

## **The complaint**

Ms N complains to Gallium Fund Solutions Limited ("Gallium") about two bonds issued by Basset & Gold Plc ("B&G plc") which she invested into in 2017. She says she was wrongly told her investments were protected by the Financial Services Compensation Scheme ("FSCS") and the Financial Conduct Authority ("FCA"), and that the bonds were low risk and diversified, but all of her money was lost.

## **What happened**

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

Ms N made two investments into B&G Plc 3-Year Fixed Monthly Income IFISA Bonds – in July 2017 she invested £20,000 and in August 2017 she invested £21,150. 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 bonds. BG Ltd arranged applications for investments in the bonds, through a website it operated. And it was responsible for advertising/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 from 17 February 2017 to 28 February 2018.

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

Ms N explains that she first found the bonds while searching for ISAs online. She says that she and her father spoke to BG Ltd representatives and were reassured about the bonds low risk and regulatory protection. She recalls being told that sufficient due diligence had been done, with monies lent being secured against assets. Ms N completed her first application online in June 2017. Ms N then completed her second application online, as well as a paper based form to instruct an ISA transfer from her bank.

Ms N says she had limited investment experience when applying for the bonds, having only experienced fixed rate bonds and stocks and shares ISAs previously. Ms N says she understood the bonds to be low risk and to have met her investment objectives.

When Ms N referred her complaint to us, we asked for copies of any call recordings BG Ltd held. We were provided with some, but they were service and enquiry calls – importantly, none were pertinent to the sales of the investments, so the recordings have not been material in my consideration of this complaint.

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, Ms N has not had her invested capital returned to her.

### ***The application process***

It appears Ms N completed her applications for her bonds online – but she also followed up with a paper ISA form for the second bond, given she was transferring an existing ISA.

I have seen screen prints of each stage of the online application process. These show the application journey that Ms N 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 Ms N was categorised as an ‘everyday investor’. The second was the appropriateness test.

In relation to the second bond, have seen the ISA form and note Ms N included an application reference number that corresponded with her second bond application. It therefore appears she completed this after applying for her second bond online. The form asked Ms N to provide her personal and bank details for the transfer to be instructed. It also included a section called ‘Understanding the IF ISA’ and asked Ms N questions about her understanding of the bond.

### ***Gallium’s response to Ms N’s complaint***

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

- The application process – both in terms of the certification of Ms N 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 its regulatory obligations. Had it done so, Ms N wouldn’t have decided to invest or BG Ltd should have concluded that it shouldn’t allow Ms N to invest. For these reasons, both cumulatively and individually, it was fair to uphold the complaint and for Gallium to compensate Ms N for the loss she 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 Ms N's complaint.
- Regardless of label, Ms N 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 N giving an incorrect declaration, and it was reasonable for it to rely on the declaration.
- The appropriateness test answers and 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.
- Ms N made the investment on the understanding it had risk associated with it and did not chose to surrender it when receiving the email in 2019 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 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 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 Ms N 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 N fairly or acting in her best interests. Had BG Ltd followed the rules and not misled Ms N, it is unlikely she would have certified herself as being a restricted investor.
- Neither the appropriateness tests carried out by BG Ltd, on behalf of Gallium, nor the questions on the ISA form met the requirements of the rules. And, had they have done so, it would have been apparent the bonds were not appropriate investments for Ms N. In the circumstances Ms N would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bonds to Ms N.

For these reasons – individually and cumulatively – my decision is that Ms N's complaint should be upheld. I am also satisfied Ms N 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 Ms N 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 N as close to the position she would probably now be in if she had not invested in the bonds.

I think Ms N would have invested differently. It is not possible to say *precisely* what she would have done, but I am satisfied that what I have set out below is fair and reasonable given Ms N's circumstances and objectives when she invested.

#### ***What must Gallium do?***

To compensate the estate of Ms N fairly, Gallium must:

- Compare the performance of each of Ms N's investments with that of the benchmark shown below and pay the difference between the fair value and the actual value. If the actual value is greater than the fair value, no compensation is payable.
- Gallium should also pay interest as set out below.
- A separate calculation should be carried out for each investment.

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 - July 2017	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 - August 2017	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 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 Ms N 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 Ms N 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 N wanted to achieve a reasonable return without taking a significant risk.
- The average rate for the fixed rate bonds would be a fair measure given Ms N's circumstances and objectives. It does not mean that Ms N 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 Ms N's complaint. My decision is that Gallium Fund Solutions Limited should pay the amount calculated as set out above and provide details of its calculation in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms N to accept or reject my decision before 17 March 2023.

Aimee Stanton  
**Ombudsman**