

The complaint

Mr A complains that he was mis-sold some investment bonds as he thought they were relatively secure and protected by the financial services compensation scheme (FSCS).

Mr A is using a representative to bring this complaint. For ease I will refer to all actions as being those of Mr A.

Background

In May 2017, Mr A invested £5,000 into a five-year Compounding High-Yield Bond. In September 2017, he invested £14,130 into a three-year Compounding High-Yield IFISA Bond. Sales of these bonds was dealt with by Basset Gold Limited ('BG Ltd'), a separate business from Basset & Gold Plc ('B&G plc'), the issuer of the bonds. BG Ltd arranged applications for investment in the bonds, through a website it operated. And it was responsible for advertising/marketing the bonds. Potential investors were also able to call BG Ltd, to discuss the bonds.

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 A's investment in the bonds

Mr A recalls that he was referred to BG Ltd by a relative who helped him complete a paper ISA transfer form on 22 August 2017 to transfer his ISA from a previous provider.

I've been provided a copy of the records BG Ltd held on its system and this confirms the application history for the May 2017 bond but doesn't confirm the application history for the September 2017 bond. I have a copy of the bond certificates showing application dates of 24 May and 1 September 2017.

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

There are post-sale call recordings on file, but I haven't received any calls on the dates the applications were made.

Based on the recollections from Mr A, the ISA transfer form, and system records I've seen, there is some evidence that part of the application process was completed online. And this is in line with what Gallium has told us about the application process being online.

At the time, Mr A held £5000 in bank/building society accounts and £600 in shares. So, his investment with BG Ltd represented over 75% of his 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, Mr A has not had his invested capital returned to him.

The application process

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

Gallium’s response to Mr A’s complaint

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

- The application process – both in terms of the certification of Mr A as a “restricted investor” and the assessment of the appropriateness of the bonds 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 A wouldn’t have decided to invest or BG Ltd should have concluded that it shouldn’t allow Mr A to invest. For these reasons, both cumulatively and individually, it was fair to uphold the complaint and for Gallium to compensate Mr A for the loss he has suffered.

Gallium’s response to the view

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

- Regardless of label, Mr A 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 A 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 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 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 bonds were 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 Mr A 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 A fairly or acting in his best interests. Had BG Ltd followed the rules and not misled Mr A, 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 A. In the circumstances Mr A would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bond to Mr A.

For these reasons – individually and cumulatively – my decision is that Mr A's complaint should be upheld. I am also satisfied Mr A 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 A 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 A as close to the position he would probably now be in if he had not been given unsuitable advice.

I take the view that Mr A 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 A's circumstances and objectives when he invested.

What must Gallium do?

To compensate Mr A fairly, Gallium must:

- Compare the performance of Mr 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.
- Gallium should also add any interest set out below to the compensation payable.
- Pay to Mr A £350 for the distress and inconvenience caused to him and the disruption to his plans.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Five-year Compoundi ng High-Yield 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)
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 Mr A agrees to Gallium taking ownership of the illiquid assets, if it wishes to. If it is not possible for Gallium to take ownership, then it may request an undertaking from Mr A that he repays to Gallium any amount he 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.

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 A wanted to achieve a reasonable return without risking any of his capital.

- The average rate for the fixed rate bonds would be a fair measure given Mr A's circumstances and objectives. It does not mean that Mr 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 Mr A in a clear, simple format.

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

Warren Wilson

Ombudsman