

The complaint

Mrs S complains about a five-year bond she invested into issued by Basset & Gold Plc (“B&G plc”). She says bond was mis sold to her by Basset Gold Limited (“BG Ltd”) an appointed representative of Gallium Fund Solutions Limited (“Gallium”).

Mrs S says she has lost all of her money as a result of the investments poor performance, and information relating to the bond was misleading. She says she was also persuaded through misleading information that it had Financial Services Compensation Scheme (FSCS) protection.

What happened

The B&G Plc Bond

Mrs S invested in a B&G Plc “Five-year fixed monthly income 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. B&G Plc and BG Ltd were appointed representatives of Gallium from 17 February 2017 to 28 February 2018.

Mrs S’ investment in the bond

Mrs S visited BG Ltd’s website in August 2017. At the time she was a retired widow and in receipt of pension income only. She came across B&G Plc bond though an online internet search as she was looking for a bond that would pay her income to supplement her pension.

Mrs S says she had very little previous investment experience and wanted a bond with no risk to her capital. This is because she had previously lost money when a company went insolvent, and she had to go through the FSCS to recover the funds. She says she wanted to avoid capital risk with her investment as she didn’t want to go through that stress again.

Mrs S says she completed the application form on the phone whilst speaking to BG Ltd. In total she applied to invest £3,000 in the bond. The bond she invested in offered an interest rate 7.46% per year, income payable and the invested capital to be returned after five years.

When Mrs S referred her complaint to the Financial Ombudsman Service, we asked for copies of any call recordings BG Ltd held. We were provided with copies of some call recordings, but we have not been provided with relevant recordings of any conversations Mrs S had with BG Ltd before or during the bond application. As such, I’ve not referred to 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, Mrs S has not had her invested capital returned to her.

The application process

Mrs S says she applied for the bond on the phone in August 2017 as she had help over the phone by BG Ltd.

A separate spreadsheet we received from the administrators on of half BG Ltd confirmed BG Ltd received and accepted Mrs S' application form on 9 August.

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

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

Gallium's response to Mrs S' complaint

Gallium did not uphold Mrs S' complaint. It said Mrs S had been given sufficient information and risk warnings about the investment. It then made further submissions, once Mrs 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

On 15 September 2022, one of our investigators considered Mrs S' complaint and concluded it should be upheld. They said, in summary:

- They are satisfied Mrs S would have met the definition of a "everyday investor" (the description Gallium used for what is described as a "restricted investor" in the regulatory rules) - in theory, therefore satisfying the first stage of the process.
- They are persuaded the application process – both in terms of the certification of Mrs S 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.
- The website and marketing material was misleading (in particular that her capital wasn't protected by FSCS).
- Overall, BG Ltd, on Gallium's behalf, didn't comply with its regulatory obligations. Had it done so, Mrs S wouldn't have decided to invest or BG Ltd should have concluded that it shouldn't allow Mrs S to invest. For these reasons, both cumulatively and individually, it was fair to uphold the complaint and for Gallium to compensate Mrs S for the loss she has suffered.

Gallium's response to the view

Gallium did not accept the investigator's view. It said, summary:

They note the investigator accepts Mrs S satisfied the criteria to be classed as a restricted 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 S 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'm 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 Mrs S into certifying herself as belonging in a category (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 S fairly or acting in her best interests. Had BG Ltd followed the rules and not misled Mrs S, it is unlikely she would have certified herself as being a restricted investor or any of the other categories.

- 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 Mrs S. In the circumstances Mrs S would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bond to Mrs S.

For these reasons – individually and cumulatively – my decision is that Mrs S’ complaint should be upheld. I am also satisfied Mrs S 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 S for her loss.

Putting things right

Fair compensation

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

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

What must Gallium do?

To compensate Mrs S fairly, Gallium must:

- Compare the performance of Mrs 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 Mrs S has been caused some distress and inconvenience by the loss of her investment. Given her circumstances, this is money Mrs S cannot afford to lose, nor is it money she is able to replace. I do not believe Mrs S foresaw such a drastic loss 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.

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 Mrs S 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 Mrs S 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:

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 22 March 2023.

Sean Pyke-Milne
Ombudsman

