

The complaint

Mr C complains about a 'Cash Bond' issued by Basset & Gold Plc ("B&G Plc") he invested into. He says the bond was mis-sold to him by Basset Gold Limited ("BG Ltd"), an appointed representative of Gallium Fund Solutions Limited ("Gallium").

Mr C says he has lost all of his money as a result of poor performance of the investment. He says he was persuaded to invest into the bond through misleading information, in particular that it had Financial Services Compensation Scheme ("FSCS") protection.

What happened

The B&G Plc Bond

Mr C invested in a B&G Plc 'Cash Bond' in October 2017. 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. 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 appointed representatives of Gallium from 17 February 2017 to 28 February 2018. Mr C invested further in other B&G Plc bonds after this date, which are not the subject of this complaint.

Mr C's investment in the bond

Mr C visited BG Ltd's website in October 2017 after seeing an advert online. He says he was looking for interest for his savings after inheriting the money in the same calendar year.

Mr C says at the time of application he was working as an engineer and was due to retire a few years later. He says he had no previous investment experience other than money invested in his pension. The amount he invested in the B&G Plc bond was around 50% of his available savings.

Mr C says he completed an online application form and applied to invest £250,000 in the bond. The bond Mr C invested in offered an interest rate 3.14% per year, with the invested capital to be returned on maturity. The relevant terms and conditions confirm the bond requires thirty days' notice to surrender and pays interest twice year. The term was open ended and pays 15.7% interest as a 'lifetime return' of the bond.

When Mr C 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 C and BG Ltd, but I note none took place prior to Mr C's application. As such, I've only referred to some of them in 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 FCA, Uncle Buck went into administration in March 2020 - and B&G Plc went into administration shortly afterwards. As a result, Mr C says he has not had his invested capital returned to him.

The application process

Mr C says he carried out the application online. I've seen confirmation that BG Ltd received and accepted Mr C's application form on 10 October 2017.

Following the online application, in a call between Mr C and BG Ltd on 10 October 2017, he confirmed to them he selected the 'Cash Bond' as he didn't want to fix it for long.

Having reviewed the available evidence, I'm satisfied that Mr C completed an online application. While he does appear to have had some telephone contact with BG Ltd, from what I've seen this was after he applied online. So, I've focused on the online application process in reaching my decision.

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

Gallium's response to Mr C's complaint

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

- The application process – both in terms of the certification of Mr C 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 C wouldn't have decided to invest or BG Ltd should have concluded that it shouldn't allow Mr C to invest. For these reasons, both cumulatively and individually, it was fair to uphold the complaint and for Gallium to compensate Mr C for the loss he has suffered.

Gallium's response to the view

Gallium didn't accept the investigator's view. It said, in summary:

- Our findings went beyond the scope of Mr C's complaint.

- Regardless of label, Mr C 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 C 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 C made the investment on the understanding it had risk associated with it and he didn’t choose to surrender it when receiving an 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’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:

- BG Ltd, acting on Gallium’s behalf, misled Mr C 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 C fairly or acting in his best

interests. Had BG Ltd followed the rules and not misled Mr C, 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 C. In the circumstances Mr C would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bond to Mr C.

For these reasons – individually and cumulatively – my decision is that Mr C’s complaint should be upheld. I am also satisfied Mr C 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. So, I am satisfied it is fair to ask Gallium to compensate Mr C 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 C as close to the position he would probably now be in if he had not been given unsuitable advice.

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

What must Gallium do?

To compensate Mr C fairly, Gallium must:

- Compare the performance of Mr C'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.
- It is also clear that Mr C has been caused some distress and inconvenience by the loss of his investment, which was almost half of his inheritance. Given his circumstances, this is money Mr C cannot afford to lose, nor is it money he is able to replace. I do not believe Mr C foresaw such a drastic loss and I recognise the considerable worry he will have felt when B&G Plc failed. I consider a payment of £350 is fair compensation for the upset caused.

Income tax may be payable on any interest awarded.

Portfolio 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)
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Actual value

This means the actual amount payable from the investment at the end date.

If at the end date any asset 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 C agrees to Gallium taking ownership of the illiquid assets, if it wishes to. If it is not possible for Gallium to take ownership, then it may request an undertaking from Mr C that he repays to Gallium any amount he may receive from the portfolio 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 C 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 C's circumstances and objectives. It does not mean that Mr C 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

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £160,000, I may recommend that the business pays the balance.

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

Recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend that Gallium Fund Solutions Limited pays Mr C the balance plus any interest on that amount as set out above.

This recommendation is not part of my determination or award. It does not bind Gallium Fund Solutions Limited. It is unlikely that Mr C can accept my decision and go to court to ask for the balance. Mr C may want to consider getting independent legal advice before deciding whether to accept this decision.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that Gallium Fund Solutions Limited should pay Mr C the amount produced by that calculation – up to a maximum of £160,000 (including distress or inconvenience but excluding costs) plus any interest set out above.

If Gallium Fund Solutions Limited does not pay the full fair compensation, then any portfolio currently illiquid should be retained by Mr C. This is until any future benefit that he may receive from the portfolio together with the compensation paid by Gallium Fund Solutions Limited (excluding any interest) equates to the full fair compensation as set out above.

Gallium Fund Solutions Limited may request an undertaking from Mr C that either he repays to Gallium Fund Solutions Limited any amount Mr C may receive from the portfolio thereafter or if possible, transfers the portfolio at that point.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 25 April 2023.

Katie Haywood
Ombudsman