

## **The complaint**

Mrs M complains to Gallium Fund Solutions Limited that she lost the money she invested into a three year bond issued by Basset & Gold Plc ("B&G plc"). She says she thinks the bond was mis-sold to her, and would like to be compensated for her loss.

## **What happened**

### ***The B&G Plc Bond***

Mrs M invested in a Basset & Gold Plc 3 Year Compounding High-Yield IFISA Bond. Sales of this bond were dealt with by Basset Gold Limited ("BG Ltd"), a separate business from B&G Plc, the issuer of the bond. BG Ltd arranged applications for investments in the bond, through a website it operated - [bassetgold.co.uk](http://bassetgold.co.uk). And it was responsible for advertising/marketing the bond. Potential investors were also able to call BG Ltd, to discuss the bond.

The bond was non-readily realisable and therefore there were rules restricting who it could be promoted to and on how to test whether the investment was appropriate for the potential investor. BG Ltd's online application process took steps to meet the obligations created by these rules. I have set out details of the application process below and will set out, and consider, the rules in my findings.

Neither B&G Plc nor BG Ltd was authorised by the Financial Conduct Authority (FCA) in its own right at the time of Mrs M's investment. But both were appointed representatives of Gallium Fund Solutions Limited ("Gallium"), which was an FCA authorised business. B&G Plc and BG Ltd were appointed representatives of Gallium from 17 February 2017 to 28 February 2018. As such, Gallium is responsible for a complaint about either business which is about the acts and omissions which took place during this time, for which Gallium accepted responsibility.

I have seen copies of the appointed representative agreements between Gallium and B&G Plc and BG Ltd – both of which are dated 17 February 2017. I will set out below why I think Mrs M's complaint is about something for which Gallium accepted responsibility.

Gallium also played a role in relation to the bond in its own right – it was responsible for approving BG Ltd's marketing and promotional material relating to the bond. Gallium has confirmed that the promotional material included the Invitation Document (which was the formal financial promotion document for the purposes of Section 21 of the Financial Services and Markets Act 2000), [bassetgold.co.uk](http://bassetgold.co.uk), and online advertising material (such as Google and Facebook adverts) issued by BG Ltd.

### ***Mrs M's investment in the bond***

Mrs M visited [bassetgold.co.uk](http://bassetgold.co.uk) around early August 2017. Soon after, she got in touch with BG Ltd to find out more about the products on offer. A representative then emailed her some information and called her on 10 August 2017 to see if she was interested in what was described as an innovative finance ISA (this seems to refer to the option of putting the bond

in an ISA wrapper). Mrs M hadn't seen the email but found it during the call – she said she would download the information and look at it. She asked how she ought to get in touch after doing so and the representative said she could reply to the email. The representative then asked Mrs M if she had any questions while they were on the phone – Mrs M asked some questions about how long B&G Plc had been trading, about the application process and about what product would provide compounded growth – Mrs M was told she'd receive £2,010 if she invested £10,000 for three years.

The representative then offered to talk Mrs M through the application process which was expected to take around ten minutes. Mrs M agreed and so her application was submitted through the website on 10 August 2017.

The bond Mrs M invested in offered an interest rate of 6.7% per year, with the invested capital and compounded interest to be returned after 3 years. Mrs M decided to invest £10,000.

Mrs M says the money she invested came from a cashed in pension, and that she didn't have any prior investment experience. She wanted her money to work harder for her, and thought the bond would provide a good interest return. Mrs M also says she was not told how the funds she invested would be used and it didn't occur to her that there was the chance she'd lose all of the money she was investing – instead she took comfort from BG Ltd being regulated and thought that meant her money would be safe, with the worst case scenario being that she might get less interest than expected.

On 8 January 2019, B&G Finance Limited (which by that point had taken on the role of BG Ltd), sent an email to all investors then holding B&G Plc bonds. That email included the following:

*“To date the vast majority of lending has been to an FCA regulated lender that currently holds approximately 36,000 consumer loans. We are happy with the way that investment is performing, and the underlying spread of loans across tens of thousands of borrowers provides strong levels of predictability and resilience.”*

*“As Basset & Gold Plc is currently predominantly invested in a single lender, it is our responsibility to ensure that you are aware of the associated risk, known as “Concentration Risk”. It might help to explain this risk if you think of the goose that laid the golden egg. It was a great asset, but it only took one goose to die for the asset to dry up. Basset & Gold's investment team has performed due diligence on more than 40 opportunities over the past year. Its investment philosophy has been to accept the risk of holding one good asset, rather than diluting quality in order to improve diversification. We hope that this will translate into improved diversification over time, but as an investor you should be aware that Basset & Gold will only proceed with an investment when they are happy with it, even if that prolongs the Concentration Risk.”*

This refers to the fact that nearly all the money invested in B&G Plc bonds had been lent to one short term and pay day lender, called Uncle Buck. Following action by the FCA, Uncle Buck went into administration in March 2020 - and B&G Plc went into administration shortly afterwards. As a result, Mrs M has not had her invested capital returned to her.

### ***The online application process***

I have seen an archive of the website [bassetgold.co.uk](http://bassetgold.co.uk) from around the time Mrs M made her investment. This shows consumers such as Mrs M would have arrived at the home page of [bassetgold.co.uk](http://bassetgold.co.uk), which carried the title “Basset & Gold | Your investment Goals, Achieved!” and were invited to click a “LEARN MORE” button beneath each of three different

bond products, one of which was the Compounded High Yield Bond Mrs M invested in. The homepage continued:

### ***“What are the Basset & Gold Fixed Monthly Income Bonds?”***

*Basset & Gold was setup by a team of seasoned professionals with decades of experience in finance, in order to provide financing for online and peer to peer lending platforms and loans. We look to provide every day investors with the opportunity to take advantage of an offer that has **security levels previously available only to institutional and ultra-high net worth investors**, and gain attractive returns from as little as £1,000 by purchasing the Basset & Gold bonds.*

### ***How are the funds used?***

*Basset & Gold is seeking funding in order to expand its business and lending capabilities. These include investing in, and providing facilities for online lending and peer-to-peer platforms and loans. Basset & Gold aims to get institutional returns and gain access to opportunities that are not readily available to everyday investors.*

### ***At a glance:***

*The Basset & Gold Bonds are designed to be a straightforward investment. Bondholders receive a predetermined fixed interest rate, which is paid every month, six months or at maturity, depending on the option chosen. At maturity, the full amount of your investment will be repaid. All interest is paid net of basic tax calculated at 20%, except in the case of taxfree investors. The Basset & Gold Bond is non-transferable and cannot be sold or traded. Bondholders may submit a request to Basset & Gold that their bond be terminated early. All requests are subject to liquidity and are considered at the discretion of the company's management.*

- *Minimum investment is £1,000 and thereafter in multiples of £10.*
- *Bonds are available to UK-based individuals, companies, charities and trusts*
- *The Basset & Gold Fixed Monthly Income Bond may be placed in a Self-Invested Pension Plan (SIPP) subject to the investment policy and procedures of the relevant SIPP trustee.*

*Before you subscribe to one of the Basset & Gold Bonds, you should make sure that you fully understand the risks which are set out in the Invitation Document and you should determine whether the investment is suitable for you on the basis of all the information contained therein. In the event that the company becomes insolvent, you may lose some or all of your investment. If you are in any doubt about the contents of the Invitation Document, this website, or the action you should take, you are strongly recommended to consult a professional financial advisor.*

### ***Frequently Asked Questions***

#### ***Who is Basset & Gold?***

*Basset & Gold is a UK registered Public Limited Company (Registration number 05433451) that specialises in financing online and peer-to-peer lending. Our registered address is 6 Percy Street, London W1T 1DQ. For more details, click [\[link\]](#)*

#### ***Are the Basset & Gold Fixed Income Bonds authorised and regulated by the FCA?***

*The Basset & Gold Fixed Income Bond program is approved as a financial promotion for UK publication by Gallium Fund Solutions Limited who are authorised by the Financial Conduct*

Authority (FCA) to conduct investment business (FRN: 431709).

### **What are the Basset & Gold Fixed Income Bonds?**

*The Basset & Gold Fixed Income Bonds are a straightforward investment. Bondholders lend the company money in return for a fixed rate of interest paid every month, in the case of 3 Year Bonds and 5 Year Bonds, and every six months in the case of 30 Day Easy Access Bonds. For more information on the investment options available to you, click [link].*

### **Who do we lend to?**

*The B&G Guaranteed Income Bond seeks to maximise capital by initially focusing on short-term lenders who provide high returns, and later expanding to various verticals including invoice finance, small- to medium-sized enterprise lending, and both long- and short-term consumer lending.*

### **What is a SIPP?**

*SIPP stands for Self Invested Personal Pensions and Basset & Gold Guaranteed Income Bonds are suitable for these. However, this does depend on the SIPP's trustee investment policy and you should consult your SIPP provider for further details.*

### **I want to invest, can you help me understand the risks?**

*All investments carry some degree of risk. But we believe that our institutional level of protection, combined with our system of "ring fencing" your capital, affords you a level of protection which rivals that of any bank or building society. For more information, please review the Risk Factors section in the Invitation Document available through the application section.*

### **How do I invest?**

*Applying is simple and should not take more than a few minutes. You should start off by registering online and follow the instructions to apply. Once completed you can purchase your bonds by bank transfer, debit card (if available to you) or cheque. We do not accept subscription in cash.*

### **Are there any limits on who can purchase the bonds?**

*The bonds are available to any individual who is over 18 and resides in the UK (excluding the Channel Islands). We also accept trusts or companies that are residents in the UK and are not prevented by law against obtaining or holding the Basset & Gold Guaranteed Income Bonds. For more information, click here."*

On this page consumers were invited to press a "INVEST NOW!" button, which begun the application process.

I have seen screen prints of each stage of the online application process. These show that consumers such as Mrs M first arrived at a page titled "APPLY NOW TO BECOME AN INVESTOR" which asks the consumer to provide some basic details. The next page is titled "PLEASE SELECT THE MOST ACCURATE INVESTOR PROFILE FROM THE LIST BELOW" and asks the consumer to select from "EVERYDAY INVESTOR", "SELF CERTIFIED SOPHISTICATED INVESTOR", "ADVISED INVESTOR" or "HIGH NET WORTH INVESTOR".

Mrs M selected "EVERYDAY INVESTOR", which was described as follows:

### ***“What Is An Everyday Investor?”***

*Anyone can become an Everyday Investor. You just need to agree to not make more than 10% of your investments (including savings, stocks, ISAs, bonds and property excluding your primary residence) in investments that cannot easily be sold (i.e. illiquid). This is why the FCA refers to these investors as 'Restricted Investors'.*

Having selected this profile, Mrs M was then asked to make a statement, confirmation and declaration as follows:

### ***“Everyday Investor Statement***

*I make this statement so that I can receive promotional communications relating to non-readily realisable securities and investments as a restricted investor.*

*I declare that I qualify as a restricted investor because both of the following apply:*

*In the preceding twelve months, I have not invested more than 10% of my net assets in non-readily realisable securities.*

*I undertake that in the following twelve months, I will not invest more than 10% of my net assets in non-readily realisable securities.*

*Net assets for these purposes do not include:*

*(a) the property which is my primary residence or any money raised through a loan secured on that property;*

*(b) any rights of mine under a qualifying contract of insurance;*

*(c) any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependents are), or may be, entitled.*

### ***Investment Duration***

*I confirm that I am aware that the minimum duration of the current bonds on offer are as follows:*

*Cash Bond: 30 business days.*

*3 Year Monthly Income Bond: 3 years.*

*5 Year Monthly Income Bond: 5 years.*

*Compounding High-Yield Bond: 5 years.*

*Pensioner Bonds: 1 year extendable up to 5 years.*

### ***Declaration***

*I accept that the investments to which the promotions will relate may expose me to a significant risk of losing all of the money or other property invested.*

*I am aware that it is open to me to seek advice from an authorised person who specialises in advising on non-readily realisable securities.*

*I have made investments in similar products in the last 30 months and/or I am familiar with this type of investment. I am not planning on borrowing, remortgaging or liquidating assets to invest into a Non-readily Realisable Security. I am not investing via a SIPP/SSAS created specifically for investment in a Non-readily Realisable Security. I will retain access to sufficient liquid resources following investment. I am aware the Bond is intended to be an income producing product and not a product that provides capital growth.*

*I agree to Basset & Gold Plc and Gallium Fund Solutions Limited keeping a record of this declaration and providing them to the FCA in event of an investigation.”*

Mrs M was required to click “Next” to make the required statement, confirmation and declaration. Having done this, she would then have arrived at a page titled “JUST A FEW MORE QUESTIONS (REQUIRED BY LAW)” which included the following multiple choice

questions and answers, and a concluding confirmation:

*“These questions are designed to check that this type of investment is appropriate for you. Please read each question carefully and select the answer that you believe is correct.*

**1) AFTER YOU INVEST IN THIS OFFER CAN YOU TRANSFER YOUR BASSET & GOLD BONDS?**

*The bonds are not transferable except in the case of the IFISA Bonds  
Yes I can transfer them as a listed share*

**2) THE EXPECTED RETURN FROM BASSET AND GOLD BONDS?**

*is the fixed interest rate per annum paid over the term (plus my Money back at the end).  
is dependent on movements in the financial bond and equity markets.*

**3) IS YOUR CAPITAL SECURE?**

*No, my capital is at risk and I might not get back all that I invested.  
Yes, my capital is secure and I have no risk of losing.*

**4) CAN THE BASSET & GOLD BONDS BE CONVERTED TO BASSET & GOLD SHARES?**

*Yes  
No*

**5) DIVERSIFICATION IS A COMMON WAY TO HELP MANAGE RISK WHEN INVESTING; WHAT DOES THIS MEAN?**

*That you should invest all of your money into a single bond.  
That you should invest your money in a range of different bonds as well as other less risky investments.*

*I confirm that I have read, understood and agree to Basset Gold Ltd's terms and conditions of service and confirm that I would like to become a client of Basset Gold Ltd and receive financial promotions from time to time.”*

If any question was answered incorrectly the website displayed the following message (at the point of the particular question being answered incorrectly):

*You have selected an incorrect answer. If this was an error please correct your answer, however please consider that if you are unfamiliar with the features of this investment then it might not be suitable for you.*

Mrs M completed the questions with help from BG Ltd during the first call on 10 August 2017 – having listened to the recording, the support she was given means it is unlikely she saw the message (as she was corrected before giving a wrong answer).

Answering the questions correctly allowed the consumer to move onto the final stages, which involved selecting an ISA or bond, selecting which of the products detailed on the website they wanted to invest in, and how much they wanted to invest. After completing these final stages consumers were able to click on a box to open the Invitation Document for the bond. However, it was not mandatory to do this – consumers were able to proceed

without opening the Invitation Document. During the call on 10 August 2017, BG Ltd told Mrs M she didn't need to read the document as it would be sent to her afterwards. But Mrs M has told us she has no recollection of seeing the Invitation Document thereafter.

### ***Gallium's response to Mrs M's complaint***

In its response to Mrs M's complaint Gallium said it didn't agree it needed to compensate her for the money she'd lost. It said, in short, that this was because issuing the bond and the subsequent performance of B&G Plc's business and lending activities were not regulated activities for which it assumed any responsibility. It considered what it thought to be Mrs M's concerns about the associated risks, the fact the bond was unregulated and pressure during the sale, but didn't agree the bond had been mis-sold. It referred Mrs M to the Financial Services Compensation Scheme (FSCS).

Mrs M referred her complaint to us. Gallium sent us submissions and also provided us with a copy of what it described as its "position statement", which set out general information on the background to complaints about B&G Plc bonds. I have considered these when reaching my decision.

### ***Our investigator's view***

One of our investigators considered Mrs M's complaint and concluded it should be upheld. He said, in summary:

- The investment Mrs M made was in a "mini-bond", which is a non-readily realisable security. As such it could only be promoted to retail clients if certain conditions are met. These conditions were set out in the FCA's Conduct of Business Sourcebook at COBS 4.7.7 and the rules about appropriateness were set out in COBS 10.
- The point of the online application as well as gathering basic contact information was to ascertain what type of investor Mrs M was and whether she had relevant knowledge and experience applicable to the investment she was applying for.
- But the questions that Mrs M had to answer in order for BG Ltd to assess if the investment was appropriate for her were basic and not specifically related to the investment Mrs M was applying for. And she was helped with how to answer them too. As such he was not persuaded that the answers given would've allowed BG Ltd to determine if the investment was appropriate for Mrs M or not.
- He also thought it fair to say that if the questions in the online application had asked even some basic information about Mrs M's previous investment experience BG Ltd would've known that she might not have met the requirements of the FCA rules.
- The investment was a higher risk one. But during the call Mrs M was told that the risk was very low. As Mrs M was looking for a low risk investment that would provide security for her capital, he thought it reasonable to conclude that being told it was low risk without having the opportunity to review any risk information would have had an impact on Mrs M's decision to invest.
- Risk warnings were given during the online application, but they were contained within the small print below the 'next' button which Mrs M needed to press to proceed with the application. As such he could not be sure Mrs M would have seen this warning. Even if the warning had been given sufficient prominence, he could not reasonably conclude that Mrs M would have known this was a higher risk investment

from the warning alone. It doesn't say the investment is higher risk and as Mrs M wasn't an experienced investor, it was fair to say that she would put more weight on what she was told during the call with BG Ltd.

- If a fair and reasonable appropriateness assessment had been carried out in line with the applicable rules, BG Ltd should have concluded that the investment wasn't appropriate for Mrs M.
- If this had been the case the rules required BG Ltd to warn Mrs M that the investment wasn't appropriate for her. In this case he did not think Mrs M would have wanted to proceed with the investment. Mrs M wanted a safe, capital secure investment. This was not what Mrs M was investing in and had this been made clear it was more likely than not that she would've looked to invest her monies differently.

The investigator also said he did not think the Invitation Document was clear, fair and not misleading, as required by the FCA's rules.

### ***Gallium's response to the view***

Gallium did not accept the investigator's view. It said, in summary:

- Though it appreciated our inquisitorial remit, it felt we had gone significantly beyond the scope of the complaint Mrs M made, without evidence of the factors that influenced her decision making.
- It is important to recognise when appropriateness testing or suitability testing is required. As businesses structure their approach based on this, any incorrect application can wholly undermine their business model. There is significant cost to designing and implementing the approach. Our investigator had not applied the requirements correctly.
- COBS 10.2.6G allowed BG Ltd to have relied on knowledge when assessing whether Mrs M understood the risks in relation to the product.
- COBS 10.2.2R says it may be appropriate to ask about similar investment experience but there is no requirement to do that in each case. And the regulator provided guidance to the crowdfunding industry allowing firms to satisfy themselves of what information was pertinent to their investment process – this meant the regulator did not insist on questions about education or prior investment experience had to be included. This was confirmed in the regulator's 2014 policy statement (PS 14/4) too.
- The bonds were not complex products – it involved lending money to B&G Plc, at a fixed rate of return which was contingent on B&G Plc generating sufficient revenue from its lending activities to meet its obligations to investors.
- The FCA has provided guidance on its expectations around appropriateness since Mrs M made her investment, and the regulatory environment has changed. At the time of the investment, however, the FCA had publicly articulated different expectations. We must apply regulatory expectations as they existed at the relevant time and not seek to apply the different standards that exist today in a retrospective manner.



- In 2014 there had been discussions between the FCA and crowdfunding industry as to what the FCA expected businesses to do to ensure investments were appropriate for investors. The guidance took the form of two question and answer sessions with the FCA's Head of Investment Policy and UK Crowdfunding Association ("UKCFA"). These sessions addressed, in particular, the question of whether investor experience and education needed to form part of an appropriateness assessment. Gallium had regard to this guidance when considering BG Ltd's appropriateness testing.
- It understands that guidance provided by the FCA in those industry meetings clarified that firms were able to satisfy themselves of what information was pertinent to their investment process. Importantly, in appropriate circumstances, the FCA would not insist on an appropriateness test containing questions about education or prior investment experience.
- BG Ltd's appropriateness test (this refers to the "*JUST A FEW MORE QUESTIONS (REQUIRED BY LAW)*" set out above) was adequate – information was obtained about an investor's knowledge and experience of the key characteristics of the bonds.
- Mrs M confirmed she had invested in similar products within the last 30 months, that she was familiar with the type of investment, and she had accepted other confirmations along the lines that bond might expose her to significant risk of losing all her money. Mrs M also confirmed she had read and understood the Invitation Document, inclusive of the risk warnings on pages 27 – 31 of that document.
- BG Ltd was entitled to rely on the answers Mrs M gave. It would not be fair or reasonable to expect Mrs M to have given misleading answers. Had she done so, there is no basis to suppose she would have given accurate information had further questions been asked.
- Ultimately, BG Ltd was entitled to conclude Mrs M had sufficient knowledge and experience of the same or similar products to understand the risks involved such that the investment was appropriate for her. The investigator had disregarded the confirmations and appropriateness test responses given – and had reached a wholly irrational and unsupported conclusion.
- Though Mrs M may have completed the application process during the call with BG Ltd on 10 August 2017, it has been ignored that Mrs M was given the option of whether or not she wanted to apply online and that she chose to proceed with the application process. This suggested she was committed to investing and would have proceeded in any event. It was entitled to expect that bond applicants would read the materials provided and that they would give confirmations honestly and truthfully – and that it was not fair or reasonable for Mrs M to be compensated when she was presented with information to understand the risks but chose not to read and assess the information.
- The available evidence demonstrated that being notified of any lack of diversification of B&G Plc's lending activities would not have deterred Mrs M from investing, as it did not cause her to disinvest when she became aware of it following the January 2019 update email.
- In any event, it demonstrates that Mrs M became aware of the concentration risk in 2019, had the option to seek to exit her investment in the bonds, and chose not to do so. Her loss is not therefore caused by having failed to understand the level of

concentration risk posed by the bonds at the time of purchase; it is caused by her decision not to exit her investment when that risk was made clear to her in 2019.

- The Invitation Document accurately recorded that Gallium was authorised and regulated in the UK. Importantly, it did not state or suggest the investment itself, or any Basset & Gold entity, is regulated or that the activity is regulated. The Invitation Document set out the risks of investing in detail and read as a whole, it clearly and fairly laid out the risks of the bonds including that investors' capital and interest payments were at risk of not being paid.
- Though our investigator said Mrs M wanted a safe, secure, low risk investment, the redress proposed said she didn't want to risk *any* of her capital. This is inconsistent with the warnings Mrs M saw when applying for the bond – every page of the process contained a risk warning, she accepted that she may be exposed to a significant risk of losing all her money, the appropriateness test confirmed understanding that capital was at risk and the Invitation Document outlined the risks. So it cannot now be suggested Mrs M didn't want to risk any of her money.
- The 6.7% interest rate evidences Mrs M knew the investment was not risk free – the Bank of England Base Rate was only 0.25% so it's not realistic to suggest she did not appreciate or accept the risk. Our investigator had misunderstood the risk-reward nature of securities markets and if every investor who had acknowledged their capital was at risk were to become entitled to capital protection this would bring about the end of retail participation in investment markets.

Gallium also said it did not agree with the investigator's finding the Invitation Document did not meet the regulatory standard of clear, fair and not misleading.

As there was no agreement, Mrs M's complaint was passed to me to consider.

### **My provisional decision**

I issued a provisional decision on 15 February 2022 and upheld the complaint; I will not summarise my reasons here as I will repeat them later. Mrs M accepted my provisional decision. Gallium said, in summary:

- Overall, it strongly disagreed with the reasoning and approach in my provisional decision. It thought I had fundamentally misdirected myself in a number of material respects, and had reached erroneous and unsustainable conclusions as a result.
- However, it noted my findings under the subtitle '*Mrs M's call with BG Ltd*' and said it was prepared to accept that representatives of BG Ltd communicated with Mrs M during a call recording in a manner that was not clear, fair, and not misleading. It had therefore decided to take a pragmatic view – based on what it felt was an unproven assumption – that Mrs M may have been influenced to proceed with the investment on the basis of what was heard in the recording. It was therefore willing to accept my provisional decision, but on that narrow ground only.
- It emphasised that its acceptance of my provisional decision was based on the particular context of the specific conversation referred to, and should not be taken as acceptance to any other aspect of the provisional decision, or of any wrongdoing in respect of any other complaint. As it accepted my provisional decision solely on the limited ground, it didn't comment on why it objected to the other aspects of the decision.

- It agreed to compensate Mrs M in line with my proposals, but without any admission or acceptance that my approach was correct or appropriate.

### **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.

Neither Gallium nor Mrs M provided any substantive comments on my provisional decision. So I see no reason to depart from those findings. As I have not been persuaded to depart from my findings, my final decision is the same as my provisional decision and I have repeated my provisional findings below.

Before I can look at a complaint, I need to consider whether it is one we have the power to consider. So I've first considered all the available evidence and arguments to decide whether this complaint is one I can look at.

There are a number of jurisdiction tests that must be met in relation to all complaints referred to us. Broadly speaking, these are that the complaint must be made by an eligible complainant, be about the acts or omissions of a regulated business, be about a regulated activity carried on from an establishment in the United Kingdom, and be brought within the time limits set out in the rules.

In this case there is no question Mrs M is an eligible complainant, that what she complains about was an activity carried on from an establishment in the United Kingdom, and that her complaint was brought within the time limits set out in the rules. There no dispute, as such, about whether Mrs M's complaint is about a regulated activity – but Gallium does dispute what acts we should be considering under this complaint. And, as BG Ltd and B&G Plc were appointed representatives of Gallium, I need to be satisfied the complaint is about acts or omissions for which Gallium accepted responsibility and the complaint is therefore about acts or omissions of Gallium. So I have considered these points.

Rule DISP 2.3.1R says we can;

*“consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a firm in carrying on...regulated activities...or any ancillary activities, including advice, carried on by the firm in connection with them”.*

And the guidance at DISP 2.3.3G says:

*“complaints about acts or omissions include those in respect of activities for which the firm...is responsible (including business of any appointed representative or agent for which the firm...has accepted responsibility)”.*

This guidance is drawn from the relevant legislation, which is paragraph 3 of s39 to the Financial Services and Markets Act 2000 (FSMA):

*“the principal [here, Gallium] of an appointed representative is responsible, to the same extent as if she had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which she has accepted responsibility”.*

So to answer these points I need to:

- Identify the specific acts the complaint relates to.

- Consider whether those acts are regulated activities or ancillary to regulated activities.
- Consider whether Gallium was responsible for those activities by reason of s39 FSMA (i.e. whether the complaint is therefore about acts or omissions of Gallium).

***What are the specific acts the complaint relates to?***

As mentioned, there is some dispute from Gallium about what we should be looking at when considering Mrs M's complaint. Gallium says our investigator made findings on matters significantly beyond the scope of the complaint Mrs M has made. It also said complainants *"must establish a proper basis for a complaint about Gallium to be upheld and Mrs [M's] complaint did not do that"*.

The Financial Ombudsman Service is an informal dispute resolution forum. A complaint made to us need not be, and rarely is, made out with the clarity of formal legal pleadings. As recognised by the High Court in *R (Williams) v Financial Ombudsman Service* [2008] EWHC 2142, our service deals with complaints, not causes of action. Our jurisdiction is inquisitorial, not adversarial.

Mrs M is clearly not financially sophisticated and her complaint is vaguely put – she says she thought the sale was regulated, so can't understand why she hasn't got her money back. But Mrs M is referring to the sale of the bond when making her complaint and she is clearly saying she thinks the bond was unsuitable or inappropriate for her – or was misrepresented to her in some way. And it's clear from the available evidence Mrs M does not understand the investment she made. In these circumstances, I think it is appropriate to consider all the acts or omissions which relate to the sale of the bond. That will include:

- The advertising/marketing of the bond – both on the [bassetgold.co.uk](http://bassetgold.co.uk) website and the wider internet.
- The online application process.
- Any other interactions Mrs M had with BG Ltd or B&G Plc relating to the bond.

In this case I think that means the focus is therefore on the acts or omissions of BG Ltd, as it was BG Ltd which was responsible for the advertising/marketing of the bond and the online application process. And it was BG Ltd who Mrs M spoke to before and after submitting her application.

***Are the acts the complaint relates to regulated activities or ancillary to regulated activities?***

The bond was a security or contractually based investment specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("RAO"). At the time Mrs M made her investment, the RAO said regulated activities include arranging deals in investments. This regulated activity was defined in Article 25 as:

***25. Arranging deals in investments***

*"(1) Making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite a particular investment which is—*

*(a) a security...  
is a specified kind of activity.*

*(2) Making arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments falling*

*within paragraph (1)(a) ... (whether as principal or agent) is also a specified kind of activity."*

Acts such as obtaining and assisting in the completion of an application form and sending it off, with the client's payment, to the investment issuer would come within the scope of Article 25(1), when the arrangements have the direct effect of bringing about the transaction. So I am satisfied the online application process and the conversations Mrs M had with BG Ltd before and after making her application both fall within the scope of Article 25(1). These all involved making arrangements for Mrs M to invest in the bond, and had the direct effect of bringing about the transaction. I am further satisfied the advertising/marketing of the bond was ancillary to these acts.

So I am satisfied Mrs M's complaint is about regulated activities.

***Was Gallium responsible for the acts the complaint relates to?***

As mentioned, I think the acts Mrs M's complaint relates to were all carried out by BG Ltd. So I have looked at the agreement between Gallium and BG Ltd to see if they are acts Gallium accepted responsibility for.

The appointed representative agreement (which I note mistakenly refers to Basset & Gold Ltd, rather than Basset Gold Ltd) at Section 3, "*The Appointment*" said at (i):

*"The Company (i.e. Gallium) hereby appoints the AR (i.e. BG Ltd) as an agent of the Company for the purpose only of carrying on the Business including introducing applications by associates of the AR for new contracts, for submission to Exempt Investors specifically by the AR and approved by the Company..."*

And at (iii) in the same section, the agreement said:

*"The Company hereby grants the AR the right under its authorisation with the FCA to give advice (only in accordance with the rules of the FCA and the Financial Services and Markets Act 2000) in connection with advising, arranging, or dealing in investment products for present and prospective clients and in connection therewith to display, advertise, promote, demonstrate and offer for sale at or from premises subject to the terms contained hereunder for the sole purpose of promoting the sale of the same and in relation thereto use the Company's as well as its own trade name. The Company hereby accepts responsibility, to the same extent as if it had expressly permitted it, for anything the AR does or omits to do in the carrying on the business for which the Company has accepted liability."*

Where "*Business*" was defined as:

*".. the promoting activities in respect of potential or existing collective investment schemes, or corporate bonds where the Company has approved the financial promotion."*

And where 'Exempt Investors' was defined as:

- *"persons to whom promotions may lawfully be made, such persons being exempt under FSMA 2000 (The Financial Promotions Order 2005, for example: Article 48 Certified high net worth individuals*
- *Article 50 Sophisticated Investors*
- *Article 50A Self Certified Sophisticated Investors*
- *Article 51 Association of high net worth or sophisticated Investors*

*And for corporate bonds only:*

- *Persons who confirm that they will receive regulated investment advice from an FCA authorised person*
- *Persons who certify that they will not invest more than 10% of their net investable financial assets.”*

So, in relation to corporate bonds, BG Ltd was allowed to carry out *promoting activities...where the Company has approved the financial promotion*. And Gallium allowed BG Ltd *the right under its authorisation with the FCA to give advice... in connection with advising, arranging, or dealing in investment products for present and prospective clients and in connection therewith to display, advertise, promote, .... for the sole purpose of promoting the sale of the same*.

In this case, Gallium had approved the financial promotion of the bond Mrs M invested in and, as part of the application process (at the “*EVERYDAY INVESTOR*” stage), Mrs M had been asked to declare she would not invest more than 10% of her net assets in non-readily realisable securities. And the acts the complaint is about were all done in connection with arranging Mrs M’s investment in the bond. So I am satisfied the acts the complaint is about are acts for which Gallium accepted responsibility. They are therefore acts of Gallium and can be considered in a complaint against it.

As I am satisfied Mrs M’s complaint is one I can look at I will now consider all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

### ***Relevant considerations***

I have carefully taken account of the relevant considerations to decide what is fair and reasonable in the circumstances of this complaint. In considering what is fair and reasonable in all the circumstances of this complaint, I have taken into account relevant law and regulations; regulators rules, guidance and standards; codes of practice; and where appropriate, what I consider to have been good industry practice at the relevant time.

In my view the key consideration as to what is fair and reasonable in this case is whether Gallium met its regulatory obligations when BG Ltd, acting on its behalf, carried out the acts the complaint is about. I consider the following regulatory obligations to be of particular relevance here.

### **The Principles for Businesses**

The Principles for Businesses, which are set out in the FCA’s Handbook “*are a general statement of the fundamental obligations of firms under the regulatory system*” (PRIN 1.1.2G). I think Principles 6 and 7 are relevant here. They provide:

*Principle 6 – Customers’ interests – A firm must pay due regard to the interests of its customers and treat them fairly.*

*Principle 7 – Communications with clients – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

### **COBS 4 – Communicating with clients, including financial promotions**

Principle 7 overlaps with COBS 4.2 - Fair, clear and not misleading communications, which I

also consider to be relevant here:

COBS 4.2.1R:

*(1) A firm must ensure that a communication or a financial promotion is fair, clear and not misleading.*

As mentioned, the bond was non-readily realisable and therefore there were rules restricting who it could be promoted to and how to test whether the investment was appropriate for the potential investor. These rules were set out in COBS 4.7 and COBS 10. I have set out below what I consider to be the relevant rules, in the form they existed at the time.

#### **COBS 4.7 - Direct offer financial promotions**

COBS 4.7.7R:

*(1) Unless permitted by COBS 4.7.8 R, a firm must not communicate or approve a direct-offer financial promotion relating to a non-readily realisable security to or for communication to a retail client without the conditions in (2) and (3) being satisfied.*

*(2) The first condition is that the retail client recipient of the direct-offer financial promotion is one of the following:*

- (a) certified as a 'high net worth investor' in accordance with COBS 4.7.9 R;*
- (b) certified as a 'sophisticated investor' in accordance with COBS 4.7.9 R;*
- (c) self-certified as a 'sophisticated investor' in accordance with COBS 4.7.9 R;*
- (d) certified as a 'restricted investor' in accordance with COBS 4.7.10 R.*

*(3) The second condition is that firm itself or the person who will arrange or deal in relation to the non-readily realisable security will comply with the rules on appropriateness (see COBS 10) or equivalent requirements for any application or order that the person is aware, or ought reasonably to be aware, is in response to the direct offer financial promotion.*

COBS 4.7.10R

*A certified restricted investor is an individual who has signed, within the period of twelve months ending with the day on which the communication is made, a statement in the following terms:*

***“RESTRICTED INVESTOR STATEMENT***

*I make this statement so that I can receive promotional communications relating to non-readily realisable securities as a restricted investor. I declare that I qualify as a restricted investor because:*

(a) *in the twelve months preceding the date below, I have not invested more than 10% of my net assets in non-readily realisable securities; and*

(b) *I undertake that in the twelve months following the date below, I will not invest more than 10% of my net assets in non-readily realisable securities.*

*Net assets for these purposes do not include:*

(a) *the property which is my primary residence or any money raised through a loan secured on that property;*

(b) *any rights of mine under a qualifying contract of insurance; or*

(c) *any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be entitled; or*

(d) *any withdrawals from my pension savings (except where the withdrawals are used directly for income in retirement).*

*I accept that the investments to which the promotions will relate may expose me to a significant risk of losing all of the money or other property invested. I am aware that it is open to me to seek advice from an authorised person who specialises in advising on non-readily realisable securities.*

*Signature:*

*Date:”*

***COBS 10 – Appropriateness (for non-advised services)***

At the time COBS 10.1.2 R said:

*“This chapter applies to a firm which arranges or deals in relation to a non-readily realisable security, derivative or a warrant with or for a retail client and the firm is aware, or ought reasonably to be aware, that the application or order is in response to a direct offer financial promotion.”*

COBS 10.2.1R:

*“(1) When providing a service to which this chapter applies, a firm must ask the client to provide information regarding her knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the firm to assess whether the service or product envisaged is appropriate for the client.*



(2) *When assessing appropriateness, a firm:*

*(a) must determine 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 10.2.2 R:

*“The information regarding a client's knowledge and experience in the investment field includes, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:*

*(1) the types of service, transaction and designated investment with which the client is familiar;*

*(2) the nature, volume, frequency of the client's transactions in designated investments and the period over which they have been carried out;*

*(3) the level of education, profession or relevant former profession of the client”*

10.2.6G – Knowledge and experience:

*“Depending on the circumstances, a firm may be satisfied that the client's knowledge alone is sufficient for her to understand the risks involved in a product or service. Where reasonable, a firm may infer knowledge from experience.”*

COBS 10.3 Warning the client

COBS 10.3.1R

*(1) If a firm considers, on the basis of the information received to enable it to assess appropriateness, that the product or service is not appropriate to the client, the firm must warn the client.*

COBS 10.3.2R

*(1) If the client elects not to provide the information to enable the firm to assess appropriateness, or if she provides insufficient information regarding her knowledge and experience, the firm must warn the client that such a decision will not allow the firm to determine whether the service or product envisaged is appropriate for her.*

COBS 10.3.3G

*If a client asks a firm to go ahead with a transaction, despite being given a warning by the firm, it is for the firm to consider whether to do so having regard to the circumstances.*

I note Gallium has also referred to the FCA's policy statement PS14/4, and to question and answer sessions with the FCA's Head of Investment Policy and UKCFA. I have had regard to the policy statement, and to Gallium's recollections of the two question and answer sessions.

Having taken careful account of these relevant considerations, to decide what is fair and reasonable in the circumstances, my conclusion is as follows:

- The advertising or marketing of the bond by BG Ltd, on Gallium's behalf, was not consistent with Gallium's regulatory obligations. It was not clear, fair and not misleading. By advertising or marketing the bond in the way it did, BG Ltd did not act in a way that was in Mrs M's best interests, or treat her fairly. Had BG Ltd's advertising or marketing been clear, fair and not misleading Mrs M would likely have concluded the bond was not the sort of investment for her.
- BG Ltd, acting on Gallium's behalf, led Mrs M into certifying herself as belonging in a category to which she did not belong (a "restricted investor") by changing the term used in the rules to "everyday investor" and asking for this certification in the context of the misleading information about the bond it had given. This was not treating Mrs M fairly or acting in her best interests. Had BG Ltd followed the rules and not misled Mrs M, it is unlikely she would have certified herself as being a restricted investor.
- The appropriateness test carried out by BG Ltd, on behalf of Gallium, did not meet the requirements of the rules. And, had it done so, it would have been apparent the bond was not an appropriate investment for Mrs M. In the circumstances Mrs M would either not have proceeded to invest in the bond or, acting fairly and reasonably, BG Ltd should have concluded it should not allow Mrs M to invest.
- During the call Mrs M had with BG Ltd on 10 August 2017, BG Ltd demonstrated it failed to adequately assess Mrs M's appropriateness for investing in the bond. It also gave her further information which was not clear, fair and not misleading. Had BG Ltd, on behalf of Gallium, acted fairly and reasonably to meet its regulatory obligations at this time Mrs M would likely have realised the investment was not appropriate for her.

For these reasons – individually and cumulatively – my decision is that Mrs M's complaint should be upheld.

### ***BG Ltd's advertising / marketing***

Mrs M has told us she first came across B&G Plc's bond when searching online for accounts with good interest rates. Gallium has told us BG Ltd created online advertising material – such as Google and Facebook adverts – which it approved. It has not provided copies of this advertising material. And I have only seen one example of the advertising material BG Ltd used at the time, which is a Google advert which carries the tagline "*Pensioner Bonds Are Back – Achieve Your Retirement Goals*". This referred to a return of 4.24% per year, paid monthly and included four links, one of which was to "Monthly Income Bonds", which directed to [bassetgold.co.uk](http://bassetgold.co.uk). I cannot be sure if Mrs M saw the advertisement, but what is clear is that she did search on the internet and was led to the website – and so I have focussed here on what Mrs M would have seen on the website at the time.

I have set out in the background the initial pages of the website which would have been seen by Mrs M. In my view, much of the material on the website at the time was not consistent with Gallium's regulatory obligation to communicate in a way which was clear, fair and not misleading. In my view, it was not fair or reasonable for BG Ltd (representing Gallium) to communicate in relation to the bond in the way it did on the website and, by doing this, it did not pay due regard to the interests of Mrs M and treat her fairly.

Before setting out my findings in more detail I want to first comment on a point made by Gallium in its response to the investigator's view. It says the bond Mrs M invested in was a straightforward product, as it simply involved lending money to B&G Plc, at a fixed rate of return which was contingent on B&G Plc generating sufficient revenue from its lending activities to meet its obligations to investors. In my view this significantly understates the complexity of the product B&G Plc was offering.

Risk factors associated with the bond included the track record of B&G Plc, the detail of its due diligence on the businesses it would be lending to, the criteria B&G Plc applied to its lending and the conditions on which the loan was made. The credit history of the business the loan was made to would also need to be considered, its capacity to repay, and its capital position. Furthermore, as the business B&G Plc was lending to was itself lending, the lending criteria it applied, the default rate and the success of its past lending would need to be considered. All of these points (and this is not an exhaustive list) would need to be considered in order to understand the investment.

In the market for corporate bonds listed on the main exchanges, institutions – credit reference agencies – carry out credit analysis work to assess the risk associated with a bond and express a view (a “rating”), and investment managers often carry out further credit analysis before deciding to invest in a bond. Here there were no such aids to a consumer's understanding of the product. There was also a liquidity risk. The bond was not listed on a recognised exchange, and so could not be readily sold (in fact it seems to have been a condition of the investment that it could not be transferred). And, as Gallium has pointed out, the Invitation Document which set out the details of the bond was over 40 pages long. I have read the document and it contains a lot of complex technical information which may not be readily understood by the average investor.

So I do not accept the bond could be reasonably described as a straightforward product. It was complex, risky and specialist. In my view this is why the bond fell into a category of investment which the FCA puts restrictions on the promotion of (something I consider in more detail below).

Returning now to the website, I note it initially described the bond as a “*straightforward product*” with “*100% of principal returned on exit*” and explains that B&G Plc “*look to provide every day investors with the opportunity to take advantage of an offer that has **security levels previously available only to institutional and ultra-high net worth investors**, and gain attractive returns.*” (emphasis copied from the website).

In the “*At a glance*” section the website says the bonds “*are designed to be a straightforward investment. Bondholders receive a predetermined fixed interest rate, which is paid every month, six months or at maturity, depending on the option chosen*”.

The question and answer section again describes the bond as a “*straightforward investment*” and says B&G Plc’s “*institutional level of protection, combined with our system of “ring fencing” your capital, affords you a level of protection which rivals that of any bank or building society.*”

In my view describing the bonds as “*straightforward*” was misleading. It was not fair and reasonable to describe the bonds in such a way. It was also misleading – and unfair – to describe, in bold, the bond as having “*security levels previously available only to institutional and ultra-high net worth investors*”, which “*ringfenced capital*”, “*institutional level of protection*”, and as an investment which “*offered a level of protection which rivals that of any bank or building society*”. There is no apparent basis for these statements, which appear to be completely at odds with the true nature of the bond.

I acknowledge there was a risk warning that “*In the event that the company becomes insolvent, you may lose some or all of your investment*” and potential investors were told “*you should make sure that you fully understand the risks which are set out in the Invitation Document.*”. But these warnings do nothing to correct the misleading and unfair statements made otherwise. They also do not carry the same prominence as those statements, and are undermined by them. I also note, at this point, Mrs M was not able to access the Invitation Document – and so was reliant on the selected, misleading, information BG Ltd provided.

The website gives further misleading – and unclear – information, in relation to the regulatory status of the bonds. As set out in the background, in response to the question *Are the Basset & Gold Fixed Income Bonds authorised and regulated by the FCA?*, the website says:

*The Basset & Gold Fixed Income Bond program is approved as a financial promotion for UK publication by Gallium Fund Solutions Limited who are authorised by the Financial Conduct Authority (FCA) to conduct investment business (FRN: 431709).*

However, the answer to the question is “no”. The bond was not authorised or regulated. It was correct to say Gallium, the approver of the promotion of the bond, was FCA regulated. But that was not the question asked. At the very least, to meet regulatory standards, the reference to Gallium’s regulatory status is not the only thing that should have been said in response to the question, as it puts undue emphasis on the approval of the promotion being done by an FCA regulated firm (and also refers to the approval as of the “program”, suggesting a more extensive role for Gallium). The response should say the bond itself does not come with any regulatory protection and explain there is no safety net in the event of the failure of the bond.

Overall, this had the effect of the bond appearing to be being something it was not – suitable for an average retail investor seeking a straightforward fixed interest product. I think the website led Mrs M into believing she was investing something akin to a savings bond – not a complex, risky and specialist product. This was not treating Mrs M fairly, or acting in her best interests.

Mrs M was looking for an investment that would provide a good interest return without any risk to her capital. I think it is likely that if these first sections of the website had been clear, fair and not misleading Mrs M would have concluded the bond was not the sort of investment for her and not proceeded beyond this point. And I think it would be fair and reasonable to uphold Mrs M’s complaint on this basis alone. I have however, for completeness, gone on to consider the other acts carried out by BG Ltd in relation to the sale of the bond.

### ***The online application process***

There were a number of regulatory obligations which applied to the sale of the B&G Plc bond. As mentioned, the bond was non-readily realisable and therefore there were rules restricting who it could be promoted to and on how to test whether the investment was appropriate for the potential investor. The online application took steps toward meeting the regulatory obligations which applied here. I have set out above the rules detailing each of these sets of obligations. I will consider the steps taken by BG Ltd, on behalf of Gallium, in relation to each in turn.

## **Certification**

The first condition, set by COBS 4.7.7R required a retail client, such as Mrs M, to be certified as being in one of four categories of investor. In this case, Mrs M was certified as a “restricted investor”. Although when completing its process for this BG Ltd did not use this term – it instead used the term “*everyday investor*”.

4.7.10R sets out how a retail client can be certified to be a restricted investor. The statement, confirmation and declaration Mrs M was asked to make included some of the wording set out in 4.7.10R – but not all of it. And additions had been made. The title of the statement also departed from the wording set out in 4.7.10R – it was described as a “*Everyday Investor Statement*”. So the certification was not completed in a way which was compliant with the rules.

I have considered the changes to the wording set out in 4.7.10R and also the overall context to Mrs M making the statement, confirmation and declaration – including the basis on which Mrs M was brought to the point of making them, which I have set out in the previous section of this decision.

As set out in the background above, Mrs M was offered the option of four “investor profiles”, after she had completed the first stages of her application. The options, other than “everyday investor” were “self certified sophisticated investor”, “advised investor” and “high net worth investor”.

In my view, the change of the term “restricted investor” to “everyday investor” had the effect of making the restricted investor category appear to be one into which retail investors like Mrs M would naturally fall.

“Restricted” is, by its common and ordinary meaning, something which is limited in amount or range. Synonyms include words like *limited*, *constricted* and *controlled*. “Everyday” is, by its common and ordinary meaning, something which ordinary, typical or usual. So the change of the term was likely to alter how it was perceived. The “*What Is An Everyday Investor?*” question and answer (“*Anyone can become an Everyday Investor*”) also has this effect.

In my view this put undue emphasis on the “everyday investor” option, and led consumers like Mrs M to selecting this option when they may not have done so otherwise. I do not think it was fair or reasonable for BG Ltd to act in this way. It was not treating Mrs M fairly or acting in her best interests. BG Ltd ought to have known that changing the term created a risk of consumers perceiving a “restricted investor” to be something different to what it was, and certifying themselves incorrectly as a result, and risked consumers skipping through this as a formality.

Having listened to the call when Mrs M was going through the application process, she read out the question to herself which asked her to choose an investor profile, and after only two seconds she said “*everyday I guess, yeah*”. Mrs M didn’t pause to think, ask for a definition, or question it, just said she was “everyday” and being on the phone meant she was not given any opportunity to reflect. I think this illustrates the point well – an “everyday investor” is an option Mrs M immediately understood or could resonate with. In my view Mrs M was attracted to this profile based on her understanding and perception of the word “everyday”.

As set out in the previous section Mrs M had, by this point, already been misled as to the nature of the bonds. So she arrived at the point of being asked if she was an “everyday” investor having been told the bonds were straightforward, with high levels of security and protection. This is likely to have been at the forefront of her mind, and to have given her confidence to select the “everyday” option.

Mrs M did not qualify as a restricted investor. After cashing in a pension to meet the costs of altering her home following a change in her family’s health circumstances, Mrs M was left with £10,000. She invested it all and has explained to us that she had no other money. She was also not aware of the bonds had risk associated with them and had not made investments in similar products in the last 30 months. And so she should not have made the statement, confirmation and declaration.

However, I think it unlikely Mrs M knowingly gave a false statement. I think it instead likely that she did not consider the detail of what she was being asked to agree to as she understood it to be “everyday” i.e. ordinary, typical or usual, and was encouraged by the misleading assurances as to straightforwardness, security and protection which she had seen on the website before reaching this stage, as well as the positive information she was given during the phone call on 10 August 2017 about the very low risk, the considerable experience of those working at B&G Plc, and the continuous growth of the company. These assurances are likely to have been at the forefront of her mind and she may well have viewed the statement, confirmation and declaration as a formality and not therefore have considered the detail (if the call had afforded her time to do so).

I also think it is unlikely Mrs M would have made the statement at all, had she not been misled as to the nature of the bonds, had the correct “restricted investor” term being used and had the website not presented the restricted investor category was one into which she would naturally fall. I also think it unlikely she would have described herself as a “self certified sophisticated investor”, “advised investor” or “high net worth investor” as it would have been clear from the titles and descriptions of those categories that she did not fit into them.

So I am satisfied if BG Ltd, acting on behalf of Gallium, had acted fairly and reasonably to meet Gallium’s regulatory obligations Mrs M would not have got beyond this stage. And I think it would be fair and reasonable to uphold Mrs M’s complaint on this basis alone. I have however, for completeness, gone on to consider the other acts carried out by BG Ltd in relation to the sale of the bond.

### ***Appropriateness***

The second condition, set by COBS 4.7.7R, required BG Ltd to comply with the rules on appropriateness, set out in COBS 10 and quoted in the relevant considerations section above.

The rules at the time (COBS 10.2.1R) required BG Ltd, acting on behalf of Gallium, to ask Mrs M to provide information regarding her knowledge *and* experience – and for this information to be relevant to the product offered (the first limb of the rule). The rules required that information to then be assessed, to determine whether Mrs M did have the necessary experience and knowledge in order to understand the risks involved (the second limb of the rule).

As set out above, COBS 10.2.2 R required BG Ltd, acting on behalf of Gallium, when considering what information to ask for, to consider the nature of the service provided, the type of product (including its complexity and risks) and for it to include, to the extent appropriate to the nature of the client:

- (1) the types of service, transaction and designated investment with which the client is familiar;*
- (2) the nature, volume, frequency of the client's transactions in designated investments and the period over which they have been carried out;*
- (3) the level of education, profession or relevant former profession of the client"*

In my view BG Ltd failed to ask for an appropriate amount of information about Mrs M's knowledge and experience, as required by COBS 10.2.1R and COBS 10.2.2 R.

BG Ltd did not refer to an appropriateness test on the website – it instead referred to *"just a few more questions (required by law)"*. As set out above, under this, it asked five questions which tested knowledge. These questions asked whether Mrs M knew if the bonds were transferable, if the return was fixed, if their capital was secure, if the bonds could be converted to shares and the meaning of diversification. Nothing was asked about Mrs M's experience. And if Mrs M got a question wrong, she would be told her answer was wrong and prompted to reconsider it.

However, Mrs M answered the appropriateness test while on the call with BG Ltd's representative on 10 August 2017 and she was given support on how to answer each question.

When on question one, BG Ltd's representative says *"so the first one is after you invest in this offer can you transfer your Basset & Gold bonds, the answer would be no, the bonds are non-transferrable, the only ones that would be transferrable would be the ISA bonds, so that would be the first one for you..."* Mrs M asks, *"so, no?"* and the representative says that is correct.

Mrs M read out the next question which asks what the expected return would be. She read out the first of the two possible answers and BG Ltd's representative interrupts before she reads the second answers to say *"yep, so that is correct"*.

Mrs M moves onto the next question and read aloud, *is my capital secure?* BG Ltd's representative says *"okay so because it's not a deposit and it is an investment we do need to say that there is an element of risk and because we are a regulated company we also need to put that as well. Okay, but we do have several securities in place and we do hold a 100% track record, so in my opinion it is a very low risk but because it's stated there we need to put it out there to you."*

Mrs M read out the next question. BG Ltd's representative says, *"yep so the answer would be no, you're unable to do that"*.

Mrs M then read out the next question. BG Ltd's representative says, *"so basically it's the old saying don't put all your eggs into one basket."* Mrs M asks, *"so, it's the top one is it?"*. But BG Ltd's representative corrects her and says *"err, it will be the bottom one"*.

BG Ltd's representative answered every question for Mrs M – she wasn't given time to consider what her own answer might be, before the representative interrupted with which answer to give. And on the last question, even after being told the answer, it sounded as though Mrs M was going to enter an incorrect answer before the representative corrected her. In my view this approach is inconsistent with what is set out in the relevant rules and, by

being guided through the answers by BG Ltd, Mrs M did not independently complete the test. So on this basis alone the test does not meet the requirements of the relevant rules.

Furthermore, even if Mrs M had answered the questions independently and did know the correct answer to all five questions without prompting (which seems very unlikely, as her interactions with us show she has very limited knowledge, no experience and the call recording shows she was about to get one wrong) this would still have only showed she understood the bonds were not transferrable, the return was fixed, capital was at risk, whether the bonds could be converted into shares and was able to select a correct answer from two options as to what the definition of diversification was. The questions therefore fell a long way short of adequately testing whether Mrs M had the knowledge to understand the risk associated with the bonds – particularly in circumstances where the multiple-choice options were limited to two and Mrs M was allowed repeated efforts to get them right. The risks, as I set out earlier, were complex and multifactorial. It was not, for example, a question of whether Mrs M simply understood money could be lost – but whether she was able to understand how likely that might be and what factors might lead to it happening.

BG Ltd did ask Mrs M to declare, at the previous stage “*I am familiar with this type of investment.*” and “*I have made investments in similar products in the last 30 months*”. So it might argue it did have some information about Mrs M’s experience, and additional information about her knowledge. However, even accounting for the declaration, an appropriate level of information was not asked for. I also think the declaration could not reasonably be relied on when, at the point of giving it, Mrs M had been led to believe the type of investment or product was a straightforward one where there was a high level of protection and security and may have viewed it as a formality due to it being described as part of something “everyday”.

As the first limb of COBS 10.2.1R was not met, BG Ltd was unable to carry out the assessment required under the second limb. BG Ltd should have been confident, from the information it asked for, that it was able to assess if Mrs M had the necessary experience and knowledge in order to understand the risks involved with investment in the bond. But it was not in a position to make such an assessment, based on the information it obtained.

Gallium refers to 10.2.6G which says there may be circumstances in which *a firm may be satisfied that the client's knowledge alone is sufficient for her to understand the risks involved in a product or service.*

I do not think these were such circumstances – not least because BG Ltd did not ask for an appropriate amount of information about Mrs M’s knowledge. The guidance in any event does not supplant the rules and in my view it is clearly meant to apply where the client has been asked about both knowledge *and* experience, as the rules require, and the information obtained shows knowledge is high and experience is low. It does not say a business can ask only about knowledge when conducting an appropriateness test.

Gallium also refers to industry conferences with the FCA. But I have seen no evidence to show it was told by the FCA that it did not have to follow the rules i.e. that it did not have to ask about experience *at all*. In any event – and notwithstanding what I say above about COBS 10.2.1R and 10.2.6G - as it did not ask for sufficient information about Mrs M’s knowledge it was not in a position to assess whether her knowledge alone was sufficient. Gallium also suggests the FCA has provided guidance on its expectations around appropriateness since Mrs M made her investment in 2017, and the regulatory environment has changed since then. To be clear, my findings are based on the rules that existed *at the time*.



Gallium has referred to the FCA's policy statement PS14/04. This relates to the regulation of firms operating online crowdfunding platforms or conducting other similar activities. I have read the statement. In my view it simply confirms the rules on appropriateness apply and must be followed. I note, for example, the statement confirms, at 4.24, that firms are required to assess whether the client has the necessary experience and knowledge to understand the risk involved. In relation to the crowdfunding coming under its regulation the FCA's proposal (which was adopted), summarised at 4.6, was:

*"where no advice was provided, that all firms (MiFID and non-MiFID) must check that clients have the knowledge and experience needed to understand the risks involved before being invited to respond to an offer"*

The policy statement does not therefore change my view that BG Ltd, acting on behalf of Gallium, did not meet its regulatory obligations.

Had the process been consistent with what the rules required - had Mrs M been asked for appropriate information about her knowledge *and* experience - the only reasonable conclusion BG Ltd could have reached, having assessed this, was that Mrs M did not have the necessary experience and knowledge to understand the risks involved with the bond.

If BG Ltd assessed that the bond was not appropriate, COBS 10.3.1 R said a warning must be given and the guidance at COBS 10.3.3G said a business could consider whether in the circumstances to go ahead with the transaction if the client wished to proceed, despite the warning.

But this envisages the test being completed, and a result determined, before the warning was given. As BG Ltd designed the test the only warning was in response to incorrect answers and simply said *"if you are unfamiliar with the features of this investment then it might not be suitable for you"*. In my view this does not meet what is required by COBS 10.3.1R, which is a warning that the product is *not* appropriate. And, by allowing Mrs M the opportunity to effectively silence the warning through selecting a different answer, the impact of it was reduced in any event. The process also did not give BG Ltd the opportunity to consider whether, in the circumstances, it should go ahead with the transaction if Mrs M wished to proceed, despite the warning. Furthermore, in this case the actions of BG Ltd during the 10 August 2017 call effectively steered Mrs M away from the warning – BG Ltd pre-empted it being displayed.

In my view a warning which told Mrs M clearly an investment in the bond was not appropriate for her would likely have put Mrs M off proceeding further. That is a clear, emphatic statement which would have left Mrs M in no doubt the bond was not an appropriate investment for her. And this statement should of course have been given alongside clear, fair and not misleading information about the bond which did not leave Mrs M with the impression the investment was a straightforward one where there was a high level of protection and security.

Furthermore, had BG Ltd given itself the opportunity to consider in the circumstances whether to go ahead with the transaction if Mrs M wished to proceed, having asked for appropriate information about Mrs M's knowledge *and* experience, it would have been fair and reasonable for BG Ltd to conclude it should not allow Mrs M to proceed. Had Mrs M been asked for appropriate information about her knowledge *and* experience this would have shown she may not have the capacity to fully understand the risk associated with the bond. It is clear Mrs M did not have even a basic understanding of investments such as the bond - she simply did not understand the product she was investing in. In these circumstances, it would not have been fair and reasonable for BG Ltd to conclude it should proceed if Mrs M wanted to, despite a warning.

All in all, I am satisfied BG Ltd, acting on behalf of Gallium, did not act fairly and reasonably when assessing appropriateness. If it had acted fairly and reasonably to meet the relevant regulatory obligations when assessing appropriateness, Mrs M would not have got beyond this stage. And I think it would be fair and reasonable to uphold Mrs M's complaint on this basis alone. I have however, for completeness, gone on to consider the other acts carried out by BG Ltd in relation to the sale of the bond.

### ***Mrs M's call with BG Ltd***

As noted above, I have been provided with seven recordings of conversations Mrs M had with BG Ltd. I think the first call on 10 August 2017 is especially key, as it is when Mrs M is making her application for the bond. In my view the recording shows BG Ltd failed to adequately assess Mrs M's appropriateness for investing in the bond, that the bond wasn't appropriate for her and that she was given further information which was not clear, fair and not misleading.

The recording begins with BG Ltd's representative saying they are calling to see whether Mrs M has read through the bond information that had been emailed to her. Mrs M didn't think she'd received an email. She checked and found it in her inbox. Mrs M says she will download the information and have a look, but BG Ltd's representative asks if she has any questions. Mrs M did.

Mrs M first asks *"how long has Basset & Gold been around?"* and BG Ltd's representative says *"yeah so we've been established since 2015, yes we are a relatively new company, but the people actually who work behind the scenes they've had actually over 20 years in the financial industry so they have had quite a lot of experience, erm and then our company is expanding, we have been in The Telegraph recently, erm and we're just continuing to grow really"*.

Mrs M then asks if she is able to apply for the bond on the internet. BG Ltd's representative explains the process and asks if Mrs M is transferring an ISA allowance. Mrs M explains that she had just cashed in a pension – while she needed some of the money, she didn't need it all, and she says she wants to *"lose ten grand of it before I spend it"*. BG Ltd's representative then explains Mrs M could apply online and fund the investment by cheque or bank transfer.

Mrs M was looking for growth, not income. When asked about which product to choose BG Ltd's representative explains that the compounding option would be the bond that doesn't pay income, and that this was paying 20.1% at maturity – Mrs M was told she'd get her interest plus capital back at the end of the three years. Mrs M sought to clarify her understanding of what compounding interest meant, BG Ltd's representative explains this and Mrs M asks what she'd receive after three years – the representative works this out and says she would receive £2,010 in addition to the return of the £10,000.

Mrs M asks if she is to use the link for the application, but BG Ltd's representative offers to talk her through it, which they expect to take around ten minutes. Mrs M uses a link to begin the process and once she completes the section requiring her name and address, she is presented with the investor profile page. Mrs M read the title of this page out and after two seconds she says *"everyday I guess, yeah"*. Eight seconds then passed before BG Ltd's representative says they'd missed what Mrs M had said. But Mrs M had already moved on and says, *"right okay I'm now on just a few more questions required by law"*.

Mrs M is then supported by BG Ltd's representative in answering the appropriateness questions as set out above. I have already explained why I think the recording demonstrates BG Ltd failed to complete an adequate appropriateness test. But in addition to this, rather

than take the phone call as an opportunity to check Mrs M's understanding or correct the misleading information it had provided on the website, instead it compounded matters and had no regard for Mrs M's knowledge. This is a further example of it not treating Mrs M fairly or acting in her best interests.

When considering the question about risk, *"is your capital secure?"* BG Ltd's representative says *"okay so because it's not a deposit and it is an investment we do need to say that there is an element of risk and because we are a regulated company we also need to put that as well. Okay, but we do have several securities in place and we do hold a 100% track record, so in my opinion it is a very low risk but because it's stated there we need to put it out there to you."*

BG Ltd's representative's comments significantly downplayed the risks and complexities associated with the bond. The reference to "several securities" should not have been made in the way it was – it implied to Mrs M that her investment was secured against something without explaining what this meant or what this security might be. In this case it seems the only possible security that there could have been would have been the loan book of a sub-prime lender. And the bond was not a "secure" investment either, so the use of such a term was misleading in its own right. Instead the bond was, by any measure, a high risk investment. Mrs M's money was being lent to one high risk lender – in the circumstances this should not have been the basis for assurances about security.

BG Ltd did give a warning about risk but it did not fully warn Mrs M of the risk (only saying there is an "element") and the warning is in any event undermined by the misleading information given otherwise – particularly when BG Ltd's representative says that in their opinion, the risk is very low. The warning itself is also presented as a formality – something BG Ltd had to do as a matter of course but nothing that should concern Mrs M. BG Ltd essentially says it is only giving risk warnings because it has to – that there is nothing to worry about. The fact B&G Plc had a 100% track record is also not something which should have been given as assurance without qualification. B&G Plc's track record was short and of course past performance is no guide to future performance.

After the appropriateness questions, Mrs M selected which bond she wanted and how much she wanted to invest. Mrs M was then given the chance to download the Invitation Document – this is the first time she'd have seen it. Mrs M said *"right, and I have to click to confirm that I've read..."* but BG Ltd's representative interrupted to say *"yep, erm don't worry about the downloading the Invitation Document because you'll automatically receive that after the application."* BG Ltd's representative then explained the rest of the process and asked how Mrs M intended on transferring her money.

The key point here is BG Ltd's representative advises Mrs M *not* to open the Invitation Document and to not worry as it'd automatically be provided after investing. But that meant Mrs M was effectively advised not to consider the Invitation Document before investing – in circumstances where BG Ltd had not completed an adequate appropriateness test and had provided misleading information. And BG Ltd downplayed the importance of the Invitation Document. Acting fairly and reasonably BG Ltd should have said the bond was a complex high risk investment to which the regulator attached restrictions on its promotion. And that the Invitation Document was an important document which should be considered in full before any investment decision was made.

Gallium says Mrs M had committed to invest before the call and that it was fair for BG Ltd to have expected her to have read the materials provided. But it is clear from the recording that Mrs M hadn't reviewed any material she'd been sent – so her understanding of the bond was still based on what she'd seen on the website. She was also told not to worry about reading the Invitation Document. And it is clear from Mrs M's first question to BG Ltd - *"how long has*

*Basset & Gold been around?"* – that she was not at this point committed to investing. She was seeking further information. It should also be noted that it was BG Ltd that called Mrs M to follow up, not Mrs M that called BG Ltd, which is further evidence that Mrs M was not at this point committed to investing.

Mrs M had a very limited understanding and simply did not have the capacity to understand the product, yet there was no consideration of this being a possibility and she was further deterred from considering the Invitation Document. The call highlights BG Ltd's failure to adequately assess appropriateness and, acting fairly and reasonably, it should have taken steps to address this at the time i.e. it should have concluded the bond was not appropriate for Mrs M. The call was also an opportunity for BG Ltd to finally communicate in a way which was clear, fair and not misleading – and to therefore afford Mrs M an opportunity to reflect on that basis.

I am satisfied that if BG Ltd had communicated during the call in a way that was clear, fair and not misleading, Mrs M would not have proceeded to make the investment. Had BG Ltd acted fairly and reasonably to meet its regulatory obligations, it should have concluded it should not allow Mrs M to proceed, in the circumstances, in any event – as the bond was clearly not appropriate for Mrs M. As with the previous points, I think it would be fair and reasonable to uphold Mrs M's complaint on this basis alone.

### ***Invitation Document***

The investigator considered the Invitation Document. However, considering the available evidence, I am satisfied Mrs M did not look at the Invitation Document in any detail and that she did not in any event have the capacity to understand it. And, for all the reasons I have given, I think Mrs M should not have got as far as being given the opportunity to see the document anyway. So I have not considered its contents here.

### ***The January 2019 update***

Gallium has pointed out that the January 2019 update email did not lead to Mrs M taking any action. So it says disclosure of the lack of diversification at the time of investment would not have deterred Mrs M from investing. It also says that when Mrs M became aware of the lack of diversification and had the option to sell her investment, she chose not to do so. So her loss is not caused by having failed to understand the level of concentration risk posed by the bonds at the time of purchase, it is caused by her decision not to exit her investment when that risk was made clear to her in 2019.

As I have set out, there are a number of things which, acting fairly and reasonably, BG Ltd should have done differently. And so if it is to be presupposed that a disclosure of the concentration risk arising from a lack of diversification of the type made in January 2019 was made at the time of the investment, that needs to be considered alongside all the other things which should have happened at the time. For all the reasons I have given, I am satisfied that Mrs M would not have proceeded to invest, had these things happened.

In any event, as I've set out in my findings, I am satisfied Mrs M had limited capacity to understand the risks associated with the bond. She simply did not have the required knowledge and experience. So I am not persuaded the concentration risk arising from a lack of diversification is something Mrs M would have fully understood at the outset, had it been explained to her. Setting that aside, the concentration risk was not the only risk. If a risk disclosure was to be made (and it is not clear when in the process Gallium considers this disclosure would have been made) then concentration risk should have been described as part of a full, balanced, explanation of *all* the risks – not just the concentration risk.

I think Gallium's other point is essentially that Mrs M had a duty to mitigate her loss, after receiving the 2019 update. But I do not think it would be fair in the circumstances to say Mrs M is responsible for the loss she has suffered due to her not reacting to this update. As mentioned, I am not persuaded she had the capacity to fully understand this risk – and she was in this position because BG Ltd, acting on behalf of Gallium, did not act fairly and reasonably to meet its regulatory obligations at the outset.

## **In conclusion**

Taking all of the above into consideration – individually and cumulatively – I think in the circumstances it is fair and reasonable to uphold the complaint. I am satisfied, for all the reasons given, that Mrs M would not have invested in the bond had BG Ltd, on behalf of Gallium, acted fairly and reasonably to meet its regulatory obligations. So I think it is fair to ask Gallium to compensate Mrs M for the loss she has suffered.

## **Fair compensation**

In assessing what would be fair compensation, I consider that my aim should be to put Mrs M as close to the position she would probably now be in if she had not invested in the bond.

I think Mrs M would have invested differently. It is not possible to say *precisely* what she would have done, but I am satisfied that what I have set out below is fair and reasonable given Mrs M's circumstances and objectives when she invested.

## **What should Gallium do?**

To compensate Mrs M fairly, Gallium must:

- Compare the performance of Mrs M'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.
- Gallium should also pay interest as set out below.
- It is also clear that Mrs M has been caused some distress and inconvenience by the loss of her investment. Given her circumstances, this is money Mrs M cannot afford to lose, nor is it money she is able to replace. I do not believe Mrs M foresaw such a drastic loss and I recognise the considerable worry she will have felt when B&G Plc failed. I consider a payment of £500 is fair compensation for the upset caused.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
B&G Plc bond	Still exists but illiquid	Average rate from fixed rate bonds	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

### ***Actual value***

This means the actual amount payable from the investment at the end date.

If at the end date the investment is illiquid (meaning it could not be readily sold on the open market), it may be difficult to work out what the *actual value* is. In such a case the *actual value* should be assumed to be zero. This is provided Mrs M agrees to Gallium taking ownership of the investment, if it wishes to. If it is not possible for Gallium to take ownership, then it may request an undertaking from Mrs M that she repays to Gallium any amount she may receive from the investment in future.

### ***Fair value***

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

### **Why is this remedy suitable?**

I have chosen this method of compensation because:

- Mrs M wanted to achieve a reasonable return without risking any of her capital.
- The average rate for the fixed rate bonds would be a fair measure given Mrs M's circumstances and objectives. It does not mean that Mrs M would have invested only in a fixed rate bond. It is the sort of investment return a consumer could have obtained with little risk to their capital.

### **My final decision**

For the reasons given, my decision is that I uphold Mrs M's complaint.

Gallium Fund Solutions Ltd should calculate and pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 19 April 2022.

Aimee Stanton  
**Ombudsman**