

The complaint

Mr S complains to Gallium Fund Solutions Limited about three bonds he invested into in 2017. He says he was mis-sold the bonds as he was told they would be secure and invested in property, but all the money was lost.

What happened

The B&G Plc Bond

Mr S made three investments into B&G Plc high yield bonds which compounded annually. 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") from 17 February 2017 to 28 February 2018.

Mr S's investment in the bond

Mr S tells us that he first found the bonds when searching for investments online – he'd previously invested primarily with building societies and into a mutual investment bond, but when interest rates fell his income fell too, so he began to look for something to help regain this.

Mr S says he thought B&G's bonds were 'middle of the market' in terms of the interest they'd pay, and thinking they'd invest into property covering the investment at 1.25x, he thought his money would be safe. So in 2017, Mr S made three investments:

- in August he invested £15,420 into a three year compounding high yield IFISA bond,
- and a further £15,000 later in August, into a four year compounding high yield bond,
- then in November, he invested £9,500 into another four year compounding high yield bond.

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 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 applications to invest in the bonds in question. Gallium has not provided us with any detail about Mr S's applications in 2017 – instead we have been sent a spreadsheet recording information about a fourth

investment Mr S made in 2018 which isn't relevant to this complaint given it was outside of the period of time which Gallium were the appointed representative.

This said, when Mr S invested in 2018 it appears he applied online and certified himself as being a 'high net worth' investor. Given that investment was made only one year later and given what Mr S has told us about his finances in 2017, our investigator assumed the 2017 investments to have been made similarly – in terms of them being made online, with Mr S certifying himself as a 'high net worth' investor – and Gallium has not disagreed.

Mr S told us he completed his applications online and recalls receiving a phone call from BG Ltd before completing the questions. We asked for copies of any call recordings BG Ltd held. We were provided with some, but they were all service and enquiry calls – importantly, none were pertinent to the sales of the investments, so the recordings have not been material in my consideration of this complaint.

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 bond could be promoted to and on how to test whether the investment was appropriate for the potential investor. The first was certification – which as I said above we can see was 'high net worth' in 2018 and it has not been contested that this applied in 2017 too – and the second was the appropriateness test.

Gallium's response to Mr S's complaint

Gallium did not uphold Mr S's complaint. It said it wasn't responsible for the performance of B&G and that it was clear there would be FSCS cover only in certain circumstances. It also 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:

- In respect of the certification process, from the information gathered about Mr S's circumstances they found it likely he may have qualified as a 'high net worth' investor. However, they still felt that in terms of the application process the assessment of his appropriateness for 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 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, 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 didn't accept the investigator's view. It said, in summary:

- Our findings went beyond the scope of Mr S's complaint.

- It noted Mr S satisfied the ‘high net worth’ criteria but felt the appropriateness test answers and confirmations were enough 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 investments on the understanding they had risk associated with them and did not chose to surrender them when receiving the email in 2019 which warned of the concentration risk. So, he would have proceeded with the investments 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 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, for the same reasons. In summary:

- Mr S has provided information about his circumstances at the time he invested in the bonds – this suggests he held sufficient assets to mean he could have qualified as a ‘high net worth’ investor. Though we have limited evidence about his applications in 2017, it is likely he applied for the bonds online as that would be consistent with Gallium’s general explanation of how investments were made and what we have seen in practice regarding other complaints. Mr S’s 2018 investment was made on the basis he’d certified himself as being a ‘high net worth’ investor. And in the absence of any disagreement by Gallium, it seems possible, based on the information Mr S has provided, he certified as a ‘high net worth’ investor in 2017 too.
- The wording used by BG Ltd for the ‘high net worth’ investor category mirrored the wording set out at 4.12.6R. So although it does not appear BG Ltd followed its obligations correctly and ascertained whether he met the certification criteria, had it have done so it seems Mr S would have been able to proceed with his applications.
- This said, 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 as he didn’t have the relevant knowledge and experience to understand the risks involved when investing into the bonds. 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.

For these reasons, my decision is that Mr S’s complaint should be upheld. I am also satisfied Mr S 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 S 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 S as close to the position he would probably now be in if he had not invested in the bonds.

I think Mr S would have invested differently. It is not possible to say *precisely* what he would have done, 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 each 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 ensure a separate calculation is carried out for each investment.

- Gallium should also add any interest set out below to the compensation payable. Income tax may be payable on any interest awarded.
- It is also clear that Mr S has been caused some distress and inconvenience by the loss of his investment. I do not believe Mr S foresaw such a drastic loss and I recognise the considerable worry he will have felt when B&G Plc failed. I consider a payment of £300 is fair compensation for the upset caused.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Three year compounding high yield IFISA bond dated August 2017	Still exists but illiquid	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: 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)
Four year compounding high yield bond dated August 2017	Still exists but illiquid	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: 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)
Four year compounding high yield bond dated November 2017	Still exists but illiquid	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: 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 paid or 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 S 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 S 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 S wanted some growth with a small risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income **Total Return** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr S's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr S into that position. It does not mean that Mr S would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr S could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold Mr S's 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 S in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 April 2023.

Aimee Stanton
Ombudsman