

The complaint

Mr I invested £90,000 in two fixed monthly income bonds with Basset & Gold Plc ("B&G Plc"). He says he was given false reassurances about how secure the investments were and misled that he could get his money back if the investments failed.

What happened

The B&G Plc Bond

In July 2017, Mr I invested £20,000 in a 3 Year Fixed Monthly Income IFISA Bond. The following month, in August 2017, he invested a further £70,000 in a 5 Year Fixed Monthly Income Bond. Sales of the bonds 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 bonds, through a website it operated. And it was responsible for advertising/marketing the bonds. Potential investors were also able to call BG Ltd, to discuss the bonds.

B&G Plc and BG Ltd were both appointed representatives of Gallium Fund Solutions Limited ("Gallium"). B&G Plc and BG Ltd were appointed representatives of Gallium from 17 February 2017 to 28 February 2018.

Mr I's investment in the bonds

- Mr I first became aware of B&G Plc whilst searching online for investment opportunities.
- Mr I applied online via the BG Ltd website and recalls being guided over the phone through the process by a B&G Plc representative.
- Of his prior investment experience, Mr I had invested in other bonds. All other previous investments were from either ISAs or savings held in deposit accounts with banks earning interest.

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. This referred 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. Following action by the FCA, the payday lender went into administration in March 2020 - and B&G Plc went into administration shortly afterwards. As a result, Mr I has not had his invested capital returned to him.

The application process

Mr I applied online when taking out the bonds. I have seen screen prints of each stage of the online application process. These show the application journey that Mr I underwent. This consisted of two stages, designed to meet the rules restricting who the bonds could be promoted to and on how to test whether the investments were appropriate for the potential

investor. The first was certification, where Mr I was categorised as a high net worth investor. The second was the appropriateness test.

We asked for copies of any call recordings BG Ltd held. We were provided with copies of call recordings from soon before and after the investment in the bond was made, but we haven't been provided any calls in relation to when Mr I actually made the application to invest in the bonds subject to this complaint. As such, I've not relied on the calls when reaching my findings.

Gallium's response to Mr I's complaint

Gallium did not uphold Mr I's complaint. It said Mr I had been given sufficient information and risk warnings about the investment. It then made further submissions, once Mr I's complaint was referred to us. I have considered the submissions in full. I have also considered what Gallium described as its "position statement", which sets out general information on the background to complaints about B&G Plc bonds.

Our investigator's view

One of our investigators considered Mr I's complaint and concluded it should be upheld. They said, in summary:

Whilst they could not see that BG Ltd took any steps to ascertain that Mr I met the income and net assets criteria set out in COBS 4.12.6R, he met the requirements of a high net worth investor.

The application process – both in terms of the certification of Mr I as a high net worth investor and the assessment of the appropriateness of the bonds for him was inconsistent with the FCA's rules or guidance, and didn't gather sufficient information to comply with the FCA's rules.

Overall, BG Ltd, on Gallium's behalf, didn't comply with its regulatory obligations. Had it done so, Mr I wouldn't have decided to invest or BG Ltd should have concluded that it shouldn't allow Mr I to invest. For these reasons, both cumulatively and individually, it was fair to uphold the complaint and for Gallium to compensate Mr I for the loss he has suffered.

Gallium's response to the view

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

- Mr I met the criteria to be classes as a high net worth investor and he confirmed that he those requirements, so it was reasonable for it to rely on the declaration.
- The appropriateness test answers, and these confirmations were sufficient for Gallium to satisfy itself that prospective investors had sufficient knowledge and experience of the bonds to understand the risks those bonds involved, as per the relevant rules.
- It was reasonable for Gallium to rely on the outcome of this test.
- Mr I had previous investments in bonds. This shows he had relevant experience of similar products to the B&G Plc bonds.
- Mr I made the investments on the understanding they had risk associated with them, and did not choose to surrender them when receiving the email in 2019 which warned of the concentration risk. So he would have proceeded with the investments regardless.

What I've decided – and why

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

I am satisfied it is appropriate for me to consider all of the acts carried out by BG Ltd, on behalf of Gallium, in relation to the sale of the bonds.

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.

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 (Customers' interests) and 7 (Communications with clients) are relevant here.

Principle 7 overlaps with COBS 4.2.1 R (1) (*A firm must ensure that a communication or a financial promotion is fair, clear and not misleading*), which I also consider to be relevant here.

As mentioned, the bonds were non-readily realisable and therefore there were rules restricting who they 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 10.1, 10.2 and 10.3. I have considered the relevant rules in full.

I note Gallium has 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 considered these too.

Having considered all the available evidence and arguments I have reached the same overall conclusion as the investigator.

The wording used by BG Ltd for the high net worth investor category mirrors the wording set out at 4.12.6R and therefore rightly asks about individual circumstances. But the rules required assessment of Mr I's position, which BG Ltd should have understood to mean that reasonable checks had to be made to ensure Mr I met the definition of high net worth investor.

That said, and as the investigator has explained, even if Gallium had correctly explained the position – and ensured Mr and I understood it – it's likely Mr I would have met the high net worth investor definition as the total of his qualifying assets exceeded the value of £285,000 and had been held for all of the previous financial year. In those circumstances I think it more than likely Mr I would have given the statement and declaration as he would have realised, he could meet the high net worth investor definition.

However, the issue I find is BG Ltd was also required to take reasonable steps to satisfy itself that Mr I had the requisite experience, knowledge or expertise to understand the risks of the bond in line with COBS 4.12.11.

The appropriateness test carried out by BG Ltd, on behalf of Gallium, did not meet the requirements of the rules. Had the process been consistent with what the rules required – had Mr I been asked for appropriate information about his knowledge and experience – the only reasonable conclusion BG Ltd could have reached, having assessed this, was that he

did not have the necessary experience and knowledge to understand the risks involved with the bond.

Mr I had limited investment experience, and whilst he had previously invested in bonds, I have seen no evidence to show he had anything other than a basic knowledge of investments. Though Gallium may argue Mr I's investments had given him some experience, I have not seen that this was something considered at the time. In any event, as I said above, having had limited investment experiences prior to investing in the bond subject to the complaint cannot reasonably be considered meaningful experience, insofar as it would enable Mr I to understand the risks involved. So, it would not be sufficient to conclude this bond was appropriate for him on that basis.

In the circumstances Mr I would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bonds to Mr I. So, it follows that I haven't found that BG Ltd met its obligations here.

For these reasons – individually and cumulatively – my provisional conclusion is that Mr I's complaint should be upheld. I am also satisfied Mr I would either not have proceeded to make the investments or would not have been able to proceed, had Gallium acted fairly and reasonably to meet its regulatory obligations. I am therefore, satisfied it is fair to ask Gallium to compensate Mr I for his loss.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr I as close to the position he would probably now be in if he had not made the investments.

I take the view that Mr I would have invested differently. It is not possible to say *precisely* what he would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr I's circumstances and objectives when he invested.

What must Gallium do?

To compensate Mr I fairly, Gallium must:

- Compare the performance of Mr I's investments with that of the benchmark shown below.
- Gallium should also add any interest set out below to the compensation payable.
- Pay to Mr I £500 for the distress caused by the loss of his investments. It is clear the loss came as a shock to Mr I, and has caused him upset.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
3 Year Fixed Monthly Income IFISA Bond	Still exists but illiquid	For half the investment: FTSE UK Private Investors	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled

		Income Total Return Index; for the other half: average rate from fixed rate bonds			within 28 days of the business receiving the complainant's acceptance)
5 Year Fixed Monthly Income Bond	Still exists but illiquid	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date of my 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)

For each investment:

Actual value

This means the actual amount paid or 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 Mr I 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 Mr I that he repays to Gallium any amount he 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.

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

Any withdrawal, income or other distributions paid out of the investments should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I'll accept if Gallium totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically. If any distributions or income were automatically paid out into a portfolio and left uninvested, they must be deducted at the end to determine the fair value, and not periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr I wanted income with some growth with a small risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income **Total Return** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr I's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr I into that position. It does not mean that Mr I would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr I could have obtained from investments suited to his objective and risk attitude

My final decision

I uphold this complaint and direct Gallium Fund Solutions Ltd to pay the amount calculated as set out above.

Gallium Fund Solutions Ltd should provide details of its calculation to Mr I in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 30 March 2023.

Farzana Miah
Ombudsman