

The complaint

Mr F complains that Basset Gold Limited, an appointed representative of Gallium Fund Solutions Limited, mis-sold him an investment in 2017. He says the firm misled him as to the true investment strategy and the level of risk of the bond involved.

What happened

In May 2017, Mr F invested £20,000 in a 3 Year Compounding High Yield IFISA Bond with Basset & Gold Plc ("B&G Plc"). He says the information on the website led him to believe the investment was diversified and was spread across many investments and he was attracted to the promised rate of return. So, having considered the information he received he thought the investment was a safe, simple product with high levels of protection and security.

The B&G Plc Bond

Mr F invested in 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 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 and 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.

Mr F's investment in the bond

- Mr F visited the BG Ltd website booking for a better rate than a standard ISA savings account which was low-medium risk but without taking any unnecessary risk. He had recently received funds from a maturing bond and wanted to reinvest them in a fairly secure way with a reasonable rate of return.
- Mr F applied for the investments via the BG Ltd website.
- Mr F held a variety of investments including shares, an Enterprise Investment Scheme, a Venture Capital Trust and some peer to peer lending. Whilst he had some investment experience it was limited to standard investments, and he had a limited understanding of the B&G Plc bonds.
- I have been supplied with a number of post sale call recordings, but they have not been relied on when reaching my findings.

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 F

has not had his invested capital returned to him.

The application process

Mr F applied online for the bonds. I have seen screen prints of each stage of the online application process. These show the application journey that Mr F 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 F was categorised as a high net worth investor. The second was the appropriateness test.

Gallium's response to Mr F's complaint

Gallium did not uphold Mr F's complaint. It said he 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. 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 F's complaint and concluded it should be upheld. They said, in summary:

- Whilst they could not see that BG Ltd took any steps to ascertain that Mr F met the income and net assets criteria set out in COBS 4.12.6R, he met the requirements of a high net worth investor.
- The application process – both in terms of the certification of Mr F as a high net worth investor and the assessment of the appropriateness of the bond for him was inconsistent with the FCA's rules or guidance, 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 F wouldn't have decided to invest or BG Ltd should have concluded that it shouldn't allow him to invest. For these reasons, both cumulatively and individually, it was fair to uphold the complaint and for Gallium to compensate Mr F for the loss he has suffered.

Gallium's response to the view

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

- Mr F met the criteria to be classed as a high net worth investor.
- 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 the bonds involved, as per the relevant rules.
- It was reasonable for Gallium to rely on the outcome of this test.
- Mr F had investments in a range of other investments including peer to peer lending. This shows he had relevant experience of similar products to the B&G Plc bond.
- Mr F 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.

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:

- Mr F certified himself to be a high net worth investor and met the requirements to be categorised as such.
- Mr F had experience of a range of investments, but none of these were non-readily realisable investments, of which he had no knowledge. As such, I wouldn't consider his investment experience sufficient to mean the B&G Plc bonds were appropriate for him. He was aware the bonds carried some risk but wasn't aware of the specific risk factors associated with the bond and I'm not persuaded he would have taken it out if he had been made aware of these risks. I think it more likely that he would have instead invested in a product which carried a lower level of risk than the bonds.
- 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 F. In the circumstances Mr F would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bond to Mr F.

For these reasons – individually and cumulatively – my decision is that Mr F's complaint

should be upheld. I am also satisfied Mr F 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 F 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 F 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 F 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 F's circumstances and objectives when he invested.

What must Gallium do?

To compensate Mr F fairly, Gallium must:

- Compare the performance of Mr F'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 Mr F £400 for the distress caused by the total loss of his investment.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
3 Year Compounding High Yield IFISA Bond	Still exists but illiquid	FTSE UK Private Investors Income Total Return Index	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 F 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 F 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.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr F wanted Capital growth and was willing to accept some investment risk.
- 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.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr F's circumstances 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 Mr F in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 7 April 2023.

Marc Purnell
Ombudsman