

The complaint

Mr D complains to Gallium Fund Solutions Limited (“Gallium”) about an investment he made in 2017. He says the investment was mis-sold as he thought it would be secure and diversified, yet neither were true.

What happened

The B&G Plc Bond

Mr D invested £20,000 into a B&G Plc Three 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 from 17 February 2017 to 28 February 2018.

Mr D’s investment in the bond

Mr D told us that in late 2017, he’d been looking online for somewhere to move some maturing ISA funds he had with his bank. He found the B&G bonds online and thought they offered a reasonably good return. He recalls feeling reassured when checking the firm was regulated and covered by the Financial Services Compensation Scheme. He also received an email before investing which, in part, said *“Basset & Gold was set up by a team of seasoned professionals with decades of experience in finance. We have a 100% track record which is something to be proud of, and we are! Basset & Gold Plc. has never missed any payment to investors and no investor has ever lost money with Basset & Gold Plc.”*

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, Mr D has not had his invested capital returned to him.

The application process

Mr D doesn't recall much about the application process now, but given the information we have received we can see his application was made on 8 December 2017 and appears to have been done online. We asked for copies of any call recordings BG Ltd held and were provided with some, but most were service and enquiry calls. While some calls were from before Mr D made his investment, they covered general points so these recordings have not been material in my consideration of this complaint.

I have seen screen prints of each stage of the online application process. These show the application journey that Mr D 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 Mr D was categorised as an "everyday investor". The second was the appropriateness test. As Mr D was transferring an existing ISA, he had to fill out a transfer form – within this, Mr D was asked some more questions about his understanding of the bond.

Gallium's response to Mr D's complaint

Gallium did not uphold Mr D's complaint. It said Mr D had been given sufficient information and risk warnings about the investment, and that it wasn't responsible for the performance of B&G. It then made further submissions once Mr D'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 Mr D's complaint and concluded it should be upheld. Initially they focussed on the claims made in the promotional material. But they later added to this and ultimately concluded that, in summary:

- Although the certification process was misleading, had it not have been it was likely that – based on the information gathered about Mr D's circumstances – he'd have qualified as a "restricted investor".
- However, 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.
- So BG Ltd, on Gallium's behalf, didn't comply with its regulatory obligations. Had it done so, Mr D wouldn't have decided to invest or BG Ltd should have concluded that it shouldn't allow Mr D to invest. For these reasons it was fair to uphold the complaint and for Gallium to compensate Mr D for the loss he 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 Mr D's complaint.
- The promotional material was fair, clear and not-misleading – the investment activities and scope were accurate and fairly described.

- The appropriateness test answers and 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.
- It was reasonable for Gallium to rely on the outcome of this test.
- Mr D 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 he would have proceeded with the investment regardless.
- Mr D had held numerous, similar investments before investing in B&G, so he had relevant investment experience. Our investigator had interpreted the requirement for relevant experience in an overly restrictive manner – and this was something they'd previously concluded differently on.

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 a similar conclusion to that of our investigator, for similar reasons. In summary:

- BG Ltd, acting on Gallium's behalf, misled Mr D at the certification stage by changing the term used in the rules from "restricted investor" to "everyday investor" and describing the category as being one "*anyone*" could fall into. This was not treating Mr D fairly or acting in his best interests. It does not appear BG Ltd followed its obligations correctly and ascertained whether Mr D met the certification criteria,

however, had it have done so (and had it have not misled him), as he was investing 5% of his investible assets he may have been able to proceed with his application.

- This said, neither the appropriateness test carried out by BG Ltd, on behalf of Gallium, nor the questions on the ISA form met the requirements of the rules. And, had they have done so, it would have been apparent the bond was not an appropriate investment for Mr D as he didn't have the relevant knowledge and experience to understand the risks involved. In the circumstances Mr D would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bond to Mr D.

For these reasons, my decision is that Mr D's complaint should be upheld. I am also satisfied Mr D 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 D 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 D as close to the position he would probably now be in if he had not invested in the bond.

I think Mr D would have invested differently. It is not possible to say *precisely* what he would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr D's circumstances and objectives when he invested.

What must Gallium do?

To compensate Mr D fairly, Gallium must:

- Compare the performance of Mr D'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.
- It is also clear that Mr D has been caused some distress and inconvenience by the loss of his investment. I do not believe Mr D foresaw such a drastic loss and I recognise the considerable worry he will have felt when B&G Plc failed. I consider a payment of £200 is fair compensation for the upset caused.

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

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr D wanted some capital 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 D'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 D into that position. It does not mean that Mr D 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 D could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold Mr D's 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 Mr D in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 9 June 2023.

Aimee Stanton
Ombudsman