

The complaint

Mr P complains about a bond issued by Basset & Gold Plc (“B&G plc”) he invested into. He says the bond was mis-sold to him; that he was misled into thinking it was safe. He says Basset Gold Limited (“BG Ltd”) provided this misleading information and Gallium Fund Solutions Limited (“Gallium”) is responsible, as BG Ltd was Gallium’s appointed representative at the time.

Background

The B&G Plc Bond

Mr P invested in a B&G Plc Compounding High-Yield 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 - bassetgold.co.uk. And it was responsible for advertising/marketing the bond. Potential investors were also able to call BG Ltd, to discuss the bond.

The bond was non-readily realisable and therefore there were rules restricting who it could be promoted to and on how to test 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.

Neither B&G Plc nor BG Ltd was authorised by the Financial Conduct Authority (FCA) in its own right at the time of Mr P’s investment. But both were appointed representatives of Gallium Fund Solutions Limited (“Gallium”), which was an FCA authorised business. B&G Plc and BG Ltd were appointed representatives of Gallium from 17 February 2017 to 28 February 2018. As such, Gallium is responsible for a complaint about either business which is about the acts and omissions which took place during this time, for which Gallium accepted responsibility.

Mr P’s investment in the bond

Mr P says he was introduced to the bond by a financial advisor who knew his family. The financial advisor was not authorised by the FCA (although it seems he may previously have been). Mr P says the advisor gave him a brochure for the B&G plc bonds, and said he thought they were a low risk investment.

Mr P then had a number of conversations with BG Ltd about the bond, and exchanged emails with BG Ltd too. In the emails and calls he asked various questions about the nature of the bonds and, in particular, what protections were provided. He says he received lots of reassurance and subsequently decided to invest in a 4 Year Compounding High-Yield Bond paying interest of 7.725% p.a.

Mr P applied to invest £20,000 in the bond on 12 June 2017. When the online application process was completed, Mr P was certified as what BG Ltd described as an “everyday investor” during this process, and passed an appropriateness test set by BG Ltd. Mr P says he paid the advisor £1,000 cash for introducing him to the investment, and the advisor

completed the online application on his behalf.

Mr P made a request to surrender his investment in 2019 but this was not successful and, in April 2020, BG plc went into administration, resulting in the loss of his investment.

When Mr P referred his complaint to us we asked for copies of any call recordings BG Ltd held. We were provided with some recordings, but not those relating to the conversations Mr P had with BG Ltd before he invested in the bond. Mr P has however provided us with copies of the emails he exchanged with BG Ltd about the bond and his recollection of the conversations he had with BG Ltd before he invested.

Gallium's response to Mr P's complaint

Gallium did not uphold Mr P's complaint. It said it did not think the bond had been missold to Mr P and it was not responsible for how B&G Plc subsequently managed the money invested in the bond. Mr P did not accept this response, and referred his complaint to us.

Our investigator's view

One of our investigators considered Mr P's complaint and concluded it should be upheld. He said, in summary:

- The application process – both in terms of the certification of Mr P as a “restricted investor” and the assessment of the appropriateness of the bond - didn't gather sufficient information to comply with the FCA's rules.
- He was not satisfied that Mr P was provided with clear, fair and not mis-leading information about the bond. The information on the bassetgold.co.uk website was misleading and unclear. Mr P was also misled in email correspondence he exchanged with BG Ltd.
- Overall, BG Ltd, on Gallium's behalf, didn't comply with its regulatory obligations.
- Had it done so – in particular had it not misled Mr P - he wouldn't have decided to invest.

Our investigator said he thought fair compensation would be to return the capital Mr P had invested in the bond, plus a return on the capital equivalent to the monthly average rate for one-year fixed-rate bonds as published by the Bank of England from the date of investment to the date the bond “ceased to be held”. He said Gallium should also pay £500 for the distress and worry caused to him by the loss of his investment.

Gallium's response to the view

In response to the view, Gallium said, in summary:

- It disagrees with the reasoning and approach in the view, save for the findings in respect of the telephone conversations which Mr P had with BG Ltd representatives.
- It is prepared to accept that representatives of BG Ltd communicated during those calls in a manner that was not clear, fair, and not misleading.
- On this basis it is willing to accept the view.

Mr P's response to the view

The investigator told Mr P Gallium had accepted his view. Mr P did not however accept what the investigator had suggested was fair compensation. On this point Mr P said, in summary:

- He has serious mental health problems, which all stem from the loss he suffered as a result of investing in the bond.

- Gallium should pay £1,500 for the distress caused by the loss of his investment.
- The correct benchmark to calculate a return on his investment should be the average of one year fixed rate cash ISA deposits. However, the higher of the rates between fixed rate bonds and a one year fixed rate ISA should be chosen as an appropriate method of calculation for the applicable compounded interest rate per year (this refers to the rates published on the Bank of England website).
- 8% simple interest should be paid per year on any loss from the date the loss was incurred (when B&G Plc entered administration) to the date of settlement.

Mr P provided some medical evidence to support his point about compensation for the distress caused. This said:

- He was medically diagnosed with anxiety and depression in April 2020.
- He continues to experience severe depression, anxiety and suicidal thoughts.
- This was triggered by financial loss.

My provisional decision

I recently issued a provisional decision. My provisional findings are quoted below:

“For completeness, I have first considered all the available evidence and arguments to decide whether we can consider Mr P’s complaint. I confirm I am satisfied the complaint is about regulated activities which were acts for which Gallium accepted responsibility. They are therefore acts of Gallium and can be considered in a complaint against it. So I have considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Like the investigator, I do not think Mr P should have been certified as a restricted investor (or “everyday investor”, as BG Ltd described it) or have passed an appropriateness test. However it does seem someone completed the online application on Mr P’s behalf – an advisor who it seems had an interest in the application proceeding - and so I can’t be certain whether the application would have proceeded had BG Ltd, on behalf of Gallium, acted differently.

It is however clear Mr P wanted to check the investment out for himself before deciding to apply, and that he went to some lengths to do this, asking many questions of BG Ltd. And, like the investigator, I am satisfied there is evidence (albeit not call recordings) to show BG Ltd did not respond in a clear, fair and not misleading way during these interactions with Mr P.

I am satisfied that if Mr P had been given responses to his questions which were clear, fair and not misleading he would have become aware investment in the bond carried significant risk and would not have made the application (or asked the advisor to make it on his behalf). It is clear Mr P was very cautious and did not want to take risks.

So, like the investigator, I think Mr P’s complaint should be upheld. And I note Gallium accepts the complaint should be upheld on the basis of Mr P having received communications which were not clear, fair and not misleading (although Gallium refers to call recordings I assume it means the misleading email correspondence the investigator referred to in his view) and has agreed to settle the complaint by following the approach to compensation suggested by the investigator.

Mr P, too, accepts the investigator’s overall view – but he does not agree the compensation

suggested by the investigator is fair. He would like a different benchmark to be used, and a higher amount to compensate him for the distress caused by the loss of his investment. So the dispute now is essentially about what is fair compensation in this case. I will therefore now focus on this point.

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr P broadly in the position he would probably now be in if he had not invested in the bond. I say broadly as I do not know for certain what Mr P would have done, had he not invested in the bond, and so I am not seeking to set out an approach to calculating compensation which attempts to replicate exactly what would have been received – only to make a broad approximation. I am also not looking to ascertain the highest return that could have been achieved through a suitable investment, using the hindsight knowledge of how particular benchmarks have performed. That, in my view, would not be a fair approach.

I think it likely Mr P would have got some return on his capital but, given he should not have been exposed to any risk, that return would have been modest. Overall, while I have carefully considered Mr P's points, keeping in mind all I say above, I am satisfied that what the investigator suggested - which I have set out again below - is fair given Mr P's circumstances and objectives when he invested. The average rate for the fixed rate bonds is a fair measure, given Mr P's circumstances and objectives. It is the sort of investment return a consumer could have obtained with no risk to their capital.

What should Gallium do?

To compensate Mr P fairly, Gallium must:

- Compare the performance of Mr P's investment with that of the benchmark shown below and pay the difference between the fair value and the actual value of the investment. If the actual value is greater than the fair value, no compensation is payable.
- Gallium should also pay interest as set out below.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
B&G Plc 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 (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 Mr P 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 P 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.

Mr P has confirmed there was no withdrawal, income or other distributions paid out of the investment. So no allowance needs to be made for this when compensation is calculated.

Additional interest

I have considered Mr P's comments about this but I do not think it would be fair to award 8% for the period from when the BG Plc went into administration. I am satisfied it is fair to use the benchmark to the date of my final decision. 8% should only be added, from the date of the final decision, in the event Gallium does not pay compensation within 28 days of receiving Mr P's acceptance of the decision.

Additional compensation

In addition to the compensation for financial loss, I have also considered what is fair compensation for any pain and suffering and/or distress or inconvenience caused to Mr P. I have carefully considered all Mr P has said about the distress impact of the financial loss he has suffered. I am sorry to hear of his health problems and do appreciate the significant impact the loss of his investment has had on him.

However, I am only considering acts of BG Ltd whilst it was an appointed representative of Gallium here. And I note some of what Mr P mentions relates to later communications, which he says compounded the impact of his being misled into making the investment to beginwith. I also understand, from Mr P's comments during a call with B&G Finance Limited (which by that point had taken on the role of BG Ltd), when he asked if he could surrender the bond in 2019, that he also lost money through an investment in London and Capital Finance. And, from submissions he has made on another complaint he has with us, it seems he made further mini bond type investments, on which he has suffered losses. So the financial loss which has caused his health problems does not appear to be solely a result of the B&G Plc bond investment.

That said, I can't overlook the significant loss Mr P has suffered, the obvious impact it has had on him, and that he would not have been in this position had BG Ltd acted fairly and reasonably at the outset. And its clear this is an exceptional case – there is evidence to show the financial losses Mr P has suffered (including the financial loss suffered through the B&G Plc bond) has had a significant impact on Mr P.

Mr P has referred to being in "total despair", experiencing significant anxiety, and to not knowing what was going on with his investment having caused him immense stress. The medical evidence he has provided supports this, and the deterioration in Mr P's mental health is clearly linked to his financial losses, including the loss of his investment in the B&G Plc bond. This impact has been ongoing.

Overall, taking into account all I have said above, I consider it is fair to award a higher amount of compensation than the investigator. I consider £1,250 is fair."

Responses to my provisional findings

Mr P accepted my findings in relation to additional interest and additional compensation (or at least did not dispute them). He did not accept my findings about a fair benchmark to use for calculating his financial loss. On this point Mr P repeated his request that compensation be calculated using the higher of the average rate of one year fixed rate cash ISA deposits interest rate, or average rate for the fixed rate bonds (both as published on the Bank of England website).

Mr P said he seeks to be in a position had he not invested in the bond. And, if he had not invested in the bond, he would have continued to invest using annual ISA allowance, had it not been for the actions of BG Ltd. Mr P also highlighted that he had paid a charge (£22.04) when closing his existing ISA in order to invest in the B&G Plc bond. He said Gallium should compensate him for this too.

Gallium did not respond to my provisional findings. It has however, since my findings were issued, sent a cheque to Mr P for an amount of compensation it has calculated partly by reference to the investigator's view (I say partly, as it did not use the benchmark suggested by the investigator when calculating the compensation). I have taken account of this

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 have reached the same findings as set out in my provisional decision. As those findings are quoted in full above, I will not repeat them here. I will however set out how compensation should be calculated again, and address Mr P's points when doing so

Fair compensation

Having carefully reconsidered things, I remain of the view the benchmark suggested by the investigator, and set out in my provisional decision, is fair given Mr P's circumstances and objectives when he invested. I cannot be sure what Mr P would have done, had he not invested. And I am only looking to arrive at a fair approximation of what would likely have happened. I am satisfied the average rate for the fixed rate bonds is a fair measure, given Mr P's circumstances and objectives. It is the sort of investment return a consumer could have obtained with no risk to their capital.

I know Mr P has asked for confirmation of what rates will apply if this benchmark is used. I have set out below what rates should be used and how they should be applied. And Mr P can now decide whether to accept or reject my decision with that in mind.

What should Gallium do?

To compensate Mr P fairly, Gallium must:

- Compare the performance of Mr P's investment with that of the benchmark shown below and pay the difference between the fair value and the actual value of the investment. If the actual value is greater than the fair value, no compensation is payable.
- Gallium should also pay interest as set out below.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From (“start date”)	To (“end date”)	Additional interest
B&G Plc 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 (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.

I understand Mr P has not recovered any of the money he invested in the bond. So the actual value should be assumed to be zero. This is provided Mr P 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 P 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.

Mr P has confirmed there was no withdrawal, income or other distributions paid out of the investment. So no allowance needs to be made for this when compensation is calculated.

Additional compensation

For the reasons set out in my provisional decision I remain of the view it is fair to award £1,250 for the pain and suffering and/or distress or inconvenience caused to Mr P.

I do not think it would be fair to ask Gallium to pay Mr P the charge he paid for closing his existing ISA. BG Ltd was not acting as Mr P's advisor – he made his own decision to close the ISA and I have not seen sufficient evidence to show Mr P would not have incurred this charge at some point, in any event. As I noted in my provisional decision, it seems Mr P was considering other alternative investments and so its possible he would have closed the ISA in favour of a different investment even if he had not invested in the B&G Plc bond.

The payment recently made by Gallium

The amount of the cheque recently sent to Mr P by Gallium, if paid, can be taken off the total arising from the above compensation calculation. To be clear, that means Gallium now only needs to pay any balance due, if the cheque has been paid. If the cheque has not been paid

for any reason, Gallium is required to pay the full amount resulting from the above calculation.

My final decision

I uphold the complaint. Gallium Fund Solutions should calculate and pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 20 February 2023.

John Pattinson
Ombudsman