

## **The complaint**

Miss E complains a three-year bond she invested into issued by Basset & Gold Plc ("B&G plc") was mis-sold. She says was told the investment was relatively secure and protected by the financial services compensation scheme (FSCS).

Miss E is represented in this complaint by her grandfather but, for ease, I'll refer to Miss E directly throughout my decision.

## **What happened**

Miss E invested £19,000 into a three-year Compounding High-Yield IFISA Bond in July 2017. Sales of this bond was dealt with by Basset Gold Limited ('BG Ltd'), a separate business from 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 Fund Solutions Limited ('Gallium'). B&G Plc and BG Ltd were appointed representatives of Gallium from 17 February 2017 to 28 February 2018.

### ***Miss E's investment in the bond***

Miss E recalls that she was referred to BG Ltd by her grandfather, who also helped her complete an application. Miss E sent a cheque to Gallium dated 25 July 2017 to fund her investment.

I've been provided a copy of the records BG Ltd held on its system and this confirms the application history for the bond. I have a copy of the bond certificate showing an application date of 24 July 2017.

I've seen system records which confirm an 'everyday investor' tag was added on 24 July 2017. The investment questionnaire, ISA, and B&G terms were also completed the same day.

There are post-sale call recordings on file, but I haven't received any calls conducted on the date the application was made.

Based on the Miss E's recollections, and system records I've seen, I'm satisfied there is some evidence that the application process was completed online. And this is in line with what Gallium has told us.

At the time, Miss E was a student and received the money she invested from a relative. The purpose of the investment was to help Miss E fund future studies. She didn't have any other investible assets.

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, Miss E 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 Miss E 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 Miss E was categorised as an “everyday investor”. The second was the appropriateness test.

### ***Gallium’s response to Miss E’s complaint***

Gallium did not uphold Miss E’s complaint. It said Miss E had been given sufficient information and risk warnings about the investment. It then made further submissions, once Miss E’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 Miss E’s complaint and concluded it should be upheld. He said, in summary:

- The application process – both in terms of the certification of Miss E 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, Miss E wouldn’t have decided to invest or BG Ltd should have concluded that it shouldn’t allow Miss E to invest. For these reasons, both cumulatively and individually, it was fair to uphold the complaint and for Gallium to compensate Miss E for the loss she has suffered.

### ***Gallium’s response to the view***

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

- Regardless of label, Miss E was required to confirm that she met the requirements of a restricted investor and confirmed that she did. It is not fair or reasonable to conclude that the use of the word “everyday” contributed to Miss E 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.
- Miss E 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.

## 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 bonds.

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:

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

For these reasons – individually and cumulatively – my decision is that Miss E's complaint should be upheld. I am also satisfied Miss E 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 Miss E for her loss.

## Putting things right

### Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Miss E as close to the position she would probably now be in if she had not been given unsuitable advice.

I take the view that Miss E 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 Miss E's circumstances and objectives when she invested.

### What must Gallium do?

To compensate Miss E fairly, Gallium must:

- Compare the performance of Miss E'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 to Miss E £350 for the distress and inconvenience caused to Miss E and for the disruption in her plans for future study.

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.

If at the end date any asset 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 Miss E agrees to Gallium taking ownership of the illiquid assets, if it wishes to. If it is not possible for Yes to take ownership, then it may request an undertaking from Miss E that she repays to Gallium any amount she may receive from the portfolio 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:

- Miss E wanted to achieve a reasonable return without risking any of her capital.
- The average rate for the fixed rate bonds would be a fair measure given Miss E's circumstances and objectives. It does not mean that Miss E 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 Miss E in a clear, simple format.

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

Sean Pyke-Milne  
**Ombudsman**