

## **The complaint**

Ms S complains about an investment she made in 2017 with Gallium Fund Solutions Limited ("Gallium"). She says she was mis-sold the investment as she understood it to be reasonably safe.

## **What happened**

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

Ms S invested £11,000 into a B&G Plc 3 Year Compounding High-Yield IFISA Bond. Sales of this bond were dealt with by Basset Gold Limited ("BG Ltd"), a separate business from Basset & Gold Plc ("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/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.

### ***Ms S's investment in the bond***

Ms S found out about the bond when she did a search on the internet, and she made the application online in November 2017. She had limited investment experience at the time and held all her assets in savings accounts and ISAs.

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, Ms S has not had her invested capital returned to her.

### ***The application process***

As highlighted above, Ms S has confirmed that she made the application online and I have seen screen prints of each stage of the online application process. These show the application journey Ms S 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 Ms S was categorised as an "everyday investor". The second was the appropriateness test.

### ***Gallium's response to Ms S's complaint***

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

- The application process – both in terms of the certification of Ms S as a “restricted investor” and the assessment of the appropriateness of the bond for her - was misleading and didn’t gather sufficient information to comply with the FCA’s rules.
- Ms S was given misleading information when she discussed the investment with representatives of BG Ltd.
- Overall, BG Ltd, on Gallium’s behalf, didn’t comply with its regulatory obligations. Had it done so, Ms S wouldn’t have decided to invest or BG Ltd should have concluded that it shouldn’t allow Ms S to invest. For these reasons, both cumulatively and individually, it was fair to uphold the complaint and for Gallium to compensate Ms S for the loss she has suffered.

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

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

- Our findings went beyond the scope of Ms S’s complaint.
- The website and marketing material was not misleading - Ms S was given sufficient information and risk warnings.
- Regardless of label, Ms S was required to confirm that she met the requirements of a restricted investor and confirmed that she did. It is not fair nor reasonable to conclude that the use of the word “everyday” contributed to Ms S 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.
- Ms S 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, in any event she would have proceeded with the investment.

### **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:

- BG Ltd, acting on Gallium's behalf, misled Ms S into certifying herself as belonging to a category to which she 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 Ms S fairly or acting in her best interests. Had BG Ltd followed the rules and not misled Ms S, it is unlikely she would have certified herself 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 Ms S. In the circumstances Ms S would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bond to Ms S.

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

## **Putting things right**

### **Fair compensation**

In assessing what would be fair compensation, I consider that my aim should be to put Ms S as close to the position she would probably now be in if she had not made the

investment.

I take the view that Ms S 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 Ms S's circumstances and objectives when she invested.

### What must Gallium do?

To compensate Ms S fairly, Gallium must:

- Compare the performance of Ms S'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.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
B&G Plc 3 Year Compounding High-Yield 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 Ms S 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 Ms S 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.

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

I have decided on this method of compensation because:

- Ms S wanted income with some growth with a small risk to her 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 their 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 Ms S'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 Ms S into that position. It does not mean that Ms S 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 Ms S 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 Ms S in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 3 April 2023.

Rajvinder Phaiser  
**Ombudsman**