

DRN-3787786



The complaint

In April 2017, company R invested £1,000 in a Cash Bond with Basset & Gold Plc (“B&G Plc”). Mr L, director acting on behalf of R, said the Bond was mis-sold as assurance was given that the investment was protected by the Financial Services Compensation Scheme (“FSCS”).

What happened

The B&G Plc Bond

R invested in a B&G Plc Cash 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. And it was responsible for advertising and marketing the bond. Potential investors were also able to call BG Ltd, to discuss the bond.

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.

R’s investment in the bond

- Mr L, acting on behalf of R, found B&G Plc online while looking for an investment to provide good returns.
- The application for the investment was made via the BG Ltd website.
- R had no investment history or experience. In his personal capacity, Mr L had invested in peer to peer lending, which has continued to provide good returns. Subsequently, Mr L had discovered that other personal investments were not made through an authorised company and the investments were unsuitable for retail investors. However, at the time of the investment with BG Ltd, Mr L was unaware of any issues and in any event R was a separate legal entity so I place limited weight on Mr L’s personal investment experience.
- I have been supplied with a number of call recordings, most of which occurred after the application was made, save for one which I have addressed in my findings.

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, 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, R has not had its invested capital returned.

The application process

Mr L, acting on behalf of R, applied on line for the bond.

I have seen screen prints of each stage of the online application process. These show the application journey undertaken at the time. This consisted of two stages, designed to meet the rules restricting who the bond could be promoted to and on how to test whether the investment was appropriate for the potential investor. The first was certification, where R was categorised as an everyday investor. The second was the appropriateness test.

Gallium's response to R's complaint

Gallium did not uphold R's complaint. It said sufficient information and risk warnings about the investment had been given. It then made further submissions, once R'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 R's complaint and concluded it should be upheld. They said, in summary:

- The application process – both in terms of the certification of R as a "restricted investor" and the assessment of the appropriateness of the bond - was misleading 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, R wouldn't have decided to invest or BG Ltd should have concluded that it shouldn't allow R to invest. For these reasons, both cumulatively and individually, it was fair to uphold the complaint and for Gallium to compensate R for the loss it has suffered.

Gallium's response to the view

- Our findings went beyond the scope of R's complaint
- Regardless of label, R was required to confirm that it met the requirements of a restricted investor and confirmed that it did. It is not fair or reasonable to conclude that the use of the word "everyday" contributed an incorrect declaration being made, and 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.
- The investment was made on the understanding it had risk associated with it, and R did not choose to surrender it when receiving the email in 2019 which warned of the concentration risk. So R would have proceeded with the investment regardless.
- Mr L had investments in peer to peer lending and other investments. This showed he had relevant experience of similar products to the B&G Plc bonds.

As the parties do not agree the matter has come to me for a final decision.

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 bond.

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 4.2.1R (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 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 10.1, 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 conclusion as the investigator, for the same reasons. In summary:

- BG Ltd, acting on Gallium's behalf, misled R into certifying that it belonged to a category to which it did not belong (a "restricted investor") by changing the term used in the rules to "*everyday investor*" and describing the category as being one "*anyone*" could fall into. This was not treating R fairly or acting in its best interests. Had BG Ltd followed the rules and not misled R, it is unlikely it would have certified itself as being a restricted investor.
- I place weight upon Mr L's recollection that BG Ltd's representative misled him, when he was acting on behalf of R. I've listened to a call from the time, in which BG Ltd said it didn't matter which category R selected. Again this was misleading. It's plain from the call that Mr L, acting on behalf of R, was seeking assistance and would reasonably rely upon what he was told. Calls after the event suggest that BG Ltd had recorded R as an everyday 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 R. In the circumstances R would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bond to R.

- Little weight is to be placed on the assertions about Mr L's personal investment experience, as the investment was made by a separate legal entity, R, a limited company. I'm not persuaded it has been shown that this was properly considered by Gallium.

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

Putting things right

Fair compensation

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

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

What must Gallium do?

To compensate R fairly, Gallium must:

- Compare the performance of R's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.
- Gallium should also add any interest set out below to the compensation payable.
- Gallium should provide details of its calculation to R in a clear, simple format.

Tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
B&G Plc Cash Bond	Still exists but illiquid	FTSE UK Private Investors Income Total Return Index	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 R 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 R that it repays to Gallium any amount it 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 decided on this method of compensation because:

- R wanted capital growth and was willing to accept some investment risk.
- 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 those prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given R's circumstances and risk attitude.

My final decision

I uphold the complaint. My decision is that Gallium Fund Solutions Limited should pay the amount calculated as set out above to R.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 7 April 2023.

Sarah Tozzi
Ombudsman