

The complaint

In June 2017, Mr N invested £20,000 in a Three-Year Fixed Monthly Income IFISA Bond with Basset & Gold Plc ("B&G Plc"). He says he was mis-sold the investments by Basset Gold Limited ("BG Ltd") and this has resulted in him losing all his money.

What happened

The B&G Plc Bond

Mr N 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 it was responsible for advertising and 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 Fund Solutions Limited ("Gallium"). B&G Plc and BG Ltd were appointed representatives of Gallium from 17 February 2017 to 28 February 2018.

Mr N's investment in the bond

Mr N was introduced to BG Ltd by his father, who was also a B&G Plc bondholder. His father had gifted him £20,000, which represented a full year's ISA subscription, in order to make the investment. Mr N recalls applying for the bond online.

Mr N was 19 years old at the time he completed his application. He says that, at the time, he was a full-time student and had very little investment experience. He's said he held in excess of £200,000 in savings at the time he invested, split between cash holdings and a with-profits bond his parents had arranged for him many years earlier.

I've been provided with the recordings of some calls between Mr N and BG Ltd. But as they post-date the matter Mr N is complaining about, I've not relied on them when reaching my findings.

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 N has not had his invested capital returned to him.

The application process

Mr N recalls applying for his bond online. I've seen no evidence which persuades me his application came to BG Ltd through a different channel. So I think it's likely that, as he says, Mr N applied for his bond online.

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

Gallium's response to Mr N's complaint

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

- The application process – both in terms of the certification of Mr N as a “everyday investor” (the description Gallium used for what is described as a “restricted investor” in the regulatory rules) 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 N wouldn't have decided to invest or BG Ltd should have concluded that it shouldn't allow Mr N to invest. For these reasons, both cumulatively and individually, it was fair to uphold the complaint and for Gallium to compensate Mr N for the loss he 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 Mr N's complaint
- Regardless of label, 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 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 N made the investment on the understanding it had risk associated with it, and did not choose to surrender it when receiving the 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 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 similar reasons.

I'm satisfied that BG Ltd, acting on Gallium's behalf, failed to communicate with Mr N in a way that was clear, fair, and not misleading during its certification process. It departed from the rules in COBS 4.7.10R and gave him the means to certify himself as an "everyday investor", rather than a "restricted investor". Describing this as a category which "anyone" could fall into, which I find to be misleading. And it omitted the declaration which warns of "a significant risk of losing all of the money" he'd be investing, which I find to be unfair.

I've noted that, due to his substantial savings, Mr N may have been able to satisfy some of the requirements necessary to be certified as a "restricted investor" under COBS 4.7.10R. I've also noted that Mr N was introduced to BG Ltd by his father, who had already invested himself. I've therefore considered the possibility that, had BG Ltd met with the requirements under COBS 4.7.10R and provided the correct declaration for Mr N to review, he was capable and perhaps motivated to certify himself as a "restricted investor".

But on balance, I'm not persuaded Mr N is likely to have made the declaration which would've certified him as a "restricted investor". The declaration which warns of "a significant risk of losing all of the money" he'd invested, ran counter to what Mr N has said his understanding of the investment was at that time. I think it's more likely that, had BG Ltd met with its obligations under COBS 4.7.10R and correctly displayed this declaration to Mr N, it's unlikely he'd have proceeded to certify himself as a restricted investor.

But even if I'm wrong about this, I'm satisfied that this complaint should still be upheld. Because like our investigator, I've found that following Mr N's certification, 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 N. In the circumstances Mr N would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bond to Mr N.

For these reasons – individually and cumulatively – my decision is that Mr N's complaint should be upheld. I am also satisfied Mr N 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. And so I am satisfied it is fair to ask Gallium to compensate Mr N for his loss.

Fair compensation

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

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

What must Gallium do?

To compensate Mr N fairly, Gallium must:

- Compare the performance of Mr N'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.
- Pay to Mr N £350 for the distress and worry caused to him by the loss of his investment, which I'm satisfied Gallium shouldn't have allowed him to make.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Three-Year Fixed Monthly Income IFISA 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 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 N agrees to Gallium taking ownership of the illiquid assets, if it wishes to. If it is not possible for Yes to take ownership, then it may request an undertaking from Mr N 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.

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:

- Mr N wanted to achieve a reasonable return, and I do not think he wanted to take a significant risk.
- The average rate for the fixed rate bonds would be a fair measure given Mr N's circumstances and objectives. It does not mean that Mr 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 Mr N in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 1 March 2023.

Marcus Moore
Ombudsman