

The complaint

Mrs N complains she was mis-sold an investment she made in a bond issued by Basset & Gold Plc ("B&G plc"). Mrs N says she was misled that the bond was a safe investment – but has since lost her money and would like to be refunded.

What happened

The B&G Plc Bond

Mrs N invested in a B&G Plc 3 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 Mrs N interacted with, but the point of dispute is noted, and I will consider in my findings whether Mrs N actually dealt with BGF instead.

Mrs N and the investment in the bond

Mrs N invested a total of £136,200 in the bond. This followed phone discussions between Mrs N and a representative of BG Ltd. She said she was persuaded to take out the investment by the representative who assured her it was secured and protected – and completed 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 log of applications shows Mrs N being recorded as an "Everyday Investor". The certificate dated 15 January 2018 for the bond Mrs N invested in confirms £136,200 was paid in the B&G Plc 3 year Fixed Monthly Income Bond with annual rate of 6.22%.

Mrs N has told us she was retired and in receipt of a small pension. She hadn't invested before other than the B&Gs bonds she took out a few months before this investment. The funds for this investment were transferred from savings she held with NS&I. She said she was very risk averse and cautious.

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, Mrs N has not had her invested capital returned to her.

The application process

From the available evidence, it is not completely clear how Mrs N's application was made. She recalls both completing an online application and also speaking to a relationship manager at BG Ltd when completing the application. This is supported by the available telephone records.

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 Mrs N's complaint

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

- The application process – both in terms of the certification of Mrs N as a "restricted investor" and the assessment of the appropriateness of the bond for her - 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, Mrs N wouldn't have decided to invest or BG Ltd should have concluded that it shouldn't allow Mrs N to invest. For these reasons, both cumulatively and individually, it was fair to uphold the complaint and for Gallium to compensate Mrs N for the loss she has suffered.

Gallium's response to the view

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

- The investigator has misdirected themselves on whether Gallium was responsible for the matters complained about as the sale took place during the "interim period".
- B&G Finance Limited ("BGF") was authorised by the FCA on 2 January 2018 and began to promote the bonds to investors from that date. In particular, the website and telephone line was the responsibility of BGF from that date. At no point was BGF an authorised representative of Gallium, and Gallium had no responsibility for the actions of BGF.
- It has not found that Mrs N actually spoke to anyone at B&G Plc or BG Ltd for whose conduct Gallium had any responsibility, or that Gallium actually operated the website through which the Mrs N invested and which contained the certification and

appropriateness questions which form the basis of the assessment. Rather, the available evidence suggests Mrs N spoke to representatives for whom BGF was responsible, and applied to invest through a website process approved by BGF.

Gallium has provided a witness statement from its former director, dated 16 February 2023 on subject of who is responsible for arranging the investment, 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.

Gallium has also 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.

I issued a provisional decision in July 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 Mrs N’s complaint.

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

Is Mrs N’s complaint about a regulated activity?

I am satisfied Mrs 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 Mrs N 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 – whether it took place online or over the phone – falls within the scope of Article 25(1). It involved making arrangements for Mrs 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 – 15 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.

I’ve paid particular attention to the January 2018 Appointed Representative Monthly Compliance Report which Gallium provided. 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 N's 15 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"

Mrs N dealt with a Relationship Manager helping her through the application on the phone. While the full history of call recordings aren't available, from what I have been able to listen to, it is apparent that Mrs N had an existing relationship with the person she was dealing with and they were quite familiar with each other. This is supported by the fact Mrs N was an existing B&G bond holder, having taken out investments only a couple of months earlier dealing with the same Relationship Manager. If the Relationship Manager was no longer working on behalf of BG Ltd, and after 2 January 2018 and was instead working for BGF, I would have expected this to be explained. I say this given Mrs N'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.

In addition to this, through other complaints this service has adjudicated on, we have seen numerous examples of bond sales that link BG Ltd to arranging investments during the interim period. We have seen evidence in the form of emails and telephone calls that indicate that investors were dealing with representatives of BG Ltd when arranging bonds during the time period when Mrs N took out her investment. For example, we've seen several emails from January 2018 sent to investors from BG Ltd Relationship Managers 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."

Gallium says the available evidence suggests that Mrs N 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.

Returning to the witness statement - this 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. 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 Mrs 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 contradictory to previous statements that BGF were responsible from 2 January 2018, so casts doubt over the statements made.

I’ve considered the latest general submissions Gallium has presented to support its view that it isn’t responsible for answering Mrs N’s complaint. In my view this is all evidence B&G Ltd was arranging investments in B&G Plc bonds – including the investment Mrs N 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.*

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 N's investment. All the evidence I have seen supports a contrary position. I'm satisfied Mrs 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 Mrs 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:

BG Ltd, acting on Gallium's behalf, misled Mrs N into certifying herself as belonging in a category to which she 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 Mrs N fairly or acting in her best interests. Had BG Ltd followed the rules and not misled Mrs N, it is unlikely she would have certified herself 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 Mrs N. In the circumstances she would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bond to her."

I didn't receive any further submissions from either party by the deadline set for responses to my 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.

As neither Mrs N or Gallium has made more comments or arguments for me to consider, I've got no reason to change the outcome I set out in my provisional decision.

To confirm, for the reasons described in my provisional decision, I find Mrs 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 Mrs N for her 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 Mrs N as close to the position she would probably now be in if she had not taken out this bond.

I think Mrs N would have invested differently. It is not possible to say *precisely* what she would have done, but I am satisfied that what I have set out below is fair and reasonable given Mrs N's circumstances and objectives when she invested.

What should Gallium do?

To compensate Mrs N fairly, Gallium must:

- Compare the performance of Mrs N's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. 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 Plc 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 the portfolio 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 N agrees to Gallium taking ownership of the bond, if it wishes to. If it is not possible for Gallium to take ownership, then it may request an undertaking from Mrs N that she repays to Gallium any amount she may receive from the bond in the future.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Gallium should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Why is this remedy suitable?

I have chosen this method of compensation because:

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

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 the business to pay the balance.

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

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

This recommendation is not part of my determination or award. It does not bind Gallium Fund Solutions Limited. It is unlikely that Mrs N can accept my decision and go to court to ask for the balance. Mrs N may want to consider getting independent legal advice before deciding whether to accept this decision.

Determination 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 Mrs N the amount produced by that calculation – up to a maximum of £160,000 plus any interest set out above.

If Gallium Fund Solutions Limited does not pay the full fair compensation, then any portfolio currently illiquid should be retained by Mrs N. This is until any future benefit that she may receive from the portfolio together with the compensation paid by Gallium Fund Solutions Limited (excluding any interest) equates to the full fair compensation as set out above.

Gallium Fund Solutions Limited may request an undertaking from Mrs N that either she repays to Gallium Fund Solutions Limited any amount Mrs N may receive from the portfolio thereafter or if possible, transfers the portfolio at that point.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 30 August 2023.

Daniel Little

Ombudsman