

The complaint

Mrs P and Ms N complain on behalf of the estate of the late Mr P. They complain that Gallium Fund Solutions Limited (Gallium) mis-sold Mr P three bonds. They say he was told his investments were regulated by the Financial Conduct Authority (FCA) and protected by the Financial Services Compensation Scheme (FSCS). And that Mr P was told his investments held a high-level of security and were minimal risk.

What happened

The B&G Plc Bond

Mr P invested in three B&G Plc 3-Year Fixed Monthly Income IFISA Bonds. One in April 2017 for £15,240, one in May 2017 for £20,000 and one in August 2017 for £12,090. 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.

Mr P's investment in the bonds

Mrs P and Ms N on behalf of Mr P explained he came across the website after searching online for products with good interest rates. Mr P completed his online application on 4 April 2017.

Mrs P and Ms N say Mr P had some investment experience, but was a low-risk investor. They say he had previous experience investing in insurance company bonds and cash ISAs.

Mrs P and Ms N say Mr P understood the bonds held a high level of security and were minimal risk. They say he believed he was protected as the bonds were asset-backed and covered by the FCA and FSCS.

Whilst there are some call recordings between Mr P and Gallium, these don't include the date of the sale, so I've not relied on them.

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, the estate of Mr P has not had his invested capital returned.

The application process

Mr P completed his initial online application on 4 April 2017. Although there is no confirmation as to how Mr P completed his May 2017 application, I'm satisfied this is likely to have also been completed online. I can see Mr P completed a paper application for his August 2017 ISA transfer that was signed on 21 July 2017.

I have seen screen prints of each stage of the online application process. These show the application journey that Mr P 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 P was categorised as an 'everyday investor'. The second was the appropriateness test.

The ISA transfer took place in August 2017 after Mr P had already previously applied online in April 2017. I've also seen copies of the paper application form which shows a transfer from Mr P's previous ISA provider to B&G Ltd. This was completed by Mr P and signed on 21 July 2017. Mr P completed a five-question appropriateness test as part of this application. However, this was completed after he'd already gone through the online process in April 2017 as detailed above.

Gallium's response to Mr P's complaint

Gallium did not uphold Mr P's complaint. It said Mr P had been given sufficient information and risk warnings about the investment. It then made further submissions, once Mr P'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 P's complaint and concluded it should be upheld. They 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 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 P wouldn't have decided to invest or BG Ltd should have concluded that it shouldn't allow Mr P to invest. For these reasons, both cumulatively and individually, it was fair to uphold the complaint and for Gallium to compensate the estate of Mr P for the loss suffered.

Gallium's response to the view

Gallium didn't accept the investigator's view. It said, in summary:

- Our findings went beyond the scope of Mr P's complaint
- Regardless of label, Mr P 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 P 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.
- Mr P made the investment on the understanding it had risk associated with it and did not chose 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 releavant 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 Mr P 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 P fairly or acting in his best interests. Had BG Ltd followed the rules and not misled Mr P, 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 P. In the circumstance's Mr P would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bond to Mr P.
- I've also considered the ISA transfer application and am not persuaded it was fair and reasonable for BG Ltd to proceed. Mr P was only asked to complete the transfer form after he'd completed the full online application process and would not have reached this point had he not certified himself online as a restricted ("everyday") investor.

For these reasons – individually and cumulatively – my decision is that the estate of Mr P's complaint should be upheld. I'm also satisfied Mr P 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 the estate of Mr P for its loss.

Putting things right

In assessing what would be fair compensation, I consider that my aim should be to put the estate of Mr P in as close to the position it would now be in if Mr P had not invested in these inappropriate investments.

I take the view that Mr P would have invested differently. It is not possible to say *precisely* what Mr P would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr P's circumstances and objectives when he invested.

What must Gallium do?

To compensate the estate of Mr P fairly, Gallium must:

- Compare the performance of each of Mr P's investments with that of the benchmark shown below.
- A separate calculation should be carried out for each investment.
- 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
3-Year Fixed Monthly Income IFISA Bond - April 2017	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)
3-Year Fixed Monthly Income IFISA Bond - May 2017	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)
3-Year Fixed Monthly Income IFISA Bond- August 2017	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)

For each investment:

Actual value

This means the actual amount paid or 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 the personal representatives of the estate of Mr P agree 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 the personal representatives of the estate of Mr P that they repay to Gallium any amount they 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.

Any withdrawal, income or other distributions paid out of the investments 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. If

any distributions or income were automatically paid out into a portfolio and left uninvested, they must be deducted at the end to determine the fair value, and not periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr P wanted to achieve a reasonable return without taking a significant risk.
- The average rate for the fixed rate bonds would be a fair measure given Mr P's circumstances and objectives. It does not mean that Mr P would have invested only in a fixed rate bond. It is the sort of investment return a consumer could have obtained with little risk to their capital.

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 the estate of Mr P in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr P to accept or reject my decision before 17 March 2023.

Paul Clarke
Ombudsman