

## The complaint

Mr O complains he was mis-sold an investment he made in a bond issued by Basset & Gold Plc (“B&G Plc”). Mr O says he was misled that the bond was a secure investment – but has since lost his money as the bond issuer has gone into administration.

## What happened

### *The B&G Plc Bond*

Mr O invested in a B&G Plc 5 Year Compounding High-Yield Bond. For a period of time, 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 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.

Basset Gold Finance Ltd (“BGF”) – an independently authorised business, which was not connected to Gallium – took over from BG Ltd at some point in 2018. Gallium says this happened before the appointed representative agreement between it and BG Ltd came to an end and has made submissions on this point – albeit inconsistent ones. For the remainder of this background section I have referred to BG Ltd as the business Mr O interacted with, but the point of dispute is noted, and I will consider in my findings whether Mr O actually dealt with BGF instead.

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

Mr O invested a total of £2,000 in the bond. This followed phone discussions between Mr O and a representative of BG Ltd. He said he was reassured by the representative and completed an online application.

The administrators of BG Ltd have provided some recordings of these discussions, but a number are missing – so I do not know the full detail of what was discussed. BG Ltd’s records include a log of applications records showing the following:

Investor Tags		Legal Tags	
Type	Date	Type	Date
Everyday Investor	2017-12-30 12:59:48	KYC Completed	2018-01-15 10:00:42
		B&G T&C Confirmed	2017-12-30 13:05:15
		Completed Investor Questionnaire	2017-12-30 13:02:55

The certificate dated 2 January 2018 for the bond Mr O invested in confirms £2,000 was paid in the B&G Plc 5 Year Compounding High-Yield Bond with annual rate of 9.01%.

Mr O has told us the funds he used to invest came from cash he withdrew from his credit card, as he hoped to gain an income from the interest. He was trying to provide further income for his family. He had limited investment experience at the time he took out the bond. He says after an online inquiry, he was contacted by a relationship manager at BG Ltd who explained the process and reassured him that there was nothing to worry about. He said he was told his money was 100% secured and guaranteed, and it was then he agreed to progress with the application.

On 8 January 2019, BGF (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. Following action by the FCA, the pay day lender went into administration in March 2020 - and B&G Plc went into administration shortly afterwards. As a result, Mr O has not had his invested capital returned to him.

### *The application process*

From the available evidence, it is not completely clear how Mr O's application was made. I have seen screen prints of each stage of BG Ltd's online application process. These show the online application journey that potential investors underwent. This consisted of two stages, designed to meet the rules restricting who the bonds could be promoted to and on how to test whether the investments were appropriate for the potential investor. The first was certification. The second was the appropriateness test.

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

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

- The application process – both in terms of the certification of Mr O as a "restricted investor" 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 O wouldn't have decided to invest or BG Ltd should have concluded that it shouldn't allow Mr O to invest. For these reasons, both cumulatively and individually, it was fair to uphold the complaint and for Gallium to compensate Mr O for the loss he has suffered.

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

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

- The acts the complaint is about took place after B&G Finance Ltd – an independent business with which Gallium had no relationship - became authorised. Once B&G Finance Ltd became authorised it took over from BG Ltd and so B&G Finance Ltd is responsible during this "interim period", not Gallium.
- Our findings went beyond the scope of Mr O's complaint.

- Regardless of label, Mr O 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 Mr O 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.

The investigator provided evidence to Gallium that supported that BG Ltd were involved in the arranging of investments during the interim period. They referred to specific correspondence Mr O had with BG Ltd and sent copies of correspondence from other cases we have reviewed that showed emails and paperwork in use at the time which consistently set out prior to 1 March 2018 that belonged to BG Ltd as an appointed representative of Gallium Fund Solutions Limited. The investigator remained of the view the evidence shows BG Ltd promoted and arranged the B&G bond Mr O took out on in January 2018, and Gallium was responsible for the actions of BG Ltd here.

Gallium didn’t respond directly to the investigator - but has also provided a witness statement from its former director, dated 16 February 2023 on the subject of who was responsible for arranging the bond, which says:

- He understands that the only regulated activities that continued to be carried out by BG Ltd in the interim period, 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 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.

This service has asked – on another complaint – for various points of clarification on what is said in the witness statement, and for contemporaneous evidence to support it. We have not received a response to that request. However, for the reasons I have set out below, I think I can proceed with this particular complaint without that further information.

### **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.

Given what Gallium says about the “interim period” – that it is not responsible for the act(s) this complaint relates to - I have first considered all the available evidence and arguments to decide whether we can consider Mr O’s complaint.

It is not clear how exactly Mr O’s application came about – whether it was done online, over

the phone or a combination of the two. But, I'm satisfied Mr O'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 short Mr O says he was misled during those exchanges.

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 (FSMSA):

"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".

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

*Is Mr O's complaint about a regulated activity?*

I am satisfied Mr O'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 Mr O made his investment, the RAO said regulated activities include arranging deals in investments. Acts 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 or over the phone – falls within the scope of Article 25(1). It involved making arrangements for Mr O 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 – 2 January 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 Gallium says 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 – save for the witness statement, which is unclear on several points and in any event inconsistent with the position set out in response to the view – it has provided no evidence to support this point.

I will turn to the witness statement shortly. The evidence available otherwise all shows it was BG Ltd – not BGF – which made the arrangements in this case.

Mr O's Bond certificate was issued on the same day that BFG became authorised. There is evidence that Mr O had discussed and completed his online application before this date – when he had been dealing with a relationship manager from BG Ltd. Considering the proximity to the opening of the investment and the various interactions in the application process with BG Ltd – it seems clear to me that the business arranging the bond was BG Ltd, who were an appointed representative of Gallium at this time – and essentially the arrangement happened before BFG became authorised.

There are also various emails both shortly before and shortly after completing the investment from BG Ltd to Mr O. These emails are from Mr O's Dedicated Relationship Manager (the representative Mr O dealt with throughout), which confirms he was working for BG Ltd in his title and not BFG. The emails include things like confirming receipt of documents and completion of the investment. These emails also have a footer which confirms "Basset Gold Ltd is an appointed representative of Gallium Fund Solutions Limited which is authorised and regulated by the Financial Conduct Authority, reference number 487176." So whether arrangement was still happening on or after 2 January 2018, the evidence still supports that it was BG Ltd who was the party who was arranging the investment. I note Gallium was provided these emails during its investigation of Mr O's complaint as it sent them to this service in its file submission.

I've also reviewed the sample correspondence the investigator provided to Gallium to show examples of when BG Ltd were involved in arranging investments in bonds during the interim period. This includes copies of emails and paperwork in use around the same time as Mr O took out his investment which consistently set out BG Ltd, acting as an appointed representative of Gallium Fund Solutions Limited, as the business involved in arranging the investments. This evidence further supports the specific evidence mentioned above from the sale of Mr O's bond in January 2018 that Gallium is responsible for the actions of BG Ltd when arranging Mr O's investment.

Gallium says the available evidence suggests that Mr O applied to invest through a website process approved by BGF. But I have not seen any evidence of the type Gallium refers to. 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 [name of the owner of the Basset Gold/Basset and Gold businesses], 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. [name of the owner of the Basset Gold/Basset and Gold businesses] requested a meeting to discuss the best way to "transition the regulatory business away from Gallium to the new firm".

I met with [name of the owner of the Basset Gold/Basset and Gold businesses] in the hotel he was staying in London the week following his email. I believe the meeting took place on 11 January 2018 as [name of the owner of the Basset Gold/Basset and Gold businesses]'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, [name of the owner of the Basset Gold/Basset and Gold businesses] 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. [name of the owner of the Basset Gold/Basset and Gold businesses] 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.

As mentioned, there are a number of things about the witness statement which are unclear, and we have not been provided with any evidence to support what it says. But, even I accept what the statement says as an accurate reflection of the position at the time (and, to be clear, given the available evidence otherwise, I do not) it does not in any event amount to evidence BGF was responsible for Mr O's investment.

I say this because the witness statement says a meeting – to discuss a “transition” to BGF from Gallium's appointed representatives – took place on 11 January. Gallium's ex-director says his recollection of that meeting was that at the time of the meeting Gallium would no longer be responsible “with immediate effect” and BGF “now” being responsible. Which suggests, on Gallium's ex-director's recollection, responsibility passed from Gallium to BGF on 11 January 2018. That is not evidence of BG Ltd and therefore Gallium not being responsible for arrangements which concluded on the same day.

To be clear, I have not seen any evidence to show BGF took responsibility from 2 January 2018, as Gallium says, or that it had any involvement in Mr O's investment. All the evidence I have seen supports a contrary position. All in all, I am satisfied Mr O'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 O's complaint*

I've considered 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). 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.

The bonds were non-readily realisable and therefore there were rules restricting who they 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 similar overall conclusions to the investigator, for similar reasons. In summary:

BG Ltd, acting on Gallium's behalf, misled Mr O 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 Mr O fairly or acting in his best interests. Had BG Ltd followed the rules and not misled Mr O, 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 O. In the circumstances he would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bond to him.

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

### Putting things right

In assessing what would be fair compensation, I consider that my aim should be to put Mr O as close to the position he would probably now be in if he had not been given unsuitable advice.

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

### What must Gallium do?

To compensate Mr O fairly, Gallium must:

- Compare the performance of Mr O'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 O £200 for the upset caused by losing the money invested and worry of how it will be paid back.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
B&G Bond	Still exists but illiquid	For half the investment: FTSE UK Private	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if

		Investors Income Total Return Index; for the other half: average rate from fixed rate bonds			not settled within 28 days of the business receiving the complainant's acceptance)
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### **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 O 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 O 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 income from the Bond 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.

### **Why is this remedy suitable?**

I have decided on this method of compensation because:

- Mr O wanted Income with some growth with a small risk to his capital.
- 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 his 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 Mr O's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr O into that position. It does not mean that Mr O would have invested 50% of his 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 Mr O could have obtained from investments suited to his 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.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 14 July 2023.

Daniel Little  
**Ombudsman**