

## **The complaint**

Mrs N complains to Gallium Fund Solutions Limited (“Gallium”) about investments she made into two bonds in 2017. She says they were mis-sold, the promotional material was misleading and the funds were managed negligently. And when her investments matured, she requested her capital back, but nothing has been returned – so she is claiming a return of her money.

## **What happened**

### *The B&G Plc Bond*

Mrs N invested into the following investments with Basset & Gold Plc (“B&G plc”):

- 25 March 2017 - £15,240 – 3 Year Fixed Monthly Income IFISA Bond
- 25 May 2017 – £20,000 – 3 Year Fixed Monthly Income IFISA Bond

Sales of the bonds were dealt with by Basset Gold Limited (“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 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. B&G Plc and BG Ltd were appointed representatives of Gallium from 17 February 2017 to 28 February 2018.

### *Mrs N’s investment in the bonds*

Mrs N found out about the bond when her husband – who also made a complaint to Gallium about a similar investment – was researching on the internet for a better interest rate for her savings. After being contacted by a representative of BG Ltd, Mrs N made her applications on or around the dates highlighted above. Mrs N had savings predominantly held in cash-based accounts and some investment experience, but said she was looking for an investment with no risk when she applied for the B&G Plc IFISAs.

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. Following action by the FCA, the lender went into administration in March 2020 - and B&G Plc went into administration shortly afterwards. As a result, Mrs N has not had her invested capital returned to her.

### *The application process*

Gallium say the bonds were taken out following an online application process on BG Ltd’s website. Mrs N has mentioned completing an online process but also recalls speaking to BG Ltd about her applications. We have been provided with systems records that indicate Mrs N completed an investor questionnaire and categorisation on 27 March 2017. I have seen screen prints of each stage of the online application process. These show the application

journey that Mrs N underwent online. 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 N was categorised as an “everyday investor”. The second was the appropriateness test.

When Mrs N referred her complaint to us, we asked for copies of any call recordings BG Ltd held, but we have not been provided with recordings of any conversations Mrs N had with BG Ltd before or during the bond applications.

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

In June 2020, Mrs N raised a complaint. Gallium did not uphold Mrs N’s complaint. It said Mrs N had been given sufficient information and risk warnings about the investment. It then made further submissions, once Mrs 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 Mrs N’s complaint and concluded it should be upheld. They said, in summary:

- The application process – both in terms of the certification of Mrs 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.
- In respect of the certification process, from the information gathered about Mrs N’s circumstances, the investigator found it likely that she may have qualified as a different type of investor than what was recorded – that being a High Net Worth (HNW) investor.
- But the investigator still found the assessment of appropriateness did not to meet the obligations required, so there was still reason to uphold the complaint.
- Overall, BG Ltd, on Gallium’s behalf, didn’t comply with its regulatory obligations. Had it done so, Mrs N wouldn’t have decided to invest or BG Ltd should have concluded that it shouldn’t allow Mrs N to invest. For these reasons, it was fair to uphold the complaint and for Gallium to compensate Mrs N for the losses 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 N’s complaint
- The website and marketing material was not misleading - Mrs N was given sufficient information and risk warnings
- It noted that Mrs N satisfied the criteria to be classed as HNW investor. It didn’t comment on the fact that Mrs N had classed herself as an “everyday investor”.
- 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.
- Mrs N made the investments on the understanding they had risk associated with them, and did not choose 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 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:

In this case there is limited contemporaneous evidence of Mrs N's applications. Neither Gallium's response to the complaint nor the information provided to us by the administrators of BG Ltd have any detail of applications beyond what is recorded on the systems records, set out above, which only appears to refer to one application. Based on what is available, I think it more likely than not Mrs N did complete at least one online application process on BG Ltd's website. That would be consistent with Gallium's general explanation of how investments were made and what we have seen in practice in the large number of complaints we have seen about Gallium and these bonds. So I have considered the complaint on that basis.

BG Ltd, acting on Gallium's behalf, misled Mrs 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 Mrs N fairly or acting in her best interests. Had BG Ltd followed the rules and not misled Mrs N, it is unlikely she would have certified herself as being a restricted investor. But as the investigator noted, Mrs N has provided information about her circumstances at the time she invested in the bonds. This information suggests she held sufficient assets to mean she qualified as a "High Net Worth" investor. So while I have concerns about the way the certification process was completed, it seems possible, based on the information she has provided, Mrs N would have been able to proceed with her applications if BG Ltd had followed its obligations correctly in respect of the certification.

But I still find 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 N. BG Ltd was also required to take reasonable steps to satisfy itself that Mrs N had the requisite experience, knowledge or expertise to understand the risks of the bonds in line with COBS 4.12.11. The appropriateness test carried out, did not meet the requirements of the rules. Had the process been consistent with what the rules required – had Mrs N been asked for appropriate information about her knowledge and experience – the only reasonable conclusion BG Ltd could have reached, having assessed this, was that Mrs N did not have the necessary experience and knowledge to understand the risks involved with the bonds.

Mrs N had limited investment experience and was predominantly familiar with standard deposit savings and ISA accounts – I have seen no evidence to show she had anything other than a basic knowledge of investments. I don't think Mrs N's level of investment experiences prior to investing can be considered meaningful experience, insofar as it would enable her to understand the risks involved. So, it would not be sufficient to conclude these bonds were appropriate for her on that basis.

In the circumstances Mrs N would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bonds to Mrs N. Given the evidence available, it's clear that Mrs N was looking for an account with no risk from which to earn interest.

For these reasons my decision is that Mrs N's complaint should be upheld. I am also satisfied Mrs 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 Mrs N for her losses.

### **Putting things right**

In assessing what would be fair compensation, I consider that my aim should be to put Mrs N as close to the position she would probably now be in if she had not made the investments.

I take the view that Mrs N 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 N's circumstances and objectives when she invested.

### *What must Gallium do?*

To compensate Mrs N fairly, Gallium must:

- Compare the performance of each of Mrs N'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 N £350 for the distress and inconvenience of losing all the capital invested in bonds she thought were safe.

Income tax may be payable on any interest awarded.

| Investment name                                    | Status                    | Benchmark                          | From ("start date") | To ("end date")           | Additional interest   |
|--|---------------------------|------------------------------------|---------------------|---------------------------|---|
| B&G 3 Year Fixed Monthly Income IFISA Bond £15,240 | 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) |
| B&G 3 Year Fixed Monthly Income IFISA Bond £20,000 | 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) |

*For each investment:*

*Actual value*

This means the actual amount paid or payable from the investments at the end date.

If at the end date the investments are illiquid (meaning they 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 N agrees to Gallium taking ownership of the investments, if it wishes to. If it is not possible for Gallium to take ownership, then it may request an undertaking from Mrs N that she repays to Gallium any amount she may receive from the investments in future.

*Fair value*

This is what the investments would have been worth at the end date had they 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:

- Mrs N 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 N's circumstances and objectives. It does not mean that Mrs 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 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 N in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 30 March 2023.

Daniel Little  
**Ombudsman**