

## **The complaint**

Mr J complains Gallium Fund Solutions Limited (“Gallium”) are responsible for money he lost on a high-risk investment.

## **What happened**

Mr J was sold his bond – a 4 Year Compounding High-Yield Bond – in July 2017 by Basset Gold Limited (“BG Ltd”). A separate business – Basset & Gold Plc (“B&G plc”) – then issued the bond.

BG Ltd arranged applications for the bond through a website it operated. It was responsible for advertising and marketing the bond.

The bond was non-readily realisable. That meant there were rules restricting who it could be promoted to, and rules about testing whether the investment was appropriate for the potential investor. BG Ltd's online application process took steps to meet the obligations created by these rules.

While neither B&G Plc nor BG Ltd were regulated companies, both were appointed representatives of Gallium from 17 February 2017 to 28 February 2018. As such, Gallium – which is regulated by the Financial Conduct Authority (“FCA”) – is responsible for complaints about the acts or omissions either business allegedly made during this time.

## **Mr J's investment in the bond**

Mr J explained he heard about the bond through a friend who had also invested with Gallium. Mr J had no previous investment experience, and no other investments at the time. He applied online via the BG Ltd website. Mr J invested £2,000. The bond was to return the amount invested after four years, plus a relatively high rate of interest.

In January 2019, I understand that a further company – B&G Finance Limited, which by that point had taken on BG Ltd's role – sent investors like Mr J an email about the bonds issued by B&G plc. This referred to the fact that nearly all the money invested had been lent to one short-term lender.

Following action by the FCA, the short-term lender went into administration in March 2020. B&G Plc went into administration shortly afterwards. As a result, Mr J has not had his invested capital or the expected interest returned to him.

## **The application process**

Gallium's records confirm Mr J completed an online application in July 2017 to set up his bond. This was a key step to get the bonds, so I've focussed my decision on the online process.

I've not seen Mr J's specific online application. But I've seen screen-prints of each stage of the process he'd have followed. This consisted of two stages: certification, designed to meet

the rules restricting who the bond could be promoted to; and then a test to decide if the investment was appropriate for Mr J.

### **Gallium's response to Mr J's complaint**

Gallium didn't uphold Mr J's complaint. It said Mr J had been given sufficient information and risk warnings about the investment.

Gallium made further submissions once Mr J's complaint came to us. I've considered the submissions in full. I've 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 J's complaint and concluded it should be upheld. In summary, they made the following points:

- The part of the application process designed to check the bond could be promoted to Mr J was misleading about what being a "restricted investor" meant. This led Mr J – who had no other investments – to incorrectly identify himself in this category.
- The part of the application process testing the appropriateness of the bond for Mr J was inconsistent with the FCA's rules and guidance, and didn't gather sufficient information.
- Overall, BG Ltd, on Gallium's behalf, didn't comply with its regulatory obligations. Had it done so, Mr J wouldn't have decided to invest or BG Ltd should have decided not to allow Mr J to invest.
- For these reasons, both cumulatively and individually, it was fair to uphold the complaint and for Gallium to compensate Mr J for the loss he has suffered.

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

Gallium didn't accept the investigator's view. In summary, it made the following points:

- Our findings went beyond the scope of Mr J's original complaint.
- Regardless of label, Mr J 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 J giving an incorrect declaration, and it was reasonable for it to rely on the declaration.
- The appropriateness test answers and the confirmations above 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 J made the investment on the understanding it had risk associated with it, and didn't choose to surrender it when receiving the warning email in 2019. So he likely 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.

To do so, I've taken into account relevant law and regulations; regulator rules, guidance and standards; codes of practice; and where appropriate, what I consider to have been good industry practice at the relevant time.

I'm satisfied I can consider the sale of this bond to Mr J when considering his complaint about having lost his money on the investment. That loss follows from the type of investment he's been sold. The appropriateness of that sale is one of the circumstances of this case.

The Principles for Businesses 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). 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). That's also relevant here.

The rules for selling non-readily realisable bonds in 2017 were set out in COBS 4.7 and COBS 10.1, 10.2 and 10.3. I've considered those 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 (UK Crowdfunding Association). I've considered these too.

Having considered all the available evidence and arguments I've reached the same conclusion as the investigator, for broadly the same reasons.

In summary:

- BG Ltd, acting as Gallium's appointed representative, misled Mr J into certifying himself as belonging in a category of investor that he didn't belong to – a "restricted investor". They did this by changing the term used to "everyday investor" and describing the category as being one "anyone" could fall into. This didn't treat Mr J fairly or act in his best interests. Had BG Ltd followed the rules and not misled Mr J, it's unlikely he would have certified himself as being a restricted investor.
- The appropriateness test carried out by BG Ltd, again as Gallium's appointed representative, didn't meet the requirements of the rules. If it had, it would have been apparent the bonds weren't an appropriate investment for Mr J.
- With a more reasonable test of Mr J's knowledge and experience of these bonds, I find it's likely he'd have either appreciated their risk and not proceeded, or BG Ltd should have concluded it wasn't reasonable for them to sell the bonds to Mr J.
- Gallium have referred to an email from 2019 that talked about the risks affecting bonds like Mr J's. But I'm not satisfied that did enough to inform Mr J about how that related to him specifically. Mr J couldn't have been aware from the email that BG Ltd hadn't taken suitable steps to assess his knowledge and experience when selling him the bonds.

## Putting things right

In assessing what would be fair compensation, my aim is to put Mr J as close to the position he would probably now be in if he hadn't invested in the bond.

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

## What must Gallium do?

To compensate Mr J fairly, Gallium must:

- Compare the performance of Mr J'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 J £250 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 (if not settled within 28 days of the business receiving the complainant's acceptance)
4 Year Compounding 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

## 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 J 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 J 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.

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:

- Mr J wanted to achieve a reasonable return without risking any of his capital.
- The average rate for the fixed rate bonds is a fair measure given Mr J's circumstances and objectives. It doesn't mean that Mr J would have invested only in a fixed rate bond. It's instead in line with the investment return a consumer could have obtained taking a similar level of risk as Mr J would likely have taken.

### **My final decision**

I uphold Mr J's complaint. My decision is that Gallium Fund Solutions Limited should pay the amount calculated as set out above. When doing so, they should provide Mr J with details of their calculation in a clear and simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 4 April 2023.

Paul Mellor  
**Ombudsman**