

The complaint

Mr M says Chrystal Capital Partners LLP (“Chrystal”) promoted an investment to him without checking it was suitable or appropriate for him. He says any checks it did make were after the investment had been promoted to him.

What happened

Mr M has a friend I will call Mr L who has a connection with Chrystal. Mr L is an investor, and he introduces other potential investors to Chrystal and he receives payments for such introductions.

In 2018 Mr L told Mr M about an investment in a Canadian company in the legal marijuana sector, which was raising “pre-IPO capital”. I will call this company the Unlisted Company. Mr M was told Chrystal was acting as broker for the Unlisted Company.

Mr M understood the Unlisted Company was involved in the legal production of marijuana for medicinal purposes. Mr M says Mr L told him other companies in the sector had approached Chrystal Capital and that it had chosen to promote it above all those other businesses and that it was a golden opportunity as the company would be listing shortly after.

As well as discussing the Unlisted Company investment with Mr L, Mr M had dealings with Chrystal direct and attended a presentation given by the Unlisted Company.

Mr M asked Chrystal if it could “*ping me a presentation package over for [the Unlisted Company] see [sic] who I can get on board.*” He also said he would like to make an order for £150,000 personally and asked Chrystal to send him the contract info which he would need to “*get looked at as well*”.

Mr M emailed his lawyer to say that he had been “*invited to invest in a company that is being [sic] starting manufacturing medical marijuana in Latin America.*” He also said he knew a person at Chrystal and two friends who had invested in a previous company in the sector. He said he was thinking of investing, and he asked his lawyer to look over the subscription agreement.

Mr M also introduced a friend I will call Mr A to the idea of investing in the Unlisted Company. Mr M said to Mr A that he was investing “*through invitation from a friend.*” Mr M told Chrystal Mr A was considering an investment of around US\$ 250,000-500,000. Mr M referred to

Mr A, in an email to another friend or associate, as “*a friend of mine who’s an investor pro*”. Mr M has said he had no real investment knowledge or experience at this time.

Mr M and Mr A exchanged emails with Chrystal – in particular Mr A asked how the Unlisted Company would be able to comply with the production laws in the producer countries and the import laws in Canada. Mr A’s question and the answer Chrystal obtained from the Unlisted Company were copied to Mr M.

In the event Mr A made an investment of around £50,000 and Mr M was paid commission by Chrystal for introducing that business to it.

Mr M invested around £145,000 in the Unlisted Company in July 2018. This involved signing a subscription agreement between him and the Unlisted Company. Chrystal was referred to as the Financial Adviser in that agreement.

The subscription Agreement was nearly 40 pages long (including Schedules) and a number of points were made in the agreement including:

- An agreement that the investor had not relied on the Financial Advisor for investment advice and that the investor had taken their own advice from their advisor or elected not to seek advice.
- The Unlisted Company had granted the Financial Advisor an option to purchase shares in the offer.
- A risk warning that the investment involved significant risk of complete loss and agreement that the investor was capable of evaluating the merits and risks of the investment and could bear the economic risk of the investment.
- A UK investor such as Mr M must sign Schedule C and Appendix A (High Net Worth) or B (sophisticated investor) declarations.
- The application process for UK investors involved returning signed documents and making payment to the Financial Advisor (Chrystal).

Mr M returned his completed application without completing the high-net-worth declaration and Chrystal emailed him to ask him to complete a declaration by email which he did after receiving confirmation of his annual income from his accountant. Mr M said he had inherited a Self-Invested Personal Pension from which he could draw £650,000 tax free so he said he did meet the relevant criteria and his income from his business and his pension also exceeded the minimum income requirement.

Chrystal gave Mr M the details of the account in Canada he was to make his payment to (rather than to Chrystal itself).

Later in 2018 Chrystal sent details of another investment opportunity in the same sector to Mr M and Mr L as introducers. Chrystal says Mr M showed an interest in investing although in the end Mr M did not invest.

As I understand it, Chrystal's relationship with the Unlisted Company ended in 2019. At some point 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 M took part were effectively cancelled or written off as part of a restructuring of the company. Mr M has mentioned that the details are unclear because of a non-disclosure agreement between the company and its former CEO.

Some investors started to explore what action could be taken against the Unlisted Company. That group included Mr L who, as mentioned, had also invested in the company. Initially at least Chrystal was also involved as it too had shares in 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 (which included one joint investment which I have

referred to as one investment/client for these purposes) including Mr M. This group did not include Mr L.

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 M (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 M referred his complaint to the Financial Ombudsman Service in May 2024. Two other investors referred essentially the same complaint at the same time. Mr M has mentioned that his wife also invested £20,000 in the shares of the Unlisted Company. That matter is not included within this complaint and I have not considered that investment.

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 that the Unlisted Company is still solvent and still trading.
- Mr M (and the solicitors' other clients) is/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.
- Mr M was introduced by Mr L. They were friends and so an assessment was made about whether Mr M was a sophisticated investor before the investment was introduced to Mr M.
- Mr M is a sophisticated investor and he spoke with FCA authorised representatives of Chrystal and attended a presentation by the Unlisted Company itself before he invested. The risks were explained verbally and in writing.
- Mr M became an introducer himself and introduced a friend who invested in the Unlisted Company and was paid a commission for doing so.
- Mr M should contact the Unlisted Company for an update on his investment.

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

- Although the complaint had been made more than three years after Mr M 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 M 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 M. Mr M is therefore a client of Chrystal and is an eligible complainant.
- 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 M and the promotion would not have been made and Mr M would not have invested.
- The appropriateness rules did allow Chrystal to warn Mr M that the investment was not suitable (and Mr M 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 M was correctly categorised as a high-net-worth person.
 - It did not advise Mr M to make the investment
 - The assessment of the complaint should not be approached in terms of the suitability rules (COBS 9).
- Mr M was not a client - he was a corporate finance contact.
- 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 M.

- Mr M discussed the investment with some of his contacts including his lawyer. And he felt sufficiently comfortable about the investment to introduce it to his friend who is an experienced investor.
- Mr M's loss was caused by his own conduct in choosing to make the investment.

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 M'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 M is an eligible complainant. (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 M to invest in the shares of the Unlisted Company. While I appreciate that Mr M felt encouraged to invest by Mr L's words and conduct, there is no clear allegation of acts by Chrystal that amount to investment advice. Nor do I consider that Mr M reasonably thought that anything Mr L said in terms of expressing an opinion about the investment was, or was meant to be, advice on behalf of Chrystal.

Chrystal was clearly involved in promoting the investment to Mr M as an investment opportunity for him 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 M.

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 M 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 M'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.

Was Mr M a customer of Chrystal?

Chrystal argues that Mr M was not a client. 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 M is not a client because he is a corporate finance contact.

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 M's dealings with Chrystal were such that it did not make things clear that it was not acting for him in arranging his investment.

In my present view Mr M was not a corporate finance contact, and he was a client for the service of arranging Mr M's purchase of the shares in the Unlisted Company. I also consider that Mr M was therefore a customer of Chrystal in relation to the matter about which he complains. And as Mr M was, when making the investment, acting for purposes

outside his trade or profession etc, he was a consumer (for the purposes of our jurisdiction rules) and so is an eligible complainant.

I am satisfied that Mr M's complaint can therefore be considered.

The investment in the Unlisted Company

Although I have said that I do not think Mr M was a corporate finance contact, it is still the case that this was not a routine investment made in a normal way. And in my view Mr M 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 M.

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

Appropriateness:

Another point to note 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 M was introduced to Chrystal who will have had some idea of Mr M's financial situation just as Mr M introduced a friend to Chrystal about whom he had some idea of his financial situation.

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 M would not have been aware that the investment was high risk. I also consider it implausible that Mr M will not have understood that in the worst case scenario he could lose all of the money he invested.

And in the event Mr M does seem to have lost all the money he 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 M invested. (This was apparently justified on the basis it was necessary to save the company but Mr M and other investors suspect the power was misused.)

It is my view that Mr M was aware that the process around the investment he made was not normal. It was something he was being invited to by a friend. That is not normal. Nor is involving your lawyer in reviewing investment documents. This is all relatively sophisticated and Mr M was happy to participate in this process and appears to have been relatively comfortable in it and confident enough in that process to introduce Mr A to the investment.

In the circumstances, if Chrystal had carried out a formal and structured assessment of Mr M it *might* have concluded that Mr M had the necessary knowledge and experience to understand the risks involved in the investment. But that said Mr M has said he has little investment experience. 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 M.

In such circumstances a firm is not obliged to prevent the client 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 M's actions in this matter. He was introduced to the investment by a friend – he referred to it as being invited to invest in the shares. He knew other people who were investing. He checked matters with his lawyer. He was sufficiently interested and motivated that he decided to become an introducer for Chrystal meaning he told Mr A about the investment and, with Mr A's agreement, introduced Mr A to Chrystal in order to consider the investment. Mr M was paid a commission for that introduction by Chrystal

As already mentioned, Mr M knew this was not a routine investment made in the routine way. And Mr M made the decision to invest a large sum of money in the investment.

The investment was obviously high risk and I consider it implausible that Mr M was not aware that that was the case. I think Mr M would have been aware of this himself and, more likely than not, also from his conversations with Mr A who seems to have been a more experienced investor than Mr M.

In my view Mr M 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 have advised him against it and would more likely have recommended something more mainstream. While Mr M may not have applied his mind to the issue in those terms at that time, I do think it is more likely than not that if he had been asked by a concerned friend (with a more cautious outlook) whether he thought it was a normal investment that a normal adviser would say was suitable for him, he would have said no but that he 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 M was likely to have reacted to a warning that the investment was not appropriate for him.

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

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 M's investment if he 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.

In all the circumstances I do not consider that it is fair and reasonable to require Chrystal to compensate Mr M for the losses he has suffered as a result of his investment in the Unlisted Company.

Mr M does not agree with my provisional decision and has made a number of points in response including the following:

- The appropriateness regime under COBS 10 is a gatekeeping obligation. Its purpose is to prevent unsuitable investments from proceeding at all, not merely to inform investors of risk effectively after the decision to invest has been made.
- Where an investment is inappropriate the relevant question is whether it should be permitted to proceed, not whether an investor might hypothetically have chosen to proceed despite a warning.
- In this case the promotion preceded any regulatory gatekeeping. Mr M was invited to attend a promotional meeting before any client categorisation, appropriateness assessment, or enquiry into Mr H's knowledge or experience had been undertaken.
- Mr H's subsequent conduct is consistent with reliance on regulatory safeguards rather than informed acceptance of risk.
- Chrystal's communications emphasised prior success in the sector and expressed confidence that the investment would deliver similar returns.
- The promotional statements materially shaped Mr H's expectations.
- Against that background the assumption that Mr H invested regardless of regulatory compliance is not supported by the contemporaneous evidence.
- The preventative role of the appropriateness regime should not be overlooked.
- The correct question is whether Mr H should ever have been invited into the process that led to the investment.
- The sequencing matters because it determines whether subsequent actions can fairly be treated as evidence of independent decision making or whether they are the foreseeable product of a process that should not have been permitted to begin.

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 M, in effect, argues it is clear Chrystal has not complied with the rules in his case so it should be found responsible for the losses he has 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.

A non-readily realisable investment may be promoted to limited classes of investor under COBS 4.7.7R. Chrystal says it did consider that Mr M was a high net worth and/or sophisticated investor before the investment was promoted to him. Mr M disputes that he is a sophisticated investor but accepts he met the definition of a high net worth investor and he signed a declaration to that effect.

I accept that Mr M signed that declaration after the investment had been promoted to him but any issue about the timing of that declaration is not crucial because Mr M was willing to declare he was a high net worth investor. Mr M would therefore have signed the same declaration if asked to earlier in the process. And the investment would have been promoted to him just the same. So it cannot be said that Mr M should never have been at the meeting where the investment was promoted.

There was no obligation to assess appropriateness before the promotion could be communicated to a client. The second condition in DISP 4.7.7.R was that the firm who arranges the investment will comply with the rules in COBS10.

The requirement to assess appropriateness in COBS 10 applies when a firm arranges or deals in a non-readily realisable security for retail investors. So if Mr M chose to invest, an assessment should have been made before the investment was arranged by Chrystal.

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 Chrystal 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 M. And it's Mr M's position that the investment was not appropriate so would have been assessed as not appropriate for him.

I accept it is possible that Chrystal would have concluded that Mr M 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 him. 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 M a warning to that effect. But it was not obliged at that stage to end matters and prevent Mr M

from investing. It could give the warning, then decide what to do in light of Mr M's response to the warning.

I appreciate that Mr M's conduct after the promotion will have been influenced by the promotion. But as already mentioned a promotion can precede an assessment of appropriateness in a compliant process. And I also do not accept that Mr M lacked personal agency in what followed. I cannot accept that he was willing to make a large investment without giving the matter serious thought. Mr M took the precaution of getting documents checked by a lawyer (even if not formally instructed to give legal advice). Mr M also introduced the investment to a friend he regarded as an experienced investor who did ask further questions about the investment in email exchanges cc-ed to Mr M.

My view remains that Mr M was aware this was not a routine investment made in a routine way. 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 M that the investment was not appropriate for him in accordance with COBS 10, he would still 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 M for the losses they have suffered as a result of his investment in the Unlisted Company.

My final decision

For the reasons given in my provisional decision and above, we can consider Mr M'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 M to accept or reject my decision before 9 April 2026.

Philip Roberts
Ombudsman