

The complaint

X is complaining about bonds issued by Basset & Gold Plc (B&G Plc) and sold to him by Basset Gold Limited (BG Ltd), an appointed representative of Gallium Fund Solutions Limited (Gallium). He said he was told that the bonds were safe, carried low risk and paid good monthly interest. He was assured his bonds would be protected by the Financial Services Compensation Scheme (FSCS).

What happened

In April 2017, X invested £15,240 and £20,000 into two three-year Fixed Monthly Income IFISA Bonds. Sales of these bonds were dealt with by BG Ltd, a separate business from B&G Plc, the issuer of the bonds. BG Ltd arranged applications for investment in the bonds, through a website it operated. And they were responsible for advertising and 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 from 17 February 2017 to 28 February 2018.

X had previously invested in a B&G Plc bond, in 2016. But this was before B&G Plc was an appointed representative of Gallium – so I'm not considering that investment in this decision.

X's investment in the bonds

In 2017, X had limited experience of investing. He'd invested in the stock market for a short time in 2009 but decided it was too high risk. Since then, he'd had his money in Individual Savings Accounts (ISAs) and savings accounts, as well as the 2016 B&G Plc bond.

X recalls that he was told about BG Ltd by one of his friends. He looked at BG Ltd's website and saw positive reviews of the bonds. So he filled in a contact form and was contacted by a representative of BG Ltd who discussed the bonds, their risk and return, and the application process in detail. X says he was told the bonds were safe and low risk and that they'd yield good monthly interest. He also understood the investment to be regulated by the Financial Conduct Authority and covered by the FSCS – so assumed he'd get his money back if the investment failed.

X recalls the application process started over the phone and he was then emailed and posted a copy of the application to sign. This corresponds with a discussion in a phone call on 3 April 2017 in which X said he'd applied over the phone and was expecting to receive some paperwork to sign. Unfortunately we haven't got a recording of the call in which the application was made.

Although our investigator's view suggested X had applied online for these bonds, the evidence I've seen leads me to conclude he actually applied over the phone.

BG Ltd's system records show that an "everyday investor" tag was added to X's record on 28 March 2017 and the ISA and B&G terms were also confirmed on this date. The bond certificates show application dates of 3 and 13 April 2017 respectively.

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, X has not had his invested capital returned to him.

Gallium's response to X's complaint

Gallium didn't uphold X's complaint. They said X had been given sufficient information and risk warnings about the investment. They then made further submissions, after X's complaint had been referred to us. I've considered their 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 X's complaint and concluded it should be upheld. He said, in summary:

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

Gallium's response to the view

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

- Regardless of label, X 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 X giving an incorrect declaration, and it was reasonable for them to rely on the declaration.
- The appropriateness test answers, and these 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.
- X made the investment on the understanding it had risk associated with it, and did not choose to surrender it when he received 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'm satisfied it's 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 bonds.

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 bonds were 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 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 agree with the investigator that this complaint should be upheld. In summary:

- Because I haven't heard the call recording of X's phone application, I'm not making an assessment as to how X came to be classed as a "*restricted investor*". However I note that X did not meet the FCA definitions of a restricted investor.
- The appropriateness test carried out by BG Ltd, on behalf of Gallium, didn't meet the requirements of the rules. If it had, it would have been apparent the bonds weren't an appropriate investment for X. In the circumstances X would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded they shouldn't promote the bonds to X.

For this reason my decision is that X's complaint should be upheld. I am also satisfied X 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's fair to ask Gallium to compensate X for his loss.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put X as close to the position he would probably now be in if he hadn't invested in the bonds.

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

What must Gallium do?

To compensate X fairly, Gallium must:

- compare the performance of X's investments with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. A separate calculation should be carried out for each bond. 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 X for the distress and inconvenience caused to him including the disruption of his plans and not being able to support his family as he'd hoped.

Income tax may be payable on any interest awarded.

Investment 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)
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For each investment:

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 X agrees to Gallium taking ownership of the illiquid assets, if they to. If it isn't possible for Gallium to take ownership, then they may request an undertaking from X that he repays to Gallium any amount he may receive from the bonds 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:

- X wanted to achieve a reasonable return without risking any of his capital.
- The average rate for the fixed rate bonds would be a fair measure given X's circumstances and objectives. It does not mean that X 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'm upholding the complaint. My decision is that Gallium Fund Solutions Limited should pay to X the amount calculated as set out above. Gallium Fund Solutions Limited should provide details of its calculation to X in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 5 April 2023.

Clare King
Ombudsman