

The complaint

Mrs A complains to Gallium Fund Solutions Limited (“Gallium”) about a £46960 investment in a 3 Year Compounding High-Yield IFISA Bond she made with Basset & Gold Plc (“B&G Plc”) in July 2017. She says she was mis-sold the bond by Basset Gold Limited (“BG Ltd”) and lost her money as a result. Mrs A says she was told the bond was safe, secure and Financial Services Compensation Scheme (FSCS) protected.

Mrs A is represented by her husband, Mr A, so when referring in this decision to things said or done by Mrs A, I refer to things said or done by her or by Mr A on her behalf.

Background

The B&G Plc Bond

Mrs A invested £46,960 into the 3 Year Compounding High-Yield IFISA Bond (“the bond”). Gallium has said the investment was made on 3 July 2017 and this is also the date on the bond certificate. Sales of the bond were dealt with by BG Ltd, a separate business from the bond issuer B&G Plc. BG Ltd arranged applications for investment 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. B&G Plc and BG Ltd were appointed representatives of Gallium from 17 February 2017 to 28 February 2018.

Mrs A’s investment in the bond

From what Mrs A has said, she came into contact with BG Ltd through her husband who had come into contact with BG Ltd online.

I’m satisfied Mrs A made an online application. This is in line with what Gallium has told us about the application process being online – including that investors could only apply online.

To transfer her existing ISA to BG Ltd there was also a BG Ltd transfer form for Mrs A to fill in. This paper form didn’t replicate the online process in which Mrs A could select an investor profile, such as that of ‘everyday investor’. Nor did it replicate that part of Gallium’s online process that was directed towards an appropriateness test. With those points in mind, the paper form doesn’t seem to have been supposed to replace or remove the need to make an online application. This reinforces my view that Mrs A made an online application.

Mrs A’s paper transfer form is dated 28 June 2017. The bond certificate says 3 July 2017 was the application date, which is also the date Gallium gave for Mrs A’s bond investment. System records say an ‘everyday investor’ tag was added for Mrs A on 21 June 2017 and an investment questionnaire tag on 22 June 2017. I note that both these dates pre-date Mrs A’s paper ISA transfer form – which also reinforces my view that she made an online application.

I haven’t received for this case any call recordings that pre-date the 3 July 2017 application date and in which the bond investment is discussed or referred to. The call I’ve heard that

includes reference to this bond investment is from after the application date and refers to a refund of £7 for Mrs A – which appears related to the requirement, stated on the ISA transfer form, for ISA transfer contributions to be in increments of £10. As this call took place after the bond application date and doesn't appear related to the sale of the bond but rather to administration after the sale, I've not relied on the contents of this call in the findings I've reached. Nor have I relied upon the contents of any other calls.

From what Mrs A has told us, she was investing more than 70% of her savings (she held savings in cash accounts elsewhere) and her investment with BG Ltd represented over 10% of her investible assets. I've seen nothing to suggest Mrs A wanted to take significant risk with her invested funds or had prior experience of risk of the kind involved with her investment in the bond or had taken significant risk in the past with such a significant proportion of her savings.

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, Mrs A has not had her invested capital returned to her.

The application process

I have seen screen prints of each stage of the online application process. These show the application journey that Mrs A underwent. This consisted of two stages, designed to meet the rules restricting who the bonds could be promoted to and on how to test whether the investment was appropriate for the potential investor. The first was certification, where Mrs A was categorised as an "everyday investor". The second was the appropriateness test.

The paper transfer form contains a few questions about investment knowledge and experience to answer by indicating either 'yes' or 'no'. The form doesn't describe the questions as being for or part of a certification process or appropriateness test.

Gallium's response to Mrs A's complaint

Gallium did not uphold Mrs A's complaint. It said Mrs A had been given sufficient information and risk warnings about the investment. It then made further submissions, once Mrs A'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 Mrs A's complaint and concluded it should be upheld.

Our investigator said, in summary:

- The application process – both in terms of the certification of Mrs A as a "restricted investor" and the assessment of the appropriateness of the bonds for her - 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, Mrs A wouldn't have decided to invest or BG Ltd should have concluded that it shouldn't allow Mrs A to invest. For these reasons, both cumulatively and individually, it was fair to uphold the complaint and for Gallium to compensate Mrs A 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 Mrs A's complaint.
- Regardless of label, Mrs A was required to confirm she met the requirements of a restricted investor and confirmed she did. It is not fair or reasonable to conclude that the use of the word "everyday" contributed to Mrs A giving an incorrect declaration, and it was reasonable for it to rely on the declaration.
- These confirmations and the appropriateness test answers were sufficient for Gallium to satisfy itself that prospective investors had sufficient knowledge and experience of the bond to understand the risks the bond involved, as per the relevant rules.
- It was reasonable for Gallium to rely on the outcome of this test.
- Mrs A 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 she would have proceeded with the investment regardless.

My findings

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 and for the same reasons. In summary:

- BG Ltd, acting on Gallium's behalf, misled Mrs A into certifying herself as belonging in 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 Mrs A fairly or acting in her best interests. Had BG Ltd followed the rules and not misled Mrs A, 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 Mrs A. In the circumstances, Mrs A would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bond to Mrs A.

For these reasons – individually and cumulatively – my decision is that Mrs A's complaint should be upheld. I am also satisfied that had Gallium acted fairly and reasonably to meet its regulatory obligations, Mrs A would either not have proceeded to make the investment or would not have been able to proceed. And so I am satisfied it is fair to ask Gallium to compensate Mrs A for her loss.

In reaching this view I note Mrs A completed a paper ISA application form containing a few questions about investment knowledge and experience. But she wouldn't have been able to apply for the ISA had she not been certified as a restricted ("everyday") investor and passed the appropriateness test. And the questions on the form in my view aren't sufficient to remove or remedy the shortcomings I've outlined in those processes as they pertained to Mrs A in the circumstances here. I say this bearing in mind the questions on the form weren't described as being for the purpose of classification or appropriateness testing in any event.

Also I find Mrs A suffered distress and inconvenience due to losing her capital and not having it available to rely on or fall back on in her retirement.

Putting things right – fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mrs A as close to the position she would probably now be in if Gallium had properly carried out and fulfilled its obligations and duties.

I take the view that Mrs A 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 Mrs A's circumstances and objectives when she invested.

What must Gallium do?

To compensate Mrs A fairly, Gallium Fund Solutions Limited must:

- Compare the performance of Mrs A'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.
- Add any interest set out below to the compensation payable.
- Pay to Mrs A £350 for the distress and inconvenience caused to her by Gallium's failings.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Three-Year Compounding High-Yield IFISA 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.

As the investment is illiquid (meaning it could not be readily sold on the open market), the *actual value* should be assumed to be zero. This is provided Mrs A 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 Mrs A 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:

- Mrs A wanted to achieve a reasonable return and I do not think she wanted to take significant risk.
- The average rate for the fixed rate bonds would be a fair measure given Mrs A's circumstances and objectives. It does not mean that Mrs A 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 Mrs A in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 6 April 2023.

Richard Sheridan
Ombudsman