

## **The complaint**

Mr B complains he was mis-sold an investment he made in a bond issued by Basset & Gold Plc ("B&G Plc"). He believes he was misled about the risk associated with the bond and would like to be compensated for the loss in capital he suffered.

## **Background**

### **The B&G Plc Bond**

Mr B invested £10,000 in a B&G Plc 5 Year Compounding High-Yield Bond in February 2018. For a period, sales of these bonds were dealt with by Basset Gold Ltd ("BG Ltd"), a separate business from B&G Plc, the issuer of the bonds. BG Ltd arranged applications for investments in the bonds. And it was 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 (ARs) of Gallium Fund Solutions Limited ("Gallium"). B&G Plc and BG Ltd were ARs of Gallium from 17 February 2017 to 28 February 2018.

Basset Gold Finance Ltd ("BGF") – an independently authorised business not connected to Gallium – took over from BG Ltd at some point in 2018. Gallium has said this happened before the AR agreement between it and BG Ltd came to an end and has made submissions on this point. I've referred to BG Ltd as the business Mr B interacted with, but I'll go on to consider in my findings whether Mr B actually dealt with BGF instead.

### **Mr B and the investment in the bond**

As previously noted, Mr B invested a total of £10,000 in the bond. This followed email correspondence he had with a representative of BG Ltd which took place over a number of weeks. This includes an email exchange where Mr B asked:

*'I have £20k sitting in a RBS ISA account doing absolutely nothing in terms of investment. My big concern with your bonds offers is that I could lose my life savings and I am reluctant to take that gamble. Can you offer any assurance regarding the safety of my money'*

BG Ltd replied:

*'...No investor has ever lost money with Basset Gold, and we intend to keep to keep it that way. As a primary layer of security, al (sic) investments are backed by assets, such as property, corporate debentures and other forms of security in order to protect our investments and your capital.*

*Basset & Gold Plc. has never missed any payment to investors and no investor has ever lost money with Basset & Gold Plc. In addition, all payments are made directly to your bank account, so you don't have to request to withdraw your interest payments, creating a truly hassle-free investment.*

*We are required to inform you that past performance is not indicative of future results.*

*Basset & Gold Plc's profit lies in the gap between the income from financing activities and the interest paid to investors, so you can rest assured that we are not tempted to reduce risk or operate in a way that is counterproductive to our returns since our profit comes from the interest earned on investments and not from fees or other incentives that may potentially be in conflict with your objectives.'*

BG Ltd's log of applications records the following:

Investor Tags		Legal Tags	
Type	Date	Type	Date
Everyday Investor	2018-02-12 17:06:25	Completed Investor Questionnaire	2018-02-12 17:07:39
		B&G T&C Confirmed	2018-02-12 17:08:44
		KYC Completed	2018-02-14 09:04:36

The certificate for the bond Mr B invested in – £10,000 in the B&G Plc 5 Year Compounding High-Yield Bond – records the application date as 12 February 2018. He's said this sum represented roughly half his life savings. He also said:

*'My attitude to risk is very much low to medium. I would not have taken chances with my pension pot and I bought the Feb bond as a suck it and see trial rather than investing my entire savings.'*

*'If I hadn't discovered B&G I would have left the money in the Royal Bank Account. I don't really know but I would guess that a non-readily realisable security is a long term investment commitment which cannot be cashed in earlier than the agreed term. I was completely guided by my personal adviser in B&G'.*

On 8 January 2019, BGF (which by that point had taken on the role of BG Ltd), emailed all investors who held B&G Plc bonds. The email explained that nearly all the money invested in the bonds had been lent to one short term and pay day lender, called Uncle Buck. Following action by the Financial Conduct Authority (FCA), Uncle Buck went into administration in March 2020 - and B&G Plc went into administration shortly afterwards. As a result, Mr B hasn't had the money he invested in this bond returned to him.

## **The application process**

It isn't completely clear from the available evidence how Mr B's application was made. However, I've seen screen prints of each stage of BG Ltd's online application process which show the online application journey that potential investors underwent. There were two stages, designed to meet the rules regarding restrictions on who the bonds could be promoted to and testing if the investments were appropriate for potential investors. The first stage was certification and the second was the appropriateness test.

## **Gallium's response to Mr B's complaint**

Gallium did not uphold Mr B's complaint. It said Mr B had been given sufficient information and risk warnings about the investment. It then made further submissions once the complaint was referred to us. I have considered the submissions in full and I've also considered what Gallium describes 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 B's complaint and concluded it should be upheld. They said, in summary:

- The information received from BG Ltd's administrators shows that Mr B selected "everyday investor", which was BG Ltd's category for restricted investors. But as Mr B had confirmed that he had invested half his life savings in the bond, our investigator didn't think he'd have qualified as a restricted investor as he was investing more than 10% of his assets. He also had no previous investment experience of any similar products.
- They had thought about whether Mr B would have qualified as any of the other categories of investor type eligible to receive promotions of the bond but didn't think he would.
- The assessment of the appropriateness of the bonds for Mr B was misleading and didn't gather sufficient information to comply with the FCA's rules.
- Had BG Ltd's process met what was required under the rules and sufficiently asked Mr B about his knowledge and experience then BG Ltd ought to have reasonably concluded that he did not have the necessary knowledge and experience to make the bond an appropriate investment for him.
- Overall, BG Ltd, on Gallium's behalf, didn't comply with its regulatory obligations. Had it done so, Mr B wouldn't have decided to invest or BG Ltd should have concluded that it shouldn't allow Mr B to invest. For these reasons, both cumulatively and individually, it was fair to uphold the complaint and for Gallium to compensate Mr B for the loss he suffered.

## **Gallium's response to the view**

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

- The investigator made findings on advice and matters not complained about, which fell outside the scope of the complaint made.
- Mr B ought to be held to the declaration he made that he satisfied the requirements of a restricted investor.
- The appropriateness test answers, and the confirmations Mr B gave, were sufficient for Gallium to satisfy itself that he 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 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.

Gallium also made submissions on what it describes as the "interim period" and said, in summary:

- BGF was authorised by the FCA on 2 January 2018 and began to promote the bonds to investors from that date. In particular, it understands that the website and telephone line was the responsibility of BGF from that date.

- At no point was BGF an appointed representative of Gallium, and Gallium had no responsibility for the actions of BGF. Our investigator has not found that Mr B actually spoke to anyone at B&G plc and BG Ltd for whose conduct Gallium had any responsibility, or that Gallium actually approved the content of the website through which Mr B invested and which contained the certification and appropriateness questions which form the basis for the view. Rather, the available evidence suggests that Mr B applied to invest through a website process approved by BGF.

The investigator considered the points Gallium made and issued a further opinion on the complaint, he said, in summary:

- Various emails sent to Mr B prior to him taking out the bond all showed in the footer that BG Ltd were acting as an AR of Gallium.
- Widely available evidence also showed that emails and paperwork in use at the time consistently set out prior to 1 March 2018 that the correspondence was sent from BG Ltd as an AR of Gallium Fund Solutions Limited – after which, this changed to BGF.

Gallium subsequently provided a witness statement from its former director, dated 16 February 2023, which says:

- He understands that the only regulated activities that continued to be carried out by BG Ltd in the interim period (the period where BGF, were that BG Ltd remained responsible for the making of telephone calls with investors or prospective investors concerning their bond investments.
- It is his understanding that:
  - Save in relation to telephone calls between Basset & Gold representatives and investors/prospective investors in the bonds, during the interim period all regulated activities relating to the financial promotions concerning the B&G Plc bonds, as well as activities concerning the arranging of bond investments, were conducted by BGF
  - BG Ltd continued to be responsible for the content of telephone calls between Basset & Gold.
- On 4 January 2018, he received an email from the owner of Basset & Gold, which confirmed that Basset & Gold (he says this meant BGF) had been authorised by the FCA. The owner requested a meeting to discuss the best way to “transition the regulatory business away from Gallium to the new firm”.
- He believes the meeting took place on 11 January 2018. No notes are available, but he recalls what was discussed.

We asked Gallium for various points of clarification on what is said in the witness statement, and for contemporaneous evidence to support it. However, we have not yet received a response to that request.

I issued a provisional decision where I said:

*“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.*

*I note the points Gallium has raised about the ‘interim period’ – in short, that it is not*

responsible for the act(s) this complaint relates to. With that in mind I have firstly considered all the available evidence and arguments to decide whether we can consider Mr B's complaint.

It is not clear how exactly Mr B's application came about – whether it was done online, over the phone or through the post – or on what basis it proceeded. But I think it's reasonable to say that Mr B's complaint is about the arrangement of his investment in the bond and the exchanges he had with the representative in the period up to the arrangement of the investment being concluded. In summary, he says he was misled when he queried the safety of the investment into the bond.

Rule DISP 2.3.1R says we can;

'consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a firm in carrying on...regulated activities...or any ancillary activities, including advice, carried on by the firm in connection with them'.

And the guidance at DISP 2.3.3G says:

'complaints about acts or omissions include those in respect of activities for which the firm...is responsible (including business of any appointed representative or agent for which the firm...has accepted responsibility)'.

This guidance is drawn from the relevant legislation, which is paragraph 3 of s39 to the Financial Services and Markets Act 2000 (FSMA):

'the principal [here, Gallium] of an appointed representative is responsible, to the same extent as if she had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which she has accepted responsibility'.

What I need to consider here is whether Mr B's complaint is about a regulated activity, carried on by an appointed representative of Gallium, for which Gallium accepted responsibility.

### **Is Mr B's complaint about a regulated activity?**

I'm satisfied Mr B's complaint relates to a regulated activity. The bond was a security or contractually based investment specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("RAO"). At the time of Mr B's investment in the bond, the RAO said regulated activities include arranging deals in investments.

Activities such as obtaining and assisting in the completion of an application form and sending it off, with the client's payment, to the investment issuer would come within the scope of Article 25(1), when the arrangements have the direct effect of bringing about the transaction. So, I am satisfied the application process – whether it took place online, through the post or over the phone - falls within the scope of Article 25(1). It involved making arrangements for Mr B to invest in the bond and had the direct effect of bringing about the transaction.

### **Was Gallium responsible for the acts the complaint is about?**

Under the appointed representative agreement in place between BG Ltd and Gallium, in relation to bonds, BG Ltd was allowed to carry out promoting activities...where the Company has approved the financial promotion. And Gallium allowed BG Ltd the right under its authorisation with the FCA to give advice... in connection with advising, arranging, or dealing

*in investment products for present and prospective clients and in connection therewith to display, advertise, promote, .... for the sole purpose of promoting the sale of the same.*

*This agreement was in force during the period up to the date of investment – 12 February 2018. So, if BG Ltd carried out the arrangements, that is business for which Gallium accepted responsibility and the complaint can therefore be considered against it.*

*I note that Gallium has said that from 2 January 2018 BGF began to promote the bonds to investors and that the website and telephone line was the responsibility of BGF from that date. However, apart from the witness statement (which I will comment on in due course), it has provided no evidence to support this point.*

*I'm satisfied that the available evidence shows that it was BG Ltd and not BGF making the arrangements for Mr B's investment. Notable evidence includes:*

- An email dated 12 December 2017 from BG Ltd's Dedicated Relationship Manager (the representative Mr B dealt with throughout), with links to the range of investment options, with an email footer stating 'Basset Gold Ltd is an appointed representative of Gallium Fund Solutions Limited which is authorised and regulated by the Financial Conduct Authority'*
- An email dated from 12 February 2018 from the Relationship Manager in response to a query Mr B raised about the safety of his capital. There is an email footer stating 'Basset Gold Ltd is an appointed representative of Gallium Fund Solutions Limited which is authorised and regulated by the Financial Conduct Authority'*
- Another email from 12 February 2018 from the Relationship Manager acknowledging receipt of Mr B's application. Again, the email footer states 'Basset Gold Ltd is an appointed representative of Gallium Fund Solutions Limited which is authorised and regulated by the Financial Conduct Authority'*
- An email from 14 February 2018 from the Relationship Manager confirming receipt of the funds and also confirming the application is complete. As with the previous emails I've mentioned - the footer states 'Basset Gold Ltd. is an appointed representative of Gallium Fund Solutions Limited which is authorised and regulated by the Financial Conduct Authority.'*

*I think the evidence shows that it was BG Ltd that was responsible for arranging the investment, not BGF. I've also not seen any communication from BG Ltd or BGF to Mr B to notify him of a change on 2 January 2018 – and I would expect such a communication to have been issued, given Mr B's interactions with BG Ltd were ongoing at that point.*

*Gallium says the available evidence suggests that Mr B applied to invest through a website process approved by BGF. As I have set out, I have not seen any evidence specific to this investment which makes any reference to BGF - all references are to BG Ltd.*

*The witness statement includes the following:*

*On 4 January 2018, I received an email from ..., the ultimate owner and controller of Basset & Gold, which confirmed that Basset & Gold had been authorised by the FCA. I now know that it is BGF that was the entity authorised by the FCA, and that BGF had become FCA authorised on 2 January 2018. ... requested a meeting to discuss the best way to 'transition the regulatory business away from Gallium to the new firm'.*

*I met with ... in the hotel he was staying in London the week following his email. I believe the*

meeting took place on 11 January 2018 as ...’s email of 4 January 2018 mentioned that he would be in London the following Thursday, which was the 11th. I recall that I made a note of what we discussed at the meeting, but so long after it took place I cannot now locate my notes. I do, however, recall what was discussed.

At the meeting, ... and I agreed that Gallium would cease monitoring and approving new financial promotions with immediate effect, because Basset & Gold now controlled its own regulated firm, BGF.

... also informed me that BGF would update the Basset & Gold website and online application form, to reflect that BGF was now responsible for the promotion of the bonds and arranging any investments made in the Bonds.

I think several elements of the witness statement are unclear, and we haven’t been provided with any evidence in support of what it says. However, even if I were to accept what the statement says (and, for the avoidance of doubt, I don’t) it does not conclusively show that BGF was responsible for Mr B’s investment.

The reason I say this is because the witness statement says a meeting took place on 11 January 2018 to discuss a ‘transition’ to BGF from Gallium’s ARs. Gallium’s ex-director says he recalls that at the time of the meeting Gallium would no longer be responsible ‘with immediate effect’ and BGF ‘now’ being responsible. This suggests that responsibility passed from Gallium to BGF on 11 January 2018.

However, I have not seen any evidence to show BGF took responsibility from 11 January 2018. I think the use of the phrase ‘transition’ to BGF from Gallium’s ARs is telling and doesn’t indicate that BGF was taking responsibility for everything with immediate effect. I’ve also considered the AR agreements in place between Gallium and B&G Plc/BG Ltd. I note that 11 i) of the AR agreement says:

‘This Agreement will remain in force for 6 months from the date of signing after which either party may terminate the Agreement by giving 1 month’s written notice, which notice shall start from the end of the month of receipt by the Company of that said notice.’

Therefore, notice given in January would start from the end of that month and go on to the end of February. This is consistent with the emails I’ve seen from February 2018 where the footer stated they were from BG Ltd not BGF. And as I’ve previously mentioned there was no communication in January or February 2018 saying that there was a change from BG Ltd to BGF. Having considered everything, I am satisfied Mr B’s complaint is about acts for which Gallium accepted responsibility. They are therefore acts of Gallium and can be considered in a complaint against it.

### **The merits of Mr B’s complaint**

As I am satisfied Mr B’s complaint is one I can look at, I will now go on to consider all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint. 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). In my opinion Principle 6 (Customers’ interests) and Principle 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.*

*The bonds were non-readily realisable, and because of this there were rules restricting who they could be promoted to and how to test whether the investment was appropriate for potential investors. These rules are set out in COBS 4.7 and COBS 10.1, 10.2 and 10.3 and I've considered them 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've also considered these in coming to my decision.*

*Having considered all the available evidence and arguments I have reached similar overall conclusions to the investigator, for similar reasons. In summary:*

- BG Ltd, acting on Gallium's behalf, misled Mr B into certifying himself as belonging in a category to which he did not belong (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 him fairly or acting in his best interests. Had BG Ltd followed the rules and not misled him, it is unlikely he would have certified himself as being a restricted investor.*
- 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 B. In the circumstances Mr B would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bond to Mr B.*

*Overall, I am satisfied Mr 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.*

*For these reasons – individually and cumulatively – my decision is that Mr B's complaint should be upheld. I am also satisfied Mr 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 Mr B for his loss.*

### **Putting things right**

#### **Fair compensation**

*In assessing what would be fair compensation, I consider that my aim should be to put Mr B 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 B 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 B's circumstances and objectives when he invested.*

#### **What must Gallium do?**

*To compensate Mr B fairly, Gallium must:*

- Compare the performance of Mr B's investment with that of the benchmark shown below.*



- Gallium should also add any interest set out below to the compensation payable.
- Pay Mr B £350 for the distress suffered through losing his capital.
- Income tax may be payable on any interest awarded.

<i>Investment name</i>	<i>Benchmark</i>	<i>From ("start date")</i>	<i>To ("end date")</i>	<i>Additional interest</i>
<i>B&amp;G Plc bond</i>	<i>Average rate from fixed rate bonds</i>	<i>Date of investment</i>	<i>Date of my final decision</i>	<i>8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)</i>

### **Actual value**

*This means the actual amount paid or 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 Mr 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 Mr B that he repays to Gallium any amount he 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 investment 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 are 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 B 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 Mr B's*

*circumstances and objectives. It does not mean that Mr B 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."*

## **Responses to my provisional decision**

Mr B accepted my findings. Gallium provided further submissions containing information relating to the 'interim period' which included:

- A copy of the 4 January 2018 email from the owner of Basset & Gold referred to in the witness statement.
- Email correspondence regarding making B&G Plc an AR of BGF and the transfer of approved persons from January 2018.
- A list of the calls made by BG Ltd from April 2017 to February 2018 which Gallium had monitored.
- Copies of Gallium's Appointed Representative Monthly Compliance Report for 'Basset Gold' from February 2017 to February 2018.
- Copies of the documents sent by Gallium to the FCA on 1 March 2018 applying to terminate BG Ltd as Gallium's AR.

## **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've reconsidered the available evidence, taking into account the new submissions. I've firstly reconsidered if Gallium is responsible for the acts Mr B has complained about. Having done so, I haven't been persuaded to change my opinion on this point. I think the new evidence that has been provided adds further weight to my opinion that Gallium was responsible for making arrangements for Mr B to invest in the bond.

I say this because the February 2018 Appointed Representative Monthly Compliance Report details the AR name as Basset Gold. This is the same name used in the compliance reports for the previous 11 months (apart from August and September 2017 where the AR name was handwritten, not typed as it was in the other reports, and the AR name was noted as Basset Gold Ltd/Basset & Gold Plc).

I think this shows that BGF hadn't started to arrange investments at that point, and it was BG Ltd / B&G Plc and therefore ultimately Gallium who was responsible for arranging investments in February 2018. The February 2018 report also contained a list of all the investment business undertaken that month - this included Mr B's investment.

The report also included questions which were asked of 'Basset Gold', some of which were:

- *Does the Appointed Representative stationery (including website) properly identify the firm as an Appointed Representative of Gallium Fund Solutions Limited? And have you provided copies to Gallium?*
- *Have you attached a list of all investors you have promoted to this month?*
- *Have all investors been categorised as appropriate to receive the financial*

*promotions prior to promotion and such categories kept on file?*

Each of these questions was answered 'Yes'.

Gallium also provided a call monitoring list which shows that they monitored 19 calls in February 2018, this was more than it had monitored in any of the previous months included in the report.

Taking everything into account, I'm satisfied that the available evidence shows that it was B&G Ltd arranging investments in B&G Plc bonds – including the investment Mr B made - as an appointed representative of Gallium. I say this because:

- The 4 January 2018 email only refers to an intention to transition away from Gallium to BGF and makes a request to discuss how this might be done. It is not evidence of the transition having already taken place which would mean that BGF was responsible from that time.
- The Appointed Representative Monthly Compliance Report is evidence B&G Ltd was still being described as an AR of Gallium at this time, in stationery and on the website. It is also evidence Gallium was monitoring and recording promotions and arrangements being made by B&G Ltd at that time. This is strong evidence Gallium accepted responsibility for the arrangement of investments at the time.
- The fact Gallium was monitoring calls from B&G Ltd to investors (or potential investors) is further strong evidence Gallium accepted responsibility for the arrangement of investments at the time – there is no other reason why such monitoring would be taking place.

In addition to this, I haven't seen any evidence specific to this investment which makes any reference to BGF. Therefore, I remain satisfied that Mr B has complained about acts for which Gallium accepted responsibility and can be considered in a complaint against it.

Regarding the merits of Mr B's complaint, I have reconsidered all the available evidence and arguments to decide what's fair and reasonable. Having done so, I haven't been persuaded to depart from the view set out in my provisional decision. To confirm, my final decision is the same as I've set out in my provisional decision, for the same reasons. For those reasons – individually and cumulatively – my decision is that Mr B's complaint should be upheld.

I am also satisfied Mr 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. Therefore, I'm satisfied it is fair to ask Gallium to compensate Mr B for his loss.

### **Putting things right**

#### **Fair compensation**

In assessing what would be fair compensation, I consider that my aim should be to put Mr B 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 B 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 B's circumstances and objectives when he invested.

#### **What must Gallium do?**

To compensate Mr B fairly, Gallium must:

- Compare the performance of Mr B's investment with that of the benchmark shown below.
- Gallium should also add any interest set out below to the compensation payable.
- Pay Mr B £350 for the distress suffered through losing his capital.
- Income tax may be payable on any interest awarded.

Investment name	Benchmark	From ("start date")	To ("end date")	Additional interest
B&G Plc bond	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)

### **My final decision**

I uphold the 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 Mr B to accept or reject my decision before 18 August 2023.

Marc Purnell  
**Ombudsman**