

The complaint

In April 2017, Mr H invested £20,000 in a 3 Year Compounding High Income IFISA Bond with Basset & Gold Plc (“B&G Plc”). He complains the bond was mis-sold to him by Basset Gold Limited (“BG Ltd”), an appointed representative of Gallium Fund Solutions Limited (“Gallium”). He says that he was mis-sold this bond as the BG Ltd representative assured him that the bond could provide greater returns than a bank, with no more risk.

What happened

The B&G Plc Bond

Mr H invested in a B&G 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. 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 from 17 February 2017 to 28 February 2018.

Mr H’s investment in the bond

- Mr H was looking online to find a low risk ISA investment to run alongside his existing investments to provide capital growth.
- Mr H visited BG Ltd’s website in April 2017 to take out the bond.
- Mr H confirmed his previous investment experience involved some peer to peer lending which continued to provide a good return. He had not invested in similar products before and believed the bond to be low risk.

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, Mr H has not had his invested capital returned to him.

The application process

Mr H applied online when taking out the bond. He remembers speaking to BG Ltd on the phone during the application process.

When Mr H referred his complaint to us, we asked for copies of any call recordings BG Ltd held. We were provided with copies of some call recordings between Mr H and BG Ltd, but none of these took place prior to, or during, Mr H's application. That's not to say the call Mr H remembers didn't take place – simply that there isn't a recording of it available. I have been supplied with a number of call recordings post sale, these are administrative in nature and are not material, so they have not been relied on when reaching my findings.

I've seen screen prints of each stage of the online application process. These show the application journey that Mr H underwent. 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 Mr H was categorised as a high net worth investor. The second was the appropriateness test.

Gallium's response to Mr H's complaint

Gallium did not uphold Mr H's complaint. It said Mr H had been given sufficient information and risk warnings about the investment. It then made further submissions, once Mr H's complaint was referred to us. I've considered the submissions in full. I've 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 H's complaint and concluded it should be upheld. They said, in summary:

- Mr H met the criteria for a high net worth investor.
- The application process in terms of the assessment of the appropriateness of the bond for Mr H 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 H wouldn't have decided to invest or BG Ltd should have concluded that it shouldn't allow Mr H to invest. For these reasons, both cumulatively and individually, it was fair to uphold the complaint and for Gallium to compensate Mr H for the loss he has suffered.

Gallium's response to the view

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

- Our findings went beyond the scope of Mr H's complaint.
- Mr H certified that he met the requirements of a high net worth investor. 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 H made the investment on the understanding it had risk associated with it, and did not choose to surrender it when receiving the email in 2019 which warned of the concentration risk. So he would have proceeded with the investment regardless.

As a result, the complaint has been passed to me for a 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'm satisfied it's 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.

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:

- Mr H was certified as a high net worth investor. He had sufficient income to meet the criteria for this category of 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 Mr H. In the circumstances Mr H would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bond to Mr H.

My decision is that Mr H's complaint should be upheld. I am satisfied Mr H 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 Mr H 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 H as close to the position he would probably now be in if he had not invested in the bond.

I take the view that Mr H 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 H's circumstances and objectives when he invested.

What must Gallium do?

To compensate Mr H fairly, Gallium must:

- Compare the performance of Mr H'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.
- Pay to Mr H £200 for the distress caused by the total loss of his investment. I don't believe Mr H foresaw such a drastic loss and I recognise the considerable worry he will have felt when B&G Plc failed.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
3 Year Compounding High Income IFISA 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 Mr H 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 H 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.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr H 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 someone who was 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 Mr H'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.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 April 2023.

Katie Haywood
Ombudsman