

The complaint

Mr R complains he was mis-sold an investment he made in a bond issued by Basset & Gold Plc ("B&G Plc"). Mr R says he was misled that the bond was protected by the FSCS – but has since lost his money as the bond issuer has gone into administration.

What happened

The B&G Plc Bond

Mr R invested in a B&G Plc 3 Year Compounding High-Yield IFISA 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 R interacted with, but the point of dispute is noted, and I will consider in my findings whether Mr R actually dealt with BGF instead.

Mr R and the investment in the bond

This followed phone discussions between Mr R (and his wife on his behalf), and a representative of BG Ltd. He said they were told by the representative that it was a protected investment, so went on to complete an online application.

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 log of applications records showing the following:

Investor Tags		Legal Tags	
Type	Date	Type	Date
Everyday Investor	2018-01-19 11:34:21	ISA T&C Confirmed	2018-01-19 11:34:59
		B&G T&C Confirmed	2018-01-19 11:34:59
		KYC Completed	2018-01-22 11:43:12
		Completed Investor Questionnaire	2018-01-19 11:34:34

The certificate dated 19 January 2018 for the bond Mr R invested in confirms £10,000 was paid into the B&G Plc 3 Year Compounding High-Yield IFISA Bond with annual rate of 6.7%.

Mr R has told us at the time of this investment he had only held his savings in cash and other bonds he had taken out with B&G Plc. He says he applied online, and a BG Ltd relationship manager helped him complete the application. He said the only reason he invested was because he was told that the bond was covered by the FSCS and that there was no risk as everything was asset backed.

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

The application process

From the available evidence, it is not completely clear how Mr R'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.

Gallium's response to Mr R's complaint

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

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

Gallium's response to the view

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

- The acts the complaint is about took place after B&G Finance Ltd – an independent business with which Gallium had no relationship - became authorised. Once B&G Finance Ltd became authorised it took over from BG Ltd and so B&G Finance Ltd is responsible during this "interim period", not Gallium.
- Our findings went beyond the scope of Mr R's complaint.
- Regardless of label, Mr R 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 R 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.

The investigator provided evidence to Gallium that supported that BG Ltd were involved in the arranging of investments during the interim period. He sent copies of correspondence from other cases we have reviewed that showed emails and paperwork in use at the time, consistently set out prior to 1 March 2018 that they belonged to BG Ltd as an appointed representative of Gallium Fund Solutions Limited. The investigator remained of the view the evidence shows BG Ltd promoted and arranged the B&G bond Mr R took out on in January 2018, and Gallium was responsible for the actions of BG Ltd here.

Gallium didn’t respond directly to the investigator, but it has also provided this service with a witness statement from its former director, dated 16 February 2023 on the subject of who was responsible for arranging the bonds in the interim period, 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 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.

This service has asked – on another complaint – for various points of clarification on what is said in the witness statement, and for contemporaneous evidence to support it. We have not received a response to that request. We decided we could proceed with this particular complaint without that further information.

I issued a provisional decision in June 2023 – this is what I said:

“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 R’s complaint.

It is not clear how exactly Mr R’s application came about – whether it was done online, over the phone or a combination of the two. But, I’m satisfied Mr R’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 R 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 R’s complaint is about a regulated activity, carried on by an appointed representative of Gallium, for which Gallium accepted responsibility.

Is Mr R’s complaint about a regulated activity?

I am satisfied Mr R’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 R 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 or over the phone – falls within the scope of Article 25(1). It involved making arrangements for Mr R 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 – 19 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, 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 R and his wife were existing clients of B&G Ltd, having taken out investments previously. They were given a dedicated relationship manager at B&G Ltd who contacted them periodically. I’ve seen an email sent to Mr R and his wife on 28 December 2017 from their

relationship manager at BG Ltd. This invites them to invest in further bonds. In my view this supports that the arrangement of the investments they took out a few weeks later started with this contact from BG Ltd – and continued to be completed with the same relationship manager who was representing B&G Ltd.

Further I've listened to a call between Mr R's wife and the same relationship manager on 19 January 2018. Included in the discussion is a conversation about where to send the funds to open the bonds. In the call the relationship manager clearly says that the funds should be sent to BG Ltd and gives the London address that this business operates from. I'm satisfied the evidence here relates to the arrangement of the bond subject to this complaint. Considering the various interactions in the application process with BG Ltd – it seems clear to me that the business arranging Mr R's bond was BG Ltd not BGF.

While I'm satisfied arrangements were being made for the investment, I've also gone to consider who the relationship manager was working for at this time. If he was no longer working on behalf of BG Ltd, and after 2 January 2018 was instead working for BGF, I would have expected this to be explained. I say this given Mr R's interactions with BG Ltd were ongoing at that point. But I've not seen evidence this happened, in fact to the contrary it seems more likely the relationship manager was still working on behalf of BG Ltd.

I've also reviewed the sample correspondence the investigator provided to Gallium to show examples of when BG Ltd were involved in arranging investments in bonds during the interim period. This includes copies of emails and paperwork in use around the same time as Mr R took out his investment which consistently set out BG Ltd, acting as an appointed representative of Gallium Fund Solutions Limited, as the business involved in arranging the investments. This evidence along with the specific evidence mentioned above from the sale of Mr R's Bond in January 2018, supports that Gallium are responsible for the actions of BG Ltd when arranging Mr R's bond.

Gallium says the available evidence suggests that Mr R applied to invest through a website process approved by BGF. 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 R's investment.

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

BG Ltd, acting on Gallium's behalf, misled Mr R 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 R fairly or acting in his best interests. Had BG Ltd followed the rules and not misled Mr R, 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 R. In the circumstances he would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bond to him."

Gallium responded and provided further evidence for me to consider. It provided a general submission which contained some further evidence relating to what it describes as the "interim period". This included:

- A copy of the 4 January 2018 email from the owner of Basset & Gold referred to in the witness statement.
- Copies of Gallium's Appointed Representative Monthly Compliance Report for "Basset Gold", for each month from February 2017 to February 2018.
- Copies of the documents applying to terminate BG Ltd as Gallium's appointed representative, submitted by Gallium to the FCA on 1 March 2018, and some associated emails.
- Some email correspondence between Gallium and BG Ltd's compliance officer about B&G Plc becoming an appointed representative of BGF, and the transfer of approved persons.
- A list of calls made by B&G Ltd which Gallium had monitored, month on month.

Mr R responded to say he accepted the provisional decision.

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've first re-considered the "interim period" point. In doing so I've considered the new evidence presented by Gallium alongside all of the other available evidence and arguments to decide whether we can look into Mr R's complaint – i.e. whether Gallium is responsible for the act(s) this complaint relates to. I've not been persuaded to change my view on this point.

I've carefully considered the additional evidence Gallium has submitted but, in my view, this only further supports the conclusion that Gallium was responsible for making arrangements for Mr R to invest in the bond and the complaint is therefore one we can consider against it.

The 4 January 2018 email from the owner of Basset & Gold referred to in the witness statement includes the following:

"As you know we have applied for authorisation with a new company a few months ago and I am happy to inform you that we have now been authorised.

As discussed we will transition the regulatory business away from Gallium to the new firm, but wanted to discuss with you the best way to get this done. I will be in London next week on Thursday if you would like to meet.

As far as ISA manager goes, this will stay as is, as agreed.

Please let me know if you have any matters you think we should take into consideration and as always any advice and guidance will be greatly appreciated."

In the January 2018 Appointed Representative Monthly Compliance Report the following questions are asked of “Basset Gold”:

Does the Appointed Representative stationery (including website) properly identify the firm as an Appointed Representative of Gallium Fund Solutions Limited? And have you provided copies to Gallium?

Have you attached a list of all investors you have promoted to this month?

Have all investors been categorised as appropriate to receive the financial promotions prior to promotion and such categories kept on file?

Each of these questions was answered “Yes”.

Attached to the January 2018 Appointed Representative Monthly Compliance Report is a report all the investment business undertaken that month – which includes Mr R’s 19 January 2018 investment.

Although the report refers to “Basset Gold” and not specifically to either of the appointed representative businesses it clearly relates – at least insofar as what I refer to above - to the activities of B&G Ltd, as it was B&G Ltd – not B&G Plc – which operated the website, made promotions and arranged investments.

The copy of the report we have been given also features a post-it note stuck to the report of all the investment business, which says:

“Pls note the total of money raised for B&G for Series 6 & 7/ They may need to consider new loan documents soon. Although probably will not be our issue as terminating end of Feb, but worth mentioning to them”

Finally, I note the Call Monitoring List provided by Gallium shows it monitored 11 calls in January 2018 – more than it had monitored in any previous month during its relationship with B&G Ltd.

In my view this is all evidence B&G Ltd was arranging investments in B&G Plc bonds – including the investment Mr R made – at the time of this investment and was doing so as an appointed representative of Gallium. I say this because:

- The 4 January 2018 email only refers to an intention to transition away from Gallium to BGF, and makes a request to discuss how this might be done. It is not evidence of a transition to BGF having already taken place, and of BGF hence being responsible from that time.
- The Appointed Representative Monthly Compliance Report is evidence B&G Ltd was still being described as an appointed representative of Gallium at this time, in stationery and on the website. It is also evidence Gallium was monitoring and recording promotions and arrangements being made by B&G Ltd at that time. This is strong evidence Gallium accepted responsibility for the arrangement of investments at the time.
- The post-it note on the investment list is clear evidence Gallium understood it was responsible for the arrangement of investments until 1 March 2018.
- The fact Gallium was monitoring calls from B&G Ltd to investors (or potential investors) is further strong evidence Gallium accepted responsibility for the arrangement of investments at the time – there is no other reason why such monitoring would be taking place.

It also remains the case, as I set out in my provisional decision, that I have not seen any evidence specific to this investment which makes any reference to BGF.

As I set out in my provisional decision, in making the arrangements. B&G Ltd was carrying out business for which Gallium had accepted responsibility. So, I remain of the view I set out in my provisional decision, quoted above (which, to be clear forms part of this final decision) for the reasons given there, and the further reasons set out above.

Turning to the merits of Mr R's complaint again, to confirm, for the reasons described in my provisional decision, I find Mr R 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. So I am satisfied it is fair to ask Gallium to compensate Mr R 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 R as close to the position he would probably now be in if he had not taken out this investment.

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

What must Gallium do?

To compensate Mr R fairly, Gallium must:

- Compare the performance of Mr R'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.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
B&G 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 (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 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 R agrees to Gallium taking ownership of the illiquid assets, if it wishes to. If it is not possible for Gallium to take ownership, then it may request an undertaking from Mr R that he repays to Gallium any amount he may receive from the portfolio 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 income from the Bond 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.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr R 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 R's circumstances and objectives. It does not mean that Mr R 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.

Gallium Fund Solutions Limited should provide details of its calculation to Mr R in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 14 August 2023.

Daniel Little
Ombudsman