DRN-3793406

The complaint

In November 2017, Mr P invested £40,000 into a 5 Year Compounding High-Yield Bond with Basset & Gold Plc ("B&G plc"). He says that he was mis-sold the investment by Basset Gold Limited ("BG Ltd"), an appointed representative of Gallium Fund Solutions Limited ("Gallium").

Mr P says the information relating to the risk asscoiated with bond was misleading and the bond was mismanaged as he was unaware funds invested were then lent to a single "pay day" lender.

What happened

The B&G Plc Bond

Mr P invested in a B&G Plc 5 Year Compounding High-Yield Bond. Sales of this bond were dealt with by 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/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 P's investment in the bond

Mr P visited BG Ltd's website after seeing an advert online whilst looking for better rates of interest for his exisiting savings. Mr P says he was then contacted by a representative of BG Ltd.

Mr P says at the time of application he was self-employed and had around £10,000 in cash savings after investing in the bond. He says he'd previously invested around £5,000 in some low to medium risk *"Out of Bank"* investments and considers himself as an inexperienced investor. Mr P says he didn't think the B&G Plc bond carried any risk.

Mr P says he completed the online application form on BG Ltd's website. In total he invested £40,000 in the bond. The bond Mr P invested in offered an interest rate 9.01% per year, with the invested capital to be returned after five years.

When Mr P 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, but I've only referred to any I consider relevant such as a call between Mr P and BG Ltd whilst Mr P completed the online application.

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 P

has not had his invested capital returned to him.

The application process

Mr P says he completed his application for the bond online. As I referred to above, we've also been provided a call recording during which Mr P was in the process of completing the online application whilst speaking to an advisor from BG Ltd.

Having reviewed the available evidence, I think it is most likely that Mr P did initially complete an online application. While he does appear to have had some telephone contact with BG Ltd, from what I've seen I think he would have still been required to apply online first. So I've examined the online application process to help me reach my decision.

I've seen screen prints of each stage of the online application process. These show the application journey that Mr P 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 P was categorised as "everyday". The second was the appropriateness test.

Gallium's response to Mr P's complaint

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

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

- Regardless of label, Mr P was required to confirm that he met the requirements of a restricted investor and confirmed that he did. It is not fair or reasonable to conclude that the use of the word *"everyday"* contributed to Mr P giving an incorrect declaration, 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.

- Mr P 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.

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 releavant 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 Mr P into certifying himself as belonging in a category to which he 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 Mr P fairly or acting in his best interests. Had BG Ltd followed the rules and not misled Mr P, it is unlikely he would have certified himself 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 Mr P. In the circumstances Mr P would either not have proceeded or, acting fairly and reasonably, BG Ltd should have

concluded it should not promote the bond to Mr P.

For these reasons – individually and cumulatively – my decision is that Mr P's complaint should be upheld. I am also satisfied Mr P 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 P 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 P as close to the position he would probably now be in if he had not made the investment.

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

What must Gallium do?

To compensate Mr P fairly, Gallium must:

- Compare the performance of Mr P'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 P £350 for distress and inconvenience caused to him by the total loss of the investment. Further to this, Mr P, within his submission, has mentioned that he has suffered from added anxiety as a direct result of this. So, I think the payment for distress and inconvenience he suffered is appropriate.

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 Mr P 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 P 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.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr P wanted to achieve a reasonable return without risking any of his capital.

The average rate for the fixed rate bonds would be a fair measure given Mr P's circumstances and objectives. It does not mean that Mr P 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. here

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 P in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 2 March 2023.

Sean Pyke-Milne
Ombudsman