

The complaint

In May, June and November 2017, Mrs S invested a total of £56,250 in three, 3 Year Fixed Monthly Income IFISA bonds with an interest rate of 6.12% p.a. with Basset & Gold Plc ("B&G Plc"). She says the advertisements didn't mention she was investing the money in pay day lenders or mention the risks involved. She doesn't remember ever seeing an Invitation Document. Had she been told the investment was being lent pay day lending companies she wouldn't have invested. She believes she was misled.

What happened

The B&G Plc Bond

Mrs S invested in three B&G Plc 3 Year Fixed Monthly Income IFISA bonds. Sales of these bonds were dealt with by Basset Gold Limited ("BG Ltd"), a separate business from Basset & Gold Plc ("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 and 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.

Mrs S's investment in the bond

- Mrs S came across BG Ltd when searching the internet looking to find an investment with a better return than her current ISAs. She was looking to invest money which was held in cash ISAs at the time to provide for her child's education and her own retirement. She believed as these were ISAs they were tax free and supported by the government.
- Mrs S visited BG Ltd's website in April 2017 to take out the first bond and to start the ISA transfer process. She later also invested in June and November 2017.
- Mrs S has told us that she had no investment experience having only previously invested in ISAs. She was risk averse and thought the bonds were a safe investment. She had no experience of this type of investment and says she was never informed by her account manager, or via the literature, that she would be invested in pay day lending. She invested all her liquid assets in the bonds.

- I have been supplied with a number of call recordings both pre and post sale. I don't feel they are material to the sales so they have not been relied on when reaching my decision.

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 Financial Conduct Authority ("FCA"), Uncle Buck went into administration in March 2020 – and B&G Plc went into administration shortly afterwards. As a result, Mrs S has not had her invested capital returned to her.

The application process

Mrs S applied online and also submitted a paper application for an ISA transfer.

I have seen screen prints of each stage of the online application process. These show the application journey that Mrs S 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 Mrs S was categorised as an "everyday investor". The second was the appropriateness test.

I have also seen copies of the paper application form which shows a transfer from the ceding business to B&G Ltd. This was completed by Mrs S and signed on 13 June 2017. Mrs S completed a five question appropriateness test as part of this application, however this was completed after she had already gone through the online application process in April 2017 as detailed above.

Gallium's response to Mrs S's complaint

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

- The application process – both in terms of the certification of Mrs S as a "restricted investor" and the assessment of the appropriateness of the bonds for her – was misleading and didn't gather sufficient information to comply with the FCA's rules.
- The website and marketing material were misleading.

- Overall, BG Ltd, on Gallium's behalf, didn't comply with its regulatory obligations. Had it done so, Mrs S wouldn't have decided to invest or BG Ltd should have concluded that it shouldn't allow Mrs S to invest. For these reasons, both cumulatively and individually, it was fair to uphold the complaint and for Gallium to compensate Mrs S for the loss she 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 Mrs S's complaint.
- Regardless of the label, Mrs S made the investments on the understanding they had risk associated with them, and did not chose to surrender them when receiving the email in 2019 which warned of the concentration risk. So she would have proceeded with the investments regardless.
- 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 the test.
- Mrs S made the investments on the understanding they had risk associated with them, and did not chose to surrender them when receiving the email in 2019 which warned of the concentration risk. So she 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; regulator's rules, guidance and standards; codes of practice; and where appropriate, what I consider to have been good industry practice at the relevant time.

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 bonds were non-readily realisable and therefore there were rules restricting who they could be promoted to and how to test whether the investments were 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 Mrs S 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 describing the category as being one "*anyone*" could fall into. This was not treating Mrs S fairly or acting in her best interests. Had BG Ltd followed the rules and not misled Mrs S, it is unlikely she would have certified herself as being a restricted investor.
- As previously mentioned Mrs S completed a paper application as part of her ISA transfer. Whilst I've taken the paper application into account, I don't think it's fair for BG Ltd to rely on the answers given within it, given Mrs S had already gone through the online application process.
- 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 bonds were not an appropriate investment for Mrs S. In the circumstances Mrs S would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bonds to Mrs S.

For these reasons – individually and cumulatively – my decision is that Mrs S's complaint should be upheld. I am also satisfied Mrs S 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. And so I am satisfied it is fair to ask Gallium to compensate Mrs S for her loss.

Putting things right

In assessing what would be fair compensation, I consider that my aim should be to put Mrs S as close to the position she would probably now be in if she had not been given unsuitable advice.

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

What must Gallium do?

To compensate Mrs S fairly, Gallium must:

- Compare the performance of each of Mrs S's investments with that of the benchmark shown below.
- A separate calculation should be carried out for each investment.
- Gallium should also add any interest set out below to the compensation payable.
- Pay to Mrs S £350 for the distress caused by the loss of her investments.

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 (BG22970)	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)
3 Year Fixed Monthly Income IFISA Bond (BG23500)	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)
3 Year Fixed Monthly Income IFISA Bond (BG26180)	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)
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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 Mrs S 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 S 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.

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:

- Mrs S 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 S's circumstances and objectives. It does not mean that Mrs S 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

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 Mrs S in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or

reject my decision before 24 March 2023.

Catherine Langley
Ombudsman