

Complaint

Mrs A complains she was mis-sold an investment she made in a bond issued by Basset & Gold Plc ("B&G plc"). She says she was led to believe that all funds were fully secured and security backed, but now knows that was not the case and therefore thinks she was misled. She would like to be compensated for the loss of capital suffered by the investment.

Background

The B&G Plc Bond

Mrs A made two investments in B&G Plc bonds. The first (made in December 2017) was surrendered, and Mrs A's capital returned in full. She has not received any return from her second investment (made in January 2018) in a B&G Plc 3 Year Fixed Monthly Income Bond. That investment is hence the subject of her complaint. 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 Mrs A interacted with, but the point of dispute is noted and I will consider in my findings whether Mrs A actually dealt with BGF instead.

Mrs A and the investment in the bond

Mrs A invested a total of £50,000 in the bond.

BG Ltd's log of applications records the following:

Investor Tags		Legal Tags	
Type	Date	Type	Date
Everyday Investor	2017-12-29 07:53:54	KYC Completed	2017-12-29 14:19:34
		B&G T&C Confirmed	2017-12-29 07:54:39
		Completed Investor Questionnaire	2017-12-29 07:54:12

The certificate for the bond records the application date as 25 January 2018. The certificate for Mrs A's first bond investment records the application date as 29 December 2017 – so it appears BG Ltd's records relate to that first application.

Mrs A has limited recollection of the application process, but told us:

“Interest rates were emailed to me after discussions with my appointed account manager on how to set up the account and transfer the funds then await the bond certificate.”

At the time she invested Mrs A was retired, and she says the money she invested formed part of her pension and savings.

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 A has not had her invested capital returned to her.

The application process

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 noted above, there is no record of Mrs A's second application i.e. the one relating to the bond subject to complaint.

Gallium's response to Mrs A's complaint

Gallium did not uphold Mrs A's complaint. It said BGF was regulated and authorised by the FCA from 2 January 2018 and, as Mrs A's bond was issued after that date, BGF was responsible for the promotion of the bond.

Gallium then made further submissions, once Mrs A'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 Mrs A's complaint and concluded it should be upheld. They said, in summary:

- It's difficult to say whether or not Mrs A qualified as a “restricted investor” as she is unsure how much she had in savings in at the relevant times. But it is unlikely she would've been aware the bonds had a significant risk associated with them, and had made investments in similar products in the last 30 months.
- So had BG Ltd used the correct terms and description of a “restricted investor”, then Mrs A may not have got past this stage of the application. Due to the lack of information available, it's very difficult to know whether or not Mrs A met the definition of any of the other categories – but what is in little doubt is that not enough information was sought to find this out.
- The assessment of the appropriateness of the bonds for Mrs A 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 Mrs A about her knowledge and experience then BG Ltd ought to have reasonably concluded that Mrs A did not have the necessary knowledge and experience to make the bond an appropriate investment for her.
- Overall, BG Ltd, on Gallium's behalf, didn't comply with its regulatory obligations. Had it done so, Mrs A wouldn't have decided to invest or BG Ltd should have concluded that it shouldn't allow Mrs A to invest. For these reasons it was fair to uphold the complaint and for Gallium to compensate Mrs A for the loss she has suffered.

Gallium's response to the view

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

- Regardless of label, Mrs A was required to confirm that she met the requirements of a restricted investor and confirmed that she did. It is not fair or reasonable to conclude that the use of the word "everyday" contributed to Mrs A giving an incorrect declaration, and it was reasonable for it to rely on the declaration.
- The appropriateness test answers and the confirmations Mrs A 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.
- Mrs A 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 she 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:

- Basset Gold Finance ("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 Mrs A 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 Mrs A invested and which contained the certification and appropriateness questions which form the basis for the view. Rather, the available evidence suggests that Mrs A 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 (she 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 she recalls what was discussed.

I asked – on another complaint – for various points of clarification on what is said in the witness statement, and for contemporaneous evidence to support it. At the time of issuing my provisional decision I had not received a response to that request. However, for the reasons I set out in my provisional decision – which I quote below – I was satisfied I could proceed with this particular complaint without that further information.

My provisional findings

I recently issued a provisional decision. My provisional findings were as follows:

“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 Mrs A’s complaint.

It is not clear how exactly Mrs A’s application came about, and therefore on what basis it proceeded. But it seems more likely than not Mrs A completed an online form. I’ll consider this further later in this decision. But, for now, it is sufficient to say Mrs A’s complaint is about the arrangement of her investment in the bond and the exchanges she had with the representative in the period up to the arrangement of the investment being concluded. In short Mrs A says she 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 (FSMA):

“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 Mrs A’s complaint is about a regulated activity, carried on by an appointed representative of Gallium, for which Gallium accepted responsibility.

Is Mrs A’s complaint about a regulated activity?

I am satisfied Mrs A’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 Mrs A made her 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 falls within the scope of Article 25(1). It involved making arrangements for Mrs A 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 – 29 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.

Mrs A 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.

I share the view of the FSCS. I have seen the following evidence:

- *A letter to Mrs A dated 15 February 2018 confirming the investment had been made, and attaching a certificate. This letter was from BG Ltd and the address given was 23 Finsbury Circus, London EC2M 7EA - BG Ltd’s registered addresses around that time.*
- *A copy of the Investor Terms and Conditions sent to Mrs A. These refer to BG Ltd throughout (making no reference to BGF) and say, at the outset “Basset Gold Ltd (firm reference number 771886) is an appointed representative of Gallium Fund*

Solutions Ltd”

In my view this demonstrates BG Ltd was responsible for arranging the investment, not BGF. I think the letter, in particular, is strong evidence BG Ltd – and therefore Gallium – is responsible for arranging the investment in the bond.

Gallium says the available evidence suggests that Mrs A applied to invest through a website process approved by BGF. In my view it is not clear whether Mrs A 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.

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 Mrs A’s investment. All the evidence I have seen supports a contrary position.

All in all, I am satisfied Mrs A’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 Mrs A’s complaint

As I am satisfied Mrs A’s complaint is one I can look at I will now consider 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 Mrs A’s application proceeded, as BG Ltd’s records only refer to the first application she made, not the second application for the bond which is the subject of this complaint. But it seems likely – in the absence of*

any other evidence - an online application was completed, either in relation to the first bond and relied on again in relation to the second bond, or independently from the application for the first bond.

- Ultimately, Mrs A 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. And there is insufficient evidence to show she would have met the definition of one of these categories or – additionally or alternatively - would have agreed to be put into one of them, if the process was consistent with the relevant rules.*
- 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 Mrs A.*
- In the circumstances, Mrs A would not or could not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bond to Mrs A.*
- Overall, I am satisfied Mrs A 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 Mrs A’s complaint should be upheld. I am also satisfied Mrs A 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 A for her loss.”

Responses to my provisional decision

In response to my provisional decision Gallium 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.

Mrs A accepted my provisional decision.

My findings

I have first reconsidered the “interim period” point. I have reconsidered all the available evidence and arguments to decide whether we can consider Mrs A’s complaint – i.e. whether Gallium is responsible for the act(s) this complaint relates to. I have not been persuaded to change my view on this point.

I have 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 Mrs A 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 Mrs A’s 25 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 BG Ltd, as it was BG 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 BG Ltd.

In my view this is all evidence BG Ltd was arranging investments in B&G Plc bonds – including the investment Mrs A made – at the time of Mrs A’s 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 BG 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 BG 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 BG 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. BG 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 Mrs A’s complaint again, I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

I have not been persuaded to change the view set out in my provisional decision. To confirm, my final decision is the same as that set out in my provisional decision, for the same reasons. For those reasons – individually and cumulatively – my decision is that Mrs A’s complaint should be upheld. I am also satisfied Mrs A 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 A for her loss.

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mrs A

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 A 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 A's circumstances and objectives when she invested.

What must Gallium do?

To compensate Mrs A fairly, Gallium must:

- Compare the performance of Mrs A's investment with that of the benchmark shown below.
- Gallium should also add any interest set out below to the compensation payable.
- Pay Mrs A £350 for the distress caused by the complete loss of her investment.

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)

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 Mrs A 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 A 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 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:

- Mrs A 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 A's circumstances and objectives. It does not mean that Mrs A 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 provisional 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 A to accept or reject my decision before 18 August 2023.

John Pattinson
Ombudsman