

The complaint

Mrs V complains Gallium Fund Solutions Limited (“Gallium”) are responsible for money she lost on a high-risk investment that she believes shouldn’t have been sold to her.

What happened

Mrs V was sold her bond – a three-year fixed monthly income IFISA bond – in July 2017 by Basset Gold Limited (“BG Ltd”). A separate business – Basset & Gold Plc (“B&G plc”) – then issued the bond.

BG Ltd arranged applications for the bond through a website it operated. It was responsible for advertising and marketing the bond.

The bond was non-readily realisable. That meant there were rules restricting who it could be promoted to, and rules about testing whether the investment was appropriate for the potential investor. BG Ltd’s online application process took steps to meet the obligations created by these rules.

While neither B&G Plc nor BG Ltd were regulated companies, both were appointed representatives of Gallium from 17 February 2017 to 28 February 2018. As such, Gallium – which is regulated by the Financial Conduct Authority (“FCA”) – is responsible for complaints about the acts or omissions either business allegedly made during this time.

Mrs V’s investment in the bond

Mrs V found the bond while searching online. She’s said she was looking for an investment ISA to use her annual ISA allowance. She says she was looking for a safe investment that would generate a good level of income. She’s told us her previous experience was limited to investments in cash ISAs, so she wasn’t familiar with investment risk.

Mrs V applied online via the BG Ltd website. Mrs V invested £20,000, which her representative has said accounted for 9.8% of her savings. The bond was to return the amount invested after three years, plus provide regular payments of interest to Mrs V.

In January 2019, Mrs V says she received an email from a further company – B&G Finance Limited, which by that point had taken on BG Ltd’s role. This referred to the fact that nearly all the money invested had been lent to one short-term lender.

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

The application process

When Mrs V referred her complaint to us we asked for copies of any call recordings BG Ltd held. We received eight, but none of these seemed to pre-date Mrs V’s July 2017 application. As such, the calls haven’t helped me reach a conclusion for this case.

But Gallium's records seem to confirm Mrs V completed an online application in July 2017 to set up her bond. This was a key step to get the bonds, so I've focussed my decision on the online process.

I've not seen Mrs V's specific online application. But I've seen screen-prints of each stage of the process she'd have followed. This consisted of two stages: certification, designed to meet the rules restricting who the bond could be promoted to; and then a test to decide if the investment was appropriate for Mrs V.

Gallium's response to Mrs V's complaint

Gallium didn't uphold Mrs V's complaint. It said Mrs V had been given sufficient information and risk warnings about the investment.

Gallium made further submissions once Mrs V's complaint came to us. I've considered the submissions in full. I've 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 V's complaint and concluded it should be upheld. In summary, they made the following points:

- Mrs V met the requirements of a high net worth investor (despite being certified as an everyday investor).
- The part of the application process testing the appropriateness of the bond for Mrs V was inconsistent with the FCA's rules and guidance, and didn't gather sufficient information.
- Overall, BG Ltd, on Gallium's behalf, didn't comply with its regulatory obligations. Had it done so, Mrs V wouldn't have decided to invest or BG Ltd should have decided not to allow Mrs V to invest.
- For these reasons, both cumulatively and individually, it was fair to uphold the complaint and for Gallium to compensate Mrs V for the loss she has suffered.

Gallium's response to the view

Gallium didn't accept the investigator's view. In summary, it made the following points:

- Mrs V had 'expressly certified' herself as a high net worth investor. They also noted confirmations she'd agreed about her experience and understanding of the product.
- 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.
- Mrs V made the investment on the understanding it had risk associated with it, and didn't choose to surrender it when receiving the warning email in 2019. So she likely 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.

To do so, I've taken into account relevant law and regulations; regulator 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 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). 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). That's also relevant here.

The rules for selling non-readily realisable bonds in 2017 were set out in COBS 4.7 and COBS 10.1, 10.2 and 10.3. I've considered those 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 (UK Crowdfunding Association). I've considered these too.

Having considered all the available evidence and arguments I've reached the same conclusion as the investigator, for broadly the same reasons.

In summary:

- A spreadsheet Gallium sent us confirms Mrs V certified herself as an 'everyday investor', not a high net worth investor. It was our investigator's assessment that she'd also be a high net worth investor, because she had a large amount of money invested.
- I'm satisfied Mrs V's self-certification was in line with the information we've had about her savings – principally that the £20,000 she put in the bond was less than 10% of her wealth.
- The appropriateness test carried out by BG Ltd, as Gallium's appointed representative, didn't meet the requirements of the rules. If it had, it would have been apparent the bonds weren't an appropriate investment for Mrs V.
- With a more reasonable test of Mrs V's knowledge and experience of these bonds, I find it's likely she'd have either appreciated their risk and not proceeded, or BG Ltd should have concluded it wasn't reasonable for them to sell the bonds to Mrs V.
- Gallium have referred to an email from 2019 that talked about the risks affecting bonds like Mrs V's. But I'm not satisfied that did enough to inform Mrs V about how that related to her specifically. Mrs V couldn't have been aware from the email that BG Ltd hadn't taken suitable steps to assess her knowledge and experience when selling the bonds to her.
- Had the email done more to make Mrs V aware of that, she'd likely have withdrawn from the bonds at that point.

For these reasons my decision is that Mrs V's complaint should be upheld. If Gallium had acted reasonably to meet its regulatory obligations, I'm satisfied Mrs V would either not have proceeded to make the investments in 2017, or would not have been allowed to proceed. All that means I'm directing Gallium to compensate Mrs V for the losses she's had as a result.

Putting things right

In assessing what would be fair compensation, my aim is to put Mrs V as close to the position she would probably now be in if she hadn't invested in the bond.

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

What must Gallium do?

To compensate Mrs V fairly, Gallium must:

- Compare the performance of Mrs V'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 V £250 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 (if not settled within 28 days of the business receiving the complainant's acceptance)
3 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

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 V 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 V 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 V wanted to achieve a reasonable return without risking any of her capital.
- The average rate for the fixed rate bonds is a fair measure given Mrs V's circumstances and objectives. It doesn't mean that Mrs V would have invested only in a fixed rate bond. It's instead in line with the investment return a consumer could have obtained taking a similar level of risk as Mrs V would likely have taken.

My final decision

I uphold Mrs V's complaint. My decision is that Gallium Fund Solutions Limited should pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs V to accept or reject my decision before 17 March 2023.

Paul Mellor
Ombudsman