

The complaint

In July 2017, Mrs B invested £20,000 in a 3 Year Fixed Monthly Income IFISA bond with Basset & Gold Plc (“B&G Plc”). She says the bond was mis-sold as the Invitation Document gave misleading statements regarding the security of the investment proposition. She also believes she was misled regarding losses suffered by Uncle Buck, the investment process undertaken in seeking to source lending opportunities and the characterisation of how the business sought to generate returns. Mrs B said she was assured the investment was secure and fully asset backed.

What happened

The B&G Plc Bond

Mrs B invested in a B&G Plc 3 Year Fixed Monthly Income IFISA bond. Sales of this bond 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 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.

Mrs B’s investment in the bond

Mrs B found out about the bond after her husband carried out some research on her behalf. Mrs B visited BG Ltd’s website looking for a low risk product and applied online via the BG Ltd website. Mrs B had little investment experience beyond earlier investments in Blackmore bond and London Capital & Finance secure bond which she believed were asset backed with an insurance guarantee. At the time of the application for the B&G Plc bond, her previous bonds were still running and it was prior to Blackmore and London Capital & Finance failing.

I have also been supplied with a number of call recordings pre and post sale. They were with Mrs B’s husband and are administrative in nature. They are not material and the application was made online, so they have not been relied on 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, Mrs B has not had her invested capital returned to her.

The application process

Mrs B applied online when taking out the bond.

I have seen screen prints of each stage of the online application process. These show the application journey that Mrs B 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 B was categorised as a high net worth investor. The second was the appropriateness test.

Gallium's response to Mrs B's complaint

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

- Mrs B met the requirements of a high net worth investor.
- The application process in terms of the appropriateness of the bond for her was inconsistent with the FCA's rules or guidance, 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, C wouldn't have decided to invest or BG Ltd should have concluded that it shouldn't allow C to invest. For these reasons, both cumulatively and individually, it was fair to uphold the complaint and for Gallium to compensate C for the loss she has suffered.

Gallium's response to the view

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

- It notes that Mrs B met the requirements of a high net worth 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 B 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 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:

- Mrs B was certified as a high net worth investor and she confirmed she qualified for this category.
- 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 B. In the circumstances Mrs B would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bond to Mrs B.

For this reason my decision is that Mrs B's complaint should be upheld. I am also satisfied Mrs B 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 Mrs B 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 B 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 B 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 B's circumstances and objectives when she invested.

What must Gallium do?

To compensate Mrs B fairly, Gallium must:

- Compare the performance of Mrs B'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 Mrs B £200 for the distress caused by the total loss of her 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	Still exists but illiquid	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: 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 B 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 B 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 B wanted income with some growth with a small risk to her capital. She had selected the income option on the bond and had other funds in growth products.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to her capital.
- The FTSE UK Private Investors Income **Total Return** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mrs B's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs B into that position. It does not mean that Mrs B would have invested 50% of her money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mrs B could have obtained from investments suited to her objective and risk attitude.

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 B in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 11 April 2023.

Laura Dean
Ombudsman