

The complaint

The estate of Mr S complains that the late Mr S was mis-sold an investment he made in a bond issued by Basset & Gold Plc ("B&G plc"). The estate of Mr S says he was incorrectly sold the investment as he was a low risk investor.

What happened

The B&G Plc Bond

The late Mr S invested in a B&G Plc Fixed Monthly Income Bond (5 years). Sales of this bond were dealt with by Basset Gold Limited ("BG Ltd"), a separate business from B&G Plc, the issuer of the bond. BG Ltd arranged applications for investments in the bond, through a website it operated - bassetgold.co.uk. And it was responsible for advertising/marketing the bond. Potential investors were also able to call BG Ltd, to discuss the bond.

The bond was non-readily realisable and therefore there were rules restricting who it could be promoted to and on how to test whether the investment was appropriate for the potential investor. BG Ltd's online application process took steps to meet the obligations created by these rules.

Neither B&G Plc nor BG Ltd was authorised by the Financial Conduct Authority (FCA) in its own right at the time of the late Mr S's investment. But both were appointed representatives of Gallium Fund Solutions Limited ("Gallium"), which was an FCA authorised business. B&G Plc and BG Ltd were appointed representatives of Gallium from 17 February 2017 to 28 February 2018. As such, Gallium is responsible for a complaint about either business which is about the acts and omissions which took place during this time, for which Gallium accepted responsibility.

The late Mr S's investment in the bond

The estate of Mr S says he was introduced to the bond originally through some online advertisements and went on to have conversations with a representative of BG Ltd.

The late Mr S applied to invest £5,000 in the bond on 19 May 2017. The estate of Mr S says he had little investment experience and no wealth at the time. However, I've seen that he had previously invested £1,000 in another B&G Plc bond in March 2017.

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, the late Mr S's invested capital was not returned to him or his estate.

The application process

I have seen screen prints of each stage of the online application process. These show the

application journey that an investor underwent. This consisted of two stages, designed to meet the rules restricting who the bond could be promoted to and on how to test whether the investment was appropriate for the potential investor. The first was certification, where the late Mr S was categorised as an “everyday investor”. The second was the appropriateness test.

Gallium’s response to the complaint

Gallium did not uphold the complaint. It said the late Mr S had been given sufficient information and risk warnings about the investment. It then made further submissions, once the complaint was referred to us. I have considered the submissions in full. I have also considered what Gallium described as its “position statement”, which sets out general information on the background to complaints about B&G Plc bonds.

Our investigator’s view

One of our investigators considered the complaint and concluded it should be upheld. They said, in summary:

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

Gallium’s response to the view

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

- Regardless of label, the late Mr S 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 the late Mr S 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 late Mr S made the investment on the understanding it had risk associated with it, and did not chose to surrender it when receiving the email in 2019 which warned of the concentration risk. So he would have proceeded with the investment regardless.

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 am satisfied it is appropriate for me to consider all of the acts carried out by BG Ltd, on behalf of Gallium, in relation to the sale of the bond.

In considering what is fair and reasonable in all the circumstances of this complaint, I have taken into account relevant law and regulations; regulators rules, guidance and standards; codes of practice; and where appropriate, what I consider to have been good industry practice at the relevant time.

The Principles for Businesses, which are set out in the FCA's Handbook "are a general statement of the fundamental obligations of firms under the regulatory system" (PRIN 1.1.2G). I think Principles 6 (Customers' interests) and 7 (Communications with clients) are relevant here.

Principle 7 overlaps with COBS 4.2.1R (1) (A firm must ensure that a communication or a financial promotion is fair, clear and not misleading), which I also consider to be relevant here.

As mentioned, the bond was non-readily realisable and therefore there were rules restricting who it could be promoted to and how to test whether the investment was appropriate for the potential investor. These rules were set out in COBS 4.7 and COBS 10.1, 10.2 and 10.3. I have considered the relevant rules in full.

I note Gallium has referred to the FCA's policy statement PS14/4, and to question and answer sessions with the FCA's Head of Investment Policy and UKCFA. I have considered these too.

Having considered all the available evidence and arguments I have reached the same conclusion as the investigator, for the same reasons. In summary:

- BG Ltd, acting on Gallium's behalf, misled the late Mr S 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 the late Mr S fairly or acting in his best interests. Had BG Ltd followed the rules and not misled the late Mr S, 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 the late Mr S. In the circumstances the late Mr S would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bond to him.
- I appreciate that the late Mr S has previously invested in B&G Plc bond, however, I do not think the fact he invested in a similar bond within a couple of months of taking out the bond in question, if considered by BG Ltd (and I have seen no evidence it was), was a reasonable basis to conclude he had experience of investments of this type.

For these reasons – individually and cumulatively – my decision is that the complaint should be upheld. I am also satisfied the late Mr S 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 the estate of Mr S for the loss.

Putting things right

Fair compensation

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

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

What must Gallium do?

To compensate the estate of Mr S fairly, Gallium must:

- Compare the performance of the late Mr S'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.

Investment 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 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 the estate of Mr S 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 the estate of Mr S that it repays to Gallium any amount it may receive from the investment in future.

Fair value

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

To arrive at the fair value when using the fixed rate bonds as the benchmark, Gallium should

use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal, income or other distributions paid out of the investments should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Gallium totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically. If any distributions or income were automatically paid out into a portfolio and left uninvested, they must be deducted at the end to determine the fair value, and not periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- The late Mr S 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 the late Mr S's circumstances and objectives. It does not mean that the late Mr S 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 the estate of Mr S in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr S to accept or reject my decision before 11 September 2023.

Ben Waites
Ombudsman