

Complaint

Mr N complains he was mis-sold an investment he made in a bond issued by Basset & Gold Plc (“B&G plc”). Mr N says he was misled about the risk associated with the bond – that he was told it was safe – and was also not given details of how the money he invested would be used by B&G Plc. He would like to be compensated for the loss of capital suffered by the investment.

Background

The B&G Plc Bond

Mr N invested in a B&G Plc 5 Year Fixed Monthly Income Bond. For a period of time, sales of these bonds were dealt with by Basset Gold Ltd (“BG Ltd”), a separate business from B&G Plc, the issuer of the bonds. BG Ltd arranged applications for investments in the bonds. And it was responsible for advertising and 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.

Basset Gold Finance Ltd (“BGF”) – an independently authorised business, which was not connected to Gallium – took over from BG Ltd at some point in 2018. Gallium says this happened before the appointed representative agreement between it and BG Ltd came to an end and has made submissions on this point – albeit inconsistent ones. For the remainder of this background section I have referred to BG Ltd as the business Mr N interacted with, but the point of dispute is noted and I will consider in my findings whether Mr N actually dealt with BGF instead.

Mr N and the investment in the bond

Mr N invested a total of £120,000 in the bond. This followed a number of phone discussions between Mr N and a representative of BG Ltd which took place over a number of weeks, during which different investment amounts and bonds were considered. The administrators of BG Ltd have provided some recordings of these discussions, but a number are missing – so I do not know the full detail of what was discussed.

BG Ltd’s records include a paper application form for a £50,000 investment in a High Yield Bond and a cheque for that amount, both dated 5 January 2018. And BG Ltd’s log of applications records the following:

Investor Tags		Legal Tags	
Type	Date	Type	Date
Advised Investor	2017-11-14 16:26:15	KYC Completed	2018-01-09 13:52:47
Self Certified Sophisticated Inves	2018-01-10 09:52:59	B&G T&C Confirmed	2018-01-09 08:59:12
		Completed Investor Questionnaire	2017-11-14 16:27:36

The certificate for the bond Mr N actually invested in – the £120,000 in the B&G Plc 5 Year Fixed Monthly Income Bond – records the application date as 9 January 2018.

When asked about his recollections of the application process Mr N told us:

“I did not understand how to fill out online application form. I phoned [BG Ltd representative] and she helped me to fill it in whilst I stayed on the phone to her. I explained I did not know what type of investor I was as I was investing nearly all my capital. She said just tick either the High Net Worth Investor box or the Sophisticated Investor box it does not really matter as nothing is going to happen to your capital. I did not understand the difference between the different investor categories and this was not explained to me.”

“For the 5 year bond 120k I can remember not understanding what sort of investor criteria I fell under as I had never invested in anything other than a high street cash isa before. I can remember there were 2 options 'Sophisticated' and 'High Net Worth.' I did not think I was any of these as I was investing nearly all my capital to raise a regular monthly income as I was not able to work due to mental health problems. I remember asking [BG Ltd representative] in a phone call which investor criteria I fell under. I remember her saying to me 'It does not matter [Mr N] nothing is going to happen or go wrong with your investment so just tick anyone.' I had rang her to talk me through the online application process as I was having problems understanding how to do it.”

Mr N has told us he had no investment experience other than cash ISAs. The money he invested was what he had left over, after downsizing his home. He has also told us he was not working and suffered poor mental health.

On 8 January 2019, BGF (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 N has not had his invested capital returned to him.

The application process

From the available evidence, it is not completely clear how Mr N’s application was made.

I have seen screen prints of each stage of BG Ltd’s online application process. These show the online application journey that potential investors 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 investments were appropriate for the potential investor. The first was certification. The second was the appropriateness test.

As mentioned, I have also seen a paper application form Mr N completed (albeit for an investment that did not, ultimately, proceed).

Gallium’s response to Mr N’s complaint

Gallium did not uphold Mr N’s complaint. It said Mr N had been given sufficient information and risk warnings about the investment. It then made further submissions, once Mr N’s complaint was referred to us. I have considered the submissions in full. I have also considered what Gallium describes 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 N's complaint and concluded it should be upheld. They said, in summary:

- Its not clear what happened at the time. The information received from BG Ltd's administrators shows that Mr N selected "advised investor". But Mr N has said he didn't receive advice from any financial adviser.
- They had thought about whether Mr N would have qualified as any of the categories of investor type eligible to receive promotions of the bond. Mr N has confirmed that he had invested almost all his savings in the bond. He had no previous investment experience, having only ever held regular savings accounts and cash ISAs. And he'd never invested in a similar product in the past either.
- So Mr N would not have met the requirements of any of the categories as set out in COBS 4.7.9R or 10R.
- The assessment of the appropriateness of the bonds for Mr N was misleading and didn't gather sufficient information to comply with the FCA's rules.
- Had BG Ltd's process met what was required under the rules and sufficiently asked Mr N about his knowledge and experience then BG Ltd ought to have reasonably concluded that Mr N did not have the necessary knowledge and experience to make the bond an appropriate investment for him.
- Overall, BG Ltd, on Gallium's behalf, didn't comply with its regulatory obligations. Had it done so, Mr N wouldn't have decided to invest or BG Ltd should have concluded that it shouldn't allow Mr N to invest. For these reasons, both cumulatively and individually, it was fair to uphold the complaint and for Gallium to compensate Mr N for the loss he has suffered.

Gallium's response to the view

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

- It notes we make no adverse findings against Gallium as to whether Mr N satisfied the criteria to be classed as an advised investor.
- The appropriateness test answers and the confirmations Mr N gave 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 N made the investments on the understanding they had risk associated with them and did not choose to surrender them when receiving the email in 2019 which warned of the concentration risk. So he would have proceeded with the investments regardless.

Gallium also made submissions on what it describes as the "interim period". On this point Gallium said, in summary:

- BGF was authorised by the FCA on 2 January 2018 and began to promote the bonds

to investors from that date. In particular, it understands that the website and telephone line was the responsibility of BGF from that date.

- At no point was BGF an appointed representative of Gallium, and Gallium had no responsibility for the actions of BGF. Our investigator has not found that Mr N actually spoke to anyone at B&G plc and BG Ltd for whose conduct Gallium had any responsibility, or that Gallium actually approved the content of the website through which Mr N invested and which contained the certification and appropriateness questions which form the basis for the view. Rather, the available evidence suggests that Mr N applied to invest through a website process approved by BGF.

Gallium also provided a witness statement from its former director, dated 16 February 2023, which says:

- He understands that the only regulated activities that continued to be carried out by BG Ltd in the interim period, were that BG Ltd remained responsible for the making of telephone calls with investors or prospective investors concerning their bond investments.
- It is his understanding that:
 - Save in relation to telephone calls between Basset & Gold representatives and investors/prospective investors in the bonds, during the interim period all regulated activities relating to the financial promotions concerning the B&G plc bonds, as well as activities concerning the arranging of bond investments, were conducted by BGF
 - BG Ltd continued to be responsible for the content of telephone calls between Basset & Gold.
- On 4 January 2018, he received an email from the owner of Basset & Gold, which confirmed that Basset & Gold (he says this meant BGF) had been authorised by the FCA. The owner requested a meeting to discuss the best way to “transition the regulatory business away from Gallium to the new firm”.
- He believes the meeting took place on 11 January 2018. No notes are available but he recalls what was discussed.

I have asked – on another complaint – for various points of clarification on what is said in the witness statement, and for contemporaneous evidence to support it. I have not received a response to that request. However, for the reasons I have set out below, I think I can proceed with this particular complaint without that further information.

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

Mr N accepted my provisional decision. Gallium did not respond.

My findings

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.

Given what Gallium says about the “interim period” – that it is not responsible for the act(s) this complaint relates to - I have first considered all the available evidence and arguments to decide whether we can consider Mr N’s complaint.

It is not clear how exactly Mr N’s application came about – whether it was done online, over the phone or through the post – or on what basis it proceeded. I’ll consider this further later in this decision. But, for now, it is sufficient to say Mr N’s complaint is about the arrangement of his investment in the bond and the exchanges he had with the representative in the period up to the arrangement of the investment being concluded. In short Mr N says he was misled during those exchanges.

Rule DISP 2.3.1R says we can;

“consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a firm in carrying on...regulated activities...or any ancillary activities, including advice, carried on by the firm in connection with them”.

And the guidance at DISP 2.3.3G says:

“complaints about acts or omissions include those in respect of activities for which the firm...is responsible (including business of any appointed representative or agent for which the firm...has accepted responsibility)”.

This guidance is drawn from the relevant legislation, which is paragraph 3 of s39 to the Financial Services and Markets Act 2000 (FSMSA):

“the principal [here, Gallium] of an appointed representative is responsible, to the same extent as if she had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which she has accepted responsibility”.

So I need to consider whether Mr N’s complaint is about a regulated activity, carried on by an appointed representative of Gallium, for which Gallium accepted responsibility.

Is Mr N’s complaint about a regulated activity?

I am satisfied Mr N’s complaint relates to a regulated activity. The bond was a security or contractually based investment specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (“RAO”). At the time Mr N made his investment, the RAO said regulated activities include arranging deals in investments. Acts such as obtaining and assisting in the completion of an application form and sending it off, with the client’s payment, to the investment issuer would come within the scope of Article 25(1), when the arrangements have the direct effect of bringing about the transaction. So I am satisfied the application process – whether it took place online, through the post or over the phone - falls within the scope of Article 25(1). It involved making arrangements for Mr N to invest in the bond, and had the direct effect of bringing about the transaction.

Was Gallium responsible for the acts the complaint is about?

Under the appointed representative agreement in place between BG Ltd and Gallium, in relation to bonds, BG Ltd was allowed to carry out *promoting activities...where the Company has approved the financial promotion*. And Gallium allowed BG Ltd *the right under its authorisation with the FCA to give advice... in connection with advising, arranging, or dealing*

in investment products for present and prospective clients and in connection therewith to display, advertise, promote, for the sole purpose of promoting the sale of the same.

This agreement was in force during the period up to the date of investment – 9 January 2018. So, if BG Ltd carried out the arrangements, that is business for which Gallium accepted responsibility and the complaint can therefore be considered against it.

I note Gallium, in its response to the view, says from 2 January 2018 BGF began to promote the bonds to investors and that the website and telephone line was the responsibility of BGF from that date. However – save for the witness statement, which is unclear on several points and in any event inconsistent with the position set out in response to the view – it has provided no evidence to support this point.

I will turn to the witness statement shortly. The evidence available otherwise all shows it was BG Ltd – not BGF – which made the arrangements in this case.

Mr N made a claim to the Financial Services Compensation Scheme (“FSCS”), having been told by Gallium that BGF was responsible (BGF is in FSCS default). The FSCS rejected the claim, concluding Gallium was responsible. The FSCS referred to the following evidence, when reaching its conclusion:

- A letter to Mr N dated 15 November 2017 from B&G Plc advising that the application form should be sent to “Basset & Gold Ltd” at 6 Percy Street London W1T 1DQ, including a handwritten note on the letter stating the new address was 23 Finsbury Circus, London EC2M 7EA - BG Ltd’s registered addresses around that time.
- An email dated 26 December 2017 from BG Ltd’s Dedicated Relationship Manager (the representative Mr N dealt with throughout), promoting Fixed Income Bonds, with an email footer which confirms “*Basset Gold Ltd is an appointed representative of Gallium Fund Solutions Limited which is authorised and regulated by the Financial Conduct Authority, reference number 487176.*”
- An email dated 10 January 2018 from B&G Ltd’s Dedicated Relationship Manager for Basset Gold Limited acknowledging receipt of Mr N’s funds and confirming the bond subscription was complete. This email is from BG Ltd and the email footer states “*Basset Gold Ltd is an appointed representative of Gallium Fund Solutions Limited which is authorised and regulated by the Financial Conduct Authority.*”

I have seen this evidence. And I share the view of the FSCS – it demonstrates BG Ltd was responsible, not BGF. I think the email dated 10 January 2018, in particular, is strong evidence BG Ltd – and therefore Gallium – is responsible for arranging the investment in the bond.

I have also seen the paper application form completed by Mr N 5 January 2018 which, although for an investment which did not ultimately proceed, refers to B&G Plc throughout as an appointed representative of Gallium.

Furthermore, the call recordings we have all refer to BG Ltd, and are with the representative who consistently described herself as a representative of BG Ltd. There are no references in any of the calls to BGF.

Finally, I have not seen any communication from BG Ltd or BGF to Mr N to notify him of a change on 2 January 2018 – and I would expect such a communication to have been issued, given Mr N’s interactions with BG Ltd were ongoing at that point.

Gallium says the available evidence suggests that Mr N applied to invest through a website process approved by BGF. In my view it is not clear whether Mr N applied online at all – a point I'll return to later – but I have not seen any evidence of the type Gallium refers to. As I have set out, I have not seen any evidence specific to this investment which makes any reference to BGF- all references are to BG Ltd

The witness statement includes the following:

On 4 January 2018, I received an email from [name of the owner of the Basset Gold/Basset and Gold businesses], the ultimate owner and controller of Basset & Gold, which confirmed that Basset & Gold had been authorised by the FCA. I now know that it is BGF that was the entity authorised by the FCA, and that BGF had become FCA authorised on 2 January 2018. [name of the owner of the Basset Gold/Basset and Gold businesses] requested a meeting to discuss the best way to “transition the regulatory business away from Gallium to the new firm”.

I met with [name of the owner of the Basset Gold/Basset and Gold businesses] in the hotel he was staying in London the week following his email. I believe the meeting took place on 11 January 2018 as [name of the owner of the Basset Gold/Basset and Gold businesses]'s email of 4 January 2018 mentioned that he would be in London the following Thursday, which was the 11th. I recall that I made a note of what we discussed at the meeting, but so long after it took place I cannot now locate my notes. I do, however, recall what was discussed.

At the meeting, [name of the owner of the Basset Gold/Basset and Gold businesses] and I agreed that Gallium would cease monitoring and approving new financial promotions with immediate effect, because Basset & Gold now controlled its own regulated firm, BGF.

[name of the owner of the Basset Gold/Basset and Gold businesses] also informed me that BGF would update the Basset & Gold website and online application form, to reflect that BGF was now responsible for the promotion of the bonds and arranging any investments made in the Bonds.

As mentioned, there are a number of things about the witness statement which are unclear, and we have not been provided with any evidence to support what it says. But, even I accept what the statement says as an accurate reflection of the position at the time (and, to be clear, given the available evidence otherwise, I do not) it does not in any event amount to evidence BGF was responsible for Mr N's investment.

I say this because the witness statement says a meeting – to discuss a “transition” to BGF from Gallium's appointed representatives – took place on 11 January. Gallium's ex-director says his recollection of that meeting was that at the time of the meeting Gallium would no longer be responsible “with immediate effect” and BGF “now” being responsible. Which suggests, on Gallium's ex-director's recollection, responsibility passed from Gallium to BGF on 11 January 2018. That is not evidence of BG Ltd and therefore Gallium not being responsible for arrangements which concluded on 9 January 2018.

To be clear, I have not seen any evidence to show BGF took responsibility from 2 January 2018, as Gallium response to the investigator's view says, or that it had any involvement in Mr N's investment. All the evidence I have seen supports a contrary position.

All in all, I am satisfied Mr N's complaint is about acts for which Gallium accepted responsibility. They are therefore acts of Gallium and can be considered in a complaint against it.

The merits of Mr N's complaint

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

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 bonds were non-readily realisable and therefore there were rules restricting who they 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 similar overall conclusions to the investigator, for similar reasons. In summary:

- There is limited evidence as to how Mr N's application proceeded. It is not completely clear how he came to be categorised as an "advised investor" or why he was recorded as a self-certified sophisticated investor the day after his application was made. Nor is it clear, given the contradictory evidence, whether an online application was completed – either by Mr N independently or over the phone with BG Ltd's representative.
- If the application proceeded on the basis of Mr N being an "advised investor" – and there is in any event no evidence to show he received advice from an authorised financial advisor – that was not a basis on which a direct offer promotion could be made by BG Ltd, on Gallium's behalf.
- Ultimately, Mr N had to fall under one of the investor categories set out in COBS 4.7.9R and COBS 4.7.10R in order to be eligible to receive a direct offer promotion of the bond.
- Self-certified sophisticated investor is one of those categories. But, if the application proceeded on that basis, Mr N did not meet the criteria set out in the relevant statements for a self-certified sophisticated investor and, had Gallium taken reasonable steps to check Mr N met the criteria – as, acting fairly and reasonably to meet regulatory guidance, it should - it ought to have known this.
- Mr N could not have fallen under any of the alternative categories either. So he did not fall into any category eligible to receive a direct offer promotion of the bond.

- The appropriateness test carried out by BG Ltd, on behalf of Gallium – if such a test was carried out - 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 N.
- Alternatively, if no appropriateness test was carried out by BG Ltd, there was no basis on which the bond could have been promoted to Mr N.
- Either way, in the circumstances, Mr N would not or could not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bond to Mr N.
- Overall, I am satisfied Mr N 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.

For these reasons – individually and cumulatively – my decision is that Mr N’s complaint should be upheld. I am also satisfied Mr N 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 N for his loss.

Fair compensation

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

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

What must Gallium do?

To compensate Mr N fairly, Gallium must:

- Compare the performance of Mr N's investment with that of the benchmark shown below.
- A separate calculation should be carried out for each investment.
- Gallium should also add any interest set out below to the compensation payable.
- Pay Mr N £750 for the distress caused. Mr N’s mental health has been made impacted by the stress and worry this has caused. He relied on the income from the bond in order to meet his expenses and being deprived of this income and unable to access his capital - which were almost the entirety of his savings – has caused him significant stress and anxiety.

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	Date of	Date of my final	8% simple per year from final decision to settlement (if not

	bonds	investment	decision	settled within 28 days of the business receiving the complainant's acceptance)
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For each investment:

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 N 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 N 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.

Any withdrawal, income or other distributions paid out of the investment 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 are 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 N 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 N's circumstances and objectives. It does not mean that Mr N 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.

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £160,000, I may recommend that Gallium Fund Solutions Limited pays the balance.

Decision and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that Gallium Fund Solutions Limited should pay the amount produced by that calculation up to the maximum of £160,000 plus any interest on that amount as set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend that Gallium Fund Solutions Limited pays Mr N the balance plus any interest on the balance as set out above.

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

John Pattinson
Ombudsman