

## **The complaint**

Mrs P complains she was mis-sold was “pensioner bond” issued by Basset & Gold Plc (“B&G plc”) she invested into. She says the bond wasn’t suitable for her, due to the capital being at risk, and she was not told of this risk at the time of application.

## **Background**

### **The B&G Plc Bond**

Mrs P invested in a B&G Plc “Three- year fixed monthly income Bond”. Sales of this bond were dealt with by Basset Gold Limited (“BG Ltd”), a separate business from B&G plc, the issuer of the bond. BG Ltd arranged applications for investments in the bond. 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.

### **Mrs P’s investment in the bond**

Mrs P says at the time of application she was a retired widow. She was in receipt of pension income, she owned her own property, and didn’t have any debts. She says she had around £58,000 savings, which was all in cash - a current account, a fixed rate cash bond and NS&I savings account. She had previously invested in another investment (with a large life assurance company) but surrendered the investment after it started to make a loss, putting it into the fixed rate cash bond instead.

Mrs P says she made the investment following a visit to her home by someone from a business which she was told was acting as a representative of BG Ltd or B&G plc. Mrs P says the representative turned up at her door unsolicited and explained to her the B&G Plc bond and the monthly income she could get from an investment in it. She said she could only spare £5,000 but the representative was very pushy and tried to get her to invest more money by going to the bank and adding another £25,000. But she settled on £5,000 pounds and wrote a cheque for him. She says the representative explained the policy verbally to her and did not show her any information.

When Mrs P referred her complaint to us, we asked for copies of any call recordings BG Ltd held. We were provided with copies of some call recordings, but we have not been provided with recordings of any conversations Mrs P had with BG Ltd before or during the bond application.

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, Mrs P

has not had her invested capital returned to her.

### **The application process**

We have been given a copy of a paper application form and a cheque for £5,000, both signed by Mrs P on 22 May 2017.

The application form is simply titled "Investor Application Form" and is similar – but not identical to – BG Ltd's online application. Section 6 is titled "Investor Type". Mrs P was recorded as an "Ordinary (restricted) investor". The form says this is defined on pages 6 to 8 of the form. However, the copy application form we have been provided with does not include pages 6 to 8.

Section 7 is titled "Investor questionnaire". The text is the same as the "JUST A FEW MORE QUESTIONS (REQUIRED BY LAW)" section of BG Ltd's online application:

*"These questions are designed to check that this type of investment is appropriate for you. Please read each question carefully and select the answer that you believe is correct.*

**1) AFTER YOU INVEST IN THIS OFFER CAN YOU TRANSFER YOUR BASSET & GOLD BONDS?**

*The bonds are not transferable except in the case of the IFISA Bonds  
Yes I can transfer them as a listed share*

**2) THE EXPECTED RETURN FROM BASSET AND GOLD BONDS?**

*is the fixed interest rate per annum paid over the term (plus my Money back at the end).  
is dependent on movements in the financial bond and equity markets.*

**3) IS YOUR CAPITAL SECURE?**

*No, my capital is at risk and I might not get back all that I invested.  
Yes, my capital is secure and I have no risk of losing.*

**4) CAN THE BASSET & GOLD BONDS BE CONVERTED TO BASSET & GOLD SHARES?**

*Yes  
No*

**5) DIVERSIFICATION IS A COMMON WAY TO HELP MANAGE RISK WHEN INVESTING; WHAT DOES THIS MEAN?**

*That you should invest all of your money into a single bond.  
That you should invest your money in a range of different bonds as well as other less risky investments."*

The spreadsheet we have been provided detailing BG Ltd's records says the steps "Everyday Investor", "KYC", "T&C" and "Investor Questionnaire" were each completed on 24 May 2017.

Mrs P says, after being visited by the representative, she received follow up phone calls from BG Ltd to check she was receiving her income etc. But she has no further recollection of an application process.

## **Gallium's response to Mrs P's complaint**

Gallium did not uphold Mrs P's complaint. It said Mrs P had been given sufficient information and risk warnings about the investment. It then made further submissions, once Mrs P'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**

Our investigator concluded the complaint should be upheld. They said, in summary:

- They were satisfied Mrs P would have met the definition of a "restricted investor", as the amount she invested was less than 10% of her investible assets at the time of the sale.
- However, BG Ltd's assessment of appropriateness did not comply with the FCA's rules.
- Had BG Ltd's process met what was required under the rules and sufficiently asked Mrs P about her knowledge and experience BG Ltd ought to have reasonably concluded that Mrs P did not have the sufficient knowledge and experience to make an investment in the bond appropriate for her. Mrs P was an inexperienced investor who hadn't invested in similar products. All of the money she held at the time of the investment was in cash.
- If BG Ltd had given itself the opportunity to consider in the circumstances whether to allow Mrs P to proceed, having asked for appropriate information about Mrs P's knowledge and experience, it would have been fair and reasonable for BG Ltd to conclude it should not have allowed Mrs P to proceed.
- Overall, BG Ltd, on Gallium's behalf, didn't comply with its regulatory obligations. Had it done so, Mrs P wouldn't have decided to invest or BG Ltd should have concluded that it shouldn't allow Mrs P to invest. For this reason it was fair to uphold the complaint and for Gallium to compensate Mrs P for the loss she has suffered.

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

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

- It notes the investigator accepts Mrs P satisfied the criteria to be classed as a restricted investor.
- 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.
- Mrs P 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, she would have proceeded with the investment regardless.

## **My provisional decision**

I recently issued a provisional decision. I concluded the complaint should be upheld. As I've set my provisional findings out again below, I will not set out any further detail here.

## **Responses to my provisional decision**

Mrs P accepted my provisional decision. Gallium did not respond.

## **My findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As neither party has made any further submissions following my provisional decision I have not been persuaded to depart from it. I have therefore largely repeated my provisional findings as my final decision.

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.

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.

Its not completely clear how exactly this application was made. Our investigator found it likely Mrs P had completed BG Ltd's online application. However, considering the available evidence, I think that is unlikely to be the case. Mrs P's recollection is that an application was completed when the representative visited her. So I think it unlikely Mrs P did complete an online application. I think it more likely information was entered by BG Ltd onto its system once it received the paper application form, and that is why its records say steps were completed a few days after the paper application was completed.

I also think the evidence is insufficient to show Mrs P completed the form herself and/or was given adequate opportunity to consider its contents. She mentions not being given

information, and the representative being “pushy”. I don’t however know how much – if anything – BG Ltd knew of how the application came about. And so I appreciate BG Ltd may not have known, if Mrs P did not complete the form herself.

In any event, BG Ltd had an obligation to ensure Mrs P was eligible to receive a promotion of the bond before it proceeded and, in this case – whether it knew exactly how the application came about or not – I have not seen sufficient evidence to show it could reasonably have concluded Mrs P was eligible to receive a promotion of the bond.

### **Certification**

As the relevant pages of the form appear to be missing, there is insufficient evidence to show Mrs P saw the definition of a restricted investor (or “ordinary (restricted) investor” as the form described it) and therefore had a full understanding of what the category meant. 4.7.10R requires the prospective investor to agree to all of the following:

- In the twelve months preceding the certification date, not to have invested more than 10% of their net assets in non-readily realisable securities.
- To undertake that in the twelve months following the certification date, they will not invest more than 10% of my net assets in non-readily realisable securities.
- To accept that the investments may expose them to a significant risk of losing all of the money invested.
- To be aware that it is open to them to seek advice from an authorised person who specialises in advising on non-readily realisable securities.

Mrs P may have been able to meet the first two of these as she was investing less than 10% of her net assets and, as an elderly widow who did not want to take risk, was very unlikely to be making any further investments non-readily realisable securities (not that, in my view, she understood that is what she was doing here). But I think it very unlikely she would have knowingly accepted that an investment in the bond may expose her to a significant risk of losing all of the money invested. It seems she instead proceeded on the understanding there was no risk.

In the circumstances I do not think BG Ltd should have proceeded without first checking Mrs P was indeed a “restricted” investor and had a full understanding of that that meant. And I think it likely such a check would have revealed Mrs P was not a restricted investor – and that she did not fit into any of the other categories either. And so things should not have proceeded beyond this.

### **Appropriateness**

Even if there was a basis for BG Ltd to reasonably conclude Mrs P was a restricted investor – either in reliance on the application form or after having checked with Mrs P - the rules still required it to be satisfied Mrs P had the necessary experience and knowledge in order to understand the risks involved. And, like the investigator, I do not think BG Ltd acted in a way which was consistent with those rules.

The paper application form asked five questions which tested knowledge. These questions asked whether Mrs P knew if the bonds were transferable, if the return was fixed, if their capital was secure, if the bonds could be converted to shares and the meaning of diversification. Nothing was asked about Mrs P’s experience. And if Mrs P got a question

wrong, she would be told her answer was wrong and prompted to reconsider it.

If Mrs P did know the correct answer to all five questions this only showed she understood the bonds were not transferrable, the return was fixed, capital was at risk, whether the bonds could be converted into shares and was able to select a correct answer from two options as to what the definition of diversification was.

This falls a long way short of adequately testing whether Mrs C had the knowledge to understand the risk associated with the bonds – particularly in circumstances where the multiple-choice options were limited to two. The risks associated with the bond were complex and multifactorial. It was not, for example, a question of whether Mrs C simply understood money could be lost – but whether she was able to understand how likely that might be and what factors might lead to it happening.

As the first limb of COBS 10.2.1R was not met, BG Ltd was unable to carry out the assessment required under the second limb. BG Ltd should have been confident, from the information it asked for, that it was able to assess if Mrs P had the necessary experience and knowledge in order to understand the risks involved with investment in the bond. But it was not in a position to make such an assessment, based on the information it obtained.

Had the process been consistent with what the rules required - had Mrs P been asked for appropriate information about her knowledge and experience - the only reasonable conclusion BG Ltd could have reached, having assessed this, was that Mrs P did not have the necessary experience and knowledge to understand the risks involved with the bond. Mrs P had limited investment experience and I have seen no evidence to show she had anything other than a basic knowledge of investments.

If BG Ltd assessed that the bond was not appropriate, COBS 10.3.1 R said a warning must be given and the guidance at COBS 10.3.3G said a business could consider whether in the circumstances to go ahead with the transaction if the client wished to proceed, despite the warning.

Here, as the test was inadequate, a conclusion the bond was not appropriate was not drawn and therefore no warning was given. It follows BG Ltd did not have the opportunity to consider whether in the circumstances to go ahead with the transaction if Mrs P wished to proceed, despite the warning.

In my view a warning which told Mrs P clearly an investment in the bond was not appropriate for her would likely have put Mrs P off proceeding further. That is a clear, emphatic statement which would have left Mrs P in no doubt the bond was not an appropriate investment for her. And she ought to have been privy to such a warning, had an appropriateness test consistent with the requirements of the rules been conducted.

Furthermore, had BG Ltd given itself the opportunity to consider in the circumstances whether to go ahead with the transaction if Mrs P wished to proceed, having asked for appropriate information about Mrs P's knowledge and experience, it would have been fair and reasonable for BG Ltd to conclude it should not allow Mrs P to proceed. Had Mrs P been asked for appropriate information about her knowledge and experience this would have shown she may not have the capacity to fully understand the risk associated with the bond. In these circumstances, it would not have been fair and reasonable for BG Ltd to conclude it should proceed if Mrs P wanted to, despite a warning.

All in all, I am satisfied BG Ltd, acting on behalf of Gallium, did not act fairly and reasonably when assessing appropriateness. By assessing appropriateness in the way it did it was not treating Mrs P fairly or acting in her best interests. If it had acted fairly and reasonably to

meet the relevant regulatory obligations when assessing appropriateness, Mrs P would not have got beyond this stage. And I think it would be fair and reasonable to uphold Mrs P's complaint on this basis alone. Even if I am wrong in what I saw about Mrs P's certification as a restricted investor she would still not have got beyond this second stage. The second condition set out in COBS 4.7.7R could not be met and things could not have proceeded beyond this.

So my decision is that Mrs P's complaint should be upheld. I am satisfied Mrs P 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 Mrs P for her loss.

### Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mrs P as close to the position she would probably now be in if she had not invested in the bond. I take the view that Mrs P 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 Mrs P's circumstances and objectives when she invested.

What must Gallium do?

To compensate Mrs P fairly, Gallium must:

- Compare the performance of Mrs P'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.
- It is also clear that Mrs P has been caused some distress and inconvenience by the loss of her investment. Given her circumstances, this is money Mrs P cannot afford to lose, nor is it money she is able to replace. I do not believe Mrs P foresaw such a significant loss and I recognise the considerable worry she will have felt when B&G Plc failed. I consider a payment of £350 is fair compensation for the upset caused.

Income tax may be payable on any interest awarded.

Investment name	Benchmark	From ("start date")	To ("end date")	Additional interest
B&G Plc Bond	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 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 Mrs P 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 Mrs P that she repays to Gallium any amount she 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.

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:

- Mrs P 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 Mrs P's circumstances and objectives. It does not mean that Mrs P 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.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 25 April 2023.

John Pattinson  
**Ombudsman**