

## **The complaint**

Mr S has complained that two bonds he invested in were mis-sold to him by Gallium Fund Solutions Limited. He said he was incorrectly informed the bonds would be covered by the Financial Services Compensation Scheme (FSCS) and given reassurances that the investments were secure.

## **What happened**

### *The B&G Plc Bond*

In late February 2017, Mr S invested £10,000 in a five-year Fixed Monthly Income Bond. And in April 2017 he invested £20,000 in a three-year Fixed Monthly Income IFISA Bond. Sales of these bonds were 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 investments 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 S's investment in the bond*

- Mr S became aware of the investments through an advertisement he saw online.
- Mr S said he invested all of his savings with BG Ltd. He said he approached BG Ltd because they are advertising high interest rates. He was also led to believe the investments were secure and protected by the government through the FSCS. Mr S had invested funds with BG Ltd in the year before he took out these bonds, but has also complained about the sale of his earlier investments.
- Mr S recalls speaking to BG Limited when applying. We asked for copies of any call recordings BG Ltd held. We were provided with copies of call recordings from before he applied and after the investment in the bonds was made. But we haven't been provided any calls in relation to when Mr S was actually making applications to invest in the two bonds subject to this complaint.

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

### *The application process*

I have not seen any contemporaneous evidence relating to Mr S's application to invest in the February 2017 bond. I have been provided with a copy of the records BG Ltd held on its system but this doesn't confirm the application history for this bond. I have a copy of the bond certificate showing an application date of 27 February 2017.

There is some evidence to support that Mr S applied for the April 2017 IFISA Bond online. For example, I've seen an email confirmation from April 2017 that thanks Mr S for his online application. The system records also show that Mr S tagged as an "everyday investor" on the 31 March 2017. This is in line with what Gallium has told us about the application process being online.

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

We have asked Mr S about his investment experience and assets. He told us, in summary:

- Before investing with B&G all of his savings had been accumulating by saving money through the banking system.
- He invested all his savings in B&G.
- He was led to believe that it was good and secure to invest in B&G, and led to believe that his investments were backed by securities/properties.

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

In April 2020, Mr S complained to Gallium about the sale of his bonds.

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

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

I issued a Provisional Decision in February 2023. This is what I said:

*“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 these two 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 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 overall conclusion as the investigator. However, my findings on application process for the Febraury 2017 bond differ slightly.*

*The investigator considered the complaint on the basis that Mr S applied for both bonds online following the application process that was detailed by Gallium in the submissions it made to this service. As previously mentioned, there is limited evdience to indicate how the February 2017 bond was applied for. But whether this was online or through another process, I haven’t found that BG Ltd met its obligations – so I’m minded to reach the same conclision for both sales.*

*In summary:*

- *BG Ltd, acting on Gallium's behalf, misled Mr S 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 S fairly or acting in his best interests. Had BG Ltd followed the rules and not misled Mr S, 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 S. In the circumstances Mr S would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bond to Mr S.*
- *If Mr S applied for his investments in a different way, I haven't seen evidence to support that Gallium met its obligations in respect of certification and appropriateness test as required."*

Mr S didn't provide any further submissions. And I didn't receive any further evidence or arguments from Gallium by the deadline set for responses.

### **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.

As neither Mr S or Gallium has made more comments or arguments for me to consider, I've got no reason to change the outcome I set out in my provisional decision.

To confirm, for the reasons described in my provisional decision, I find Mr S would either not have proceeded to make the investments 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 S for his loss and I uphold this complaint.

### **Putting things right**

In assessing what would be fair compensation, I consider that my aim should be to put Mr S as close to the position he would probably now be in if he had not invested in the bonds.

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

#### *What must Gallium do?*

To compensate Mr S fairly, Gallium must:

- Compare the performance of Mr S's investments 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.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
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Five-year Fixed Monthly Income Bond - February 2017 sale	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 Fixed Monthly Income IFISA Bond - April 2017 sale	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 investments 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 S agrees to Gallium taking ownership of the illiquid assets, if it wishes to. If it is not possible to take ownership, then it may request an undertaking from Mr S that he repays to Gallium any amount he may receive from the portfolio in future.

#### *Fair value*

This is what the investments would have been worth at the end date had they 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 S 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 S's circumstances and objectives. It does not mean that Mr S 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 this complaint. My decision is that Gallium Fund Solutions Limited should pay the amount calculated as set out above.

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

Daniel Little  
**Ombudsman**