H have said they have no investment experience apart from property investments. I appreciate that Chrystal disputes this but I accept that it is possible that if Chrystal had carried out an appropriateness assessment in accordance with the rules it *might* have concluded that the investment was not appropriate for Mr and Mrs H.

In such circumstances a firm is not obliged to prevent its clients from investing. Chrystal was permitted to warn a client that an investment is not appropriate for them. The client may then make a decision about whether or not to continue. And if the client decides to go ahead the firm then has to decide how to proceed.

I have considered Mr and Mrs H's actions in this matter. They were introduced to the investment and seemed to have been very keen from the outset. For example, Mr and Mrs H say they were initially told the likely minimum investment would be \$1 million (or £1 million) – such a large sum that they thought about trying to “convince” other family members to also invest. This shows they were unlikely to give up on the idea easily.

As already mentioned, Mr and Mrs H knew this was not a routine investment made in the routine way. And they made the decision to invest a large sum of money in the investment without seeking independent investment advice.

In my view Mr and Mrs H would have been aware at the time that most people would not have made such an investment, and that normal investment advisers in a normal investment advice process would most likely have advised them against it and would more likely have recommended something more mainstream. While Mr and Mrs H may not have applied their minds to the issue in those terms at that time, I do think it is more likely than not that if they had been asked by a concerned friend (with a more cautious outlook) whether they thought it was a normal investment that a normal adviser would say was suitable for them, they would have said no but that they still thought it was a good idea. I do not say this is the test for appropriateness as such, but I do think this is an indication of how Mr and Mrs H were likely to have reacted to a warning that the investment was not appropriate for them.

In all the circumstances I am not able to find that it is more likely than not that Mr and Mrs H would have decided not to invest if Chrystal had warned them that the investment was not appropriate for them.

And in the circumstances surrounding the investment in this case – the promotion only to high net worth and/or sophisticated investors, and the obviously high risk nature of the investment - I do not consider that Chrystal was obliged to decide not to allow Mr and Mrs H's investment if they chose not to heed a warning that the investment was not appropriate.

Further, I cannot see that the factors that seem to have led to the failure of the investment indicate that the investment must have been so fundamentally flawed in some way that it should never have been promoted by Chrystal. Neither the solicitors, when acting for the group who complained to Chrystal, nor the complainants who referred their complaints to us have referred to any such fundamental issues that should have been discovered with reasonable due diligence. Also, apart from the investment being obviously high risk, investors did have an opportunity to carry out their own due diligence on it before investing.

Mr and Mrs H have said that they felt pressured into making the investment, but I cannot see that they were subjected to unfair pressure. Time seems to have been short and things seemed to have proceeded at pace as Mr and Mrs H did not make contact with Chrystal until after the Unlisted Company's capital raising target had been reached. But Mr and Mrs H were keen to invest and were prepared to invest on that basis. I cannot see they were pressured into doing so or did so under duress.

In all the circumstances I do not consider that it is fair and reasonable to require Chrystal

to compensate Mr and Mrs H for the losses they have suffered as a result of their investment in the Unlisted Company.

Mr and Mrs H do not agree with my provisional decision and have made a number of points in response including the following:

- Their certification as high net worth investors was signed after funds were paid over. The certification should have informed the advice process. It should not have been a retrospective tick box exercise.
- Chrystal's actions (and the provisional decision) conflate wealth with investment knowledge and sophistication. Mr and Mrs H are not serial investors. Their only assets consisted of a modest property portfolio and this was their first investment in stocks and shares.
- The provisional decision notes Mr and Mrs H's keenness to take the opportunity presented by Chrystal and possibly involve family members as a route to meeting the \$1 million threshold as evidence of membership of an investment group. A group of related individuals pooling resources is not a genuine investment group or a sophisticated collective. It was a reaction to the broker's demands not evidence of professional investment activity.
- The initial discussions with Mr K, and the introduction for Mr K and Chrystal to a community member with a high value investment proposition, were simple cases of networking and introductions not financial expertise.
- Mr and Mrs H did not consult an independent adviser because they relied on Mr K's statements and because of the time pressure conveyed to them given that the funding round had closed.
- If Chrystal had carried out an appropriateness assessment it would have concluded the investment was not appropriate.
- If Chrystal had given a warning and been reluctant to facilitate the investment for Mr and Mrs H it *"would have put into question the practicality of their involvement and without [Chrystal], we would have struggled to liaise with the relevant parties in order to finalise the investment."*
- Mr and Mrs H dispute any suggestion they were desperate to make immediate use of *"inheritance funds and the proceeds from property investments. At no point did [they] convey such a sentiment. Mr H struck up a conversation with Mr K initially, in which investing recently acquired funds were discussed. If Mr K truly believed there were suitable opportunities, he had a duty to comprehensively investigate our position and propose investments accordingly..."*

Chrystal did not make any comments in response to my provisional decision.

What I have decided about jurisdiction - and why

I am satisfied that this complaint is one we can consider for the reasons set out in my provisional decision above.

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.

As explained in my provisional decision, I'm required to determine this complaint by reference to what I consider to be fair and reasonable in all the circumstances of the case. When considering what is fair and reasonable in the circumstances, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

I've considered all the points made by the parties. I have not however responded to all of them below; I have concentrated on what I consider to be the main issues.

Mr and Mrs H think it is clear Chrystal has not complied with the rules in their case so it should be found responsible for the losses they have suffered. But in considering what is fair and reasonable in all the circumstances it is right to think about what would have happened if Chrystal had complied with the obligations on it.

Chrystal formed a view about Mr and Mrs H through their conversations with Mr K. It thought they were likely to be high net worth and/or sophisticated investors. Mr and Mrs H dispute that they are sophisticated investors but accept they met the definition of high net worth investors at the time and they did sign a declaration to that effect.

Mr and Mrs H point out that this was after they had sent off the funds to invest. They consider this a point that makes a difference. They say the assessment of their net worth/financial position should have informed the advice process.

However, Mr and Mrs H were not in a usual advice process. And it is my view as set out in the provisional decision, that Mr and Mrs H did understand that they were involved in something non-mainstream both in terms of the process and in terms of the investment.

A non-readily realisable security was promoted to Mr and Mrs H to decide, on a non-advised basis, whether to invest. Such investments may not be promoted to all retail investors. But one of the categories of investor to whom such investments could be promoted was high net worth investors. And Mr and Mrs H were high net worth investors.

Accordingly, any issues about the timing of the assessment of Mr and Mrs H as high net worth investors is not a crucial point in their case. If the relevant declaration had been completed earlier in the process the investment would still have been promoted to them.

As for whether the investment was appropriate, this is an assessment of whether Mr and Mrs H had the necessary experience and knowledge in order to understand the risks involved in relation to the product or service demanded. It is not the same as deciding whether an investment is suitable for an investor.

It is the case that Chrystal did not carry out an appropriateness assessment in a formal and structured way as envisaged by the rules. But what would have happened if it did have a process that was more formal or structured and did meet the requirements in COBS 10? It is Chrystal's position that the investment was appropriate and so would have been assessed as appropriate for Mr and Mrs H. And it's Mr and Mrs H's position that the investment was not appropriate so would have been assessed as not appropriate for them.

I accept it is possible that Chrystal would have concluded that Mr and Mrs H did not have the necessary knowledge and experience in the investment field relevant to an investment in the

Unlisted Shares and so would have decided that the investment was not appropriate for them. And so I have considered what would have happened in that case.

If Chrystal had concluded that the investment was not appropriate it should have given Mr and Mrs H a warning to that effect. But it was not obliged to also say, for example, that it was unwilling or reluctant to arrange the investment when giving that warning. It could give the warning, and then decide what to do in the light of Mr and Mrs H's response.

And my view remains, as set out in my provisional decision, that it is more likely than not that if Chrystal had given a warning to Mr and Mrs H they would have asked to proceed with the investment. And it remains my view that in the circumstances of this case Chrystal was not obliged to refuse to accept those instructions.

In all the circumstances I do not consider that it is fair and reasonable to require Chrystal to compensate Mr and Mrs H for the losses they have suffered as a result of their investment in the Unlisted Company.

My final decision

For the reasons given in my provisional decision and above, we can consider Mr and Mrs H's complaint against Chrystal Capital Partners LLP, but I do not uphold the complaint.

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 9 April 2026.

Philip Roberts
Ombudsman