

## **The complaint**

Ms W is complaining about a three-year bond issued by Basset & Gold Plc ("B&G plc"). She says the bond (held in an individual savings account ("ISA") wrapper) was mis-sold to her by Basset Gold Limited ("BG Ltd"), an appointed representative of Gallium Fund Solutions Limited ("Gallium").

Ms W says she invested in the bond based on misleading information including that she was given to believe it had Financial Services Compensation Scheme (FSCS) protection.

## **What happened**

### **The B&G Plc Bond**

Ms W invested in a B&G Plc *"Three-year fixed monthly income IFISA 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 they were responsible for advertising and marketing the bond. Potential investors were 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.

### **Ms W's investment in the bond**

Ms W visited BG Ltd's website in April 2017 after being referred by her partner who was already an investor. She says she was looking for a savings product with no risk to her initial capital and that would provide her regular income to supplement her employment income.

Ms W says at the time of investment she was close to retirement age and working as a carer. She had no previous investment experience and the £3,200 she invested in the bond was all of her savings, which she transferred to the bond from a cash ISA. The bond she chose offered an interest rate 6.12% per year, payable monthly, with the invested capital to be returned after three years.

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 payday 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, Ms W has not had her invested capital returned to her.

## **The application process**

Ms W applied online for the bond on 6 April 2017 and subsequently completed a form requesting her ISA transfer from her previous provider. The previous provider sent a cheque to Gallium in June 2017, funding Ms W's bond.

I've seen screen prints of each stage of the online application process. These show the application journey that Ms W underwent. This consisted of two stages, designed to meet the rules restricting who the bond could be promoted to testing whether the investment was appropriate for the potential investor. The first was certification, where Ms W was categorised as an "*everyday investor*". The second was the appropriateness test.

### **Gallium's response to Ms W's complaint**

Gallium didn't uphold Ms W's complaint. They said Ms W had been given sufficient information and risk warnings about the investment. They then made further submissions once Ms W's complaint was referred to us. I have considered the submissions in full. I've also considered what Gallium described as their "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 Ms W's complaint and concluded it should be upheld. They said, in summary:

- The application process – both in terms of the certification of Ms W as a "*restricted investor*" and the assessment of the appropriateness of the bond for her - 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 their regulatory obligations. Had they done so, Ms W wouldn't have decided to invest or BG Ltd should have concluded that they shouldn't allow Ms W to invest. For these reasons, both cumulatively and individually, it was fair to uphold the complaint and for Gallium to compensate Ms W for the loss she's suffered.

### **Gallium's response to the view**

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

- Our findings went beyond the scope of Ms W's complaint.
- Regardless of label, Ms W was required to confirm that she met the requirements of a restricted investor and confirmed that she did. It is not fair or reasonable to conclude that the use of the word "*everyday*" contributed to Ms W giving an incorrect declaration, and it was reasonable for them to rely on the declaration.
- The appropriateness test answers and the associated confirmations were sufficient for Gallium to satisfy themselves 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.
- Ms W made the investment on the understanding it had risk associated with it, and did not choose to surrender it when she received the 2019 email which warned of the concentration risk. So she 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 the acts carried out by BG Ltd, on behalf of Gallium, in relation to the sale of the bond.

In considering what's 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 not 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 have 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 our investigator, for the same reasons. In summary:

- BG Ltd, acting on Gallium's behalf, misled Ms W 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 Ms W fairly or acting in her best interests. Had BG Ltd followed the rules and not misled Ms W, it is unlikely she would have certified herself 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 Ms W. In the circumstances Ms W would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded they shouldn't promote the bond to Ms W.

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

## **Putting things right**

### **Fair compensation**

In assessing what would be fair compensation, I consider that my aim should be to put Ms W

as close to the position she would probably now be in if she had not invested in the bond.

I take the view that Ms W would have invested differently. It isn't possible to say *precisely* what she would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Ms W's circumstances and objectives when she invested.

It is also clear that Ms W has been caused distress and inconvenience by the loss of her investment. Given her circumstances – including disruption to her retirement plans, this is money Ms W cannot afford to lose, nor is it money she is able to replace. I don't believe Ms W expected the loss of all her capital and I recognise the considerable worry she will have felt when B&G Plc failed. I consider a payment of £350 is fair compensation for the upset caused.

### What must Gallium do?

To compensate Ms W fairly, Gallium must:

- compare the performance of Ms W'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;
- add any interest set out below to the compensation payable; and
- pay an additional £350 to Ms W to recognise the distress and inconvenience caused by the loss of her investment.

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 Ms W agrees to Gallium taking ownership of the investment if they wish to. If it is not possible for Gallium to take ownership, then they may request an undertaking from Ms W 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 is 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:

- Ms W 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 Ms W's circumstances and objectives. It doesn't mean that Ms W would have invested only in a fixed rate bond but is the sort of investment return a consumer could have obtained with little risk to their capital.

### **My final decision**

I'm upholding the complaint. My decision is that Gallium Fund Solutions Limited should pay to Ms W the amount calculated as set out above. Gallium Fund Solutions Limited should provide details of its calculation to Ms W in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 6 March 2023.

Clare King  
**Ombudsman**