

The complaint

The estate of Mr H complains to Gallium Fund Solutions Limited that the late Mr H was mis-sold an investment in a bond issued by Basset & Gold Plc ("B&G Plc"). The estate of Mr H believes Mr H was misled about the risk associated with the bond and would like to be compensated for the loss in capital he suffered.

What happened

The B&G Plc Bond

Mr H invested £5,000 in a B&G Plc Three Year Fixed Monthly Income IFISA Bond in February 2018. For a period, 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 (ARs) of Gallium Fund Solutions Limited ("Gallium") from 17 February 2017 to 28 February 2018.

Basset Gold Finance Ltd ("BGF") – an independently authorised business not connected to Gallium – took over from BG Ltd at some point in 2018. Gallium has said this happened before the AR agreement between it and BG Ltd came to an end and has made submissions on this point. I've referred to BG Ltd as the business Mr H interacted with, but I'll go on to consider in my findings whether Mr H actually dealt with BGF instead.

Mr H and the investment in the bond

As previously noted, Mr H invested a total of £5,000 in the bond. He said he'd previously invested in a bond with BG Ltd after seeing an online advertisement for a safe investment and invested in this bond after the first one had performed as promised. BG Ltd's log of applications records the following:

Investor Tags		Legal Tags	
Type	Date	Type	Date
Everyday Investor	2018-01-29 12:35:55	Completed Investor Questionnaire	2018-01-29 12:40:35
		KYC Completed	2018-02-14 09:07:55
		ISA T&C Confirmed	2018-01-29 12:55:59
		B&G T&C Confirmed	2018-01-29 12:43:14

The certificate for the bond Mr H invested in – £5,000 in the B&G Plc Three Year Fixed Monthly Income Bond – records the application date as 8 February 2018. On 8 January 2019, BGF (which by that point had taken on the role of BG Ltd), emailed all investors who

held B&G Plc bonds. The email explained that nearly all the money invested in the bonds had been lent to one short term and pay day lender, called Uncle Buck.

Following action by the Financial Conduct Authority (FCA), Uncle Buck went into administration in March 2020 - and B&G Plc went into administration shortly afterwards. As a result, Mr H didn't get back the money he invested in this bond.

The application process

It would appear that Mr H applied online when he took out the bond. I've seen screen prints of each stage of BG Ltd's online application process which show the online application journey that potential investors underwent. There were two stages, designed to meet the rules regarding restrictions on who the bonds could be promoted to and testing if the investments were appropriate for potential investors. The first stage was certification and the second was the appropriateness test.

Gallium's response to Mr H's complaint

Gallium did not uphold Mr H's complaint. It said he 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, and I've 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 the complaint and concluded it should be upheld. They said, in summary:

- The information received from BG Ltd's administrators shows that Mr H selected 'everyday investor', which was BG Ltd's category for restricted investors. The investigator thought Mr H would have qualified as a restricted investor as he was investing less than 10% of his assets.
- But the assessment of the appropriateness of the bonds for Mr H was misleading and didn't gather sufficient information to comply with the FCA's rules.
- Had BG Ltd's process met what was required under the rules and sufficiently asked Mr H about his knowledge and experience then BG Ltd ought to have reasonably concluded that he did not have the necessary knowledge and experience to make the bond an appropriate investment for him.
- Overall, BG Ltd, on Gallium's behalf, didn't comply with its regulatory obligations. Had it done so, Mr H 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 Mr H for the loss he suffered.

Gallium's response to the view

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

- The investigator made findings on advice and matters not complained about, which fell outside the scope of the complaint made.

- The appropriateness test answers, and the confirmations Mr H gave, were sufficient for Gallium to satisfy itself that he had sufficient knowledge and experience of the bonds to understand the risks those bonds involved, as per the relevant rules. It was reasonable for Gallium to rely on the outcome of this test.
- Mr H made the investment on the understanding it had risk associated with it and did not choose to surrender it when receiving the email in 2019 which warned of the concentration risk.

Gallium also made submissions on what it describes as the 'interim period' and said, in summary:

- BGF was authorised by the FCA on 2 January 2018 and began to promote the bonds to investors from that date. In particular, it understands that the website and telephone line was the responsibility of BGF from that date.
- At no point was BGF an appointed representative of Gallium, and Gallium had no responsibility for the actions of BGF. Our investigator had not found that Mr H had actually spoken to anyone at B&G plc or BG Ltd for whose conduct Gallium had any responsibility, or that Gallium actually approved the content of the website through which Mr H invested and which contained the certification and appropriateness questions which form the basis for the view. Rather, the available evidence suggests that Mr H applied to invest through a website process approved by BGF.

The investigator considered the points Gallium made and issued a further opinion on the complaint, he said, in summary:

- Widely available evidence also showed that emails and paperwork in use at the time consistently set out prior to 1 March 2018 that they had been issued by BG Ltd as an AR of Gallium Fund Solutions Limited – after which, this changed to BGF.

Gallium subsequently 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 and potential investors
 - 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 provided further submissions containing information relating to the 'interim period' which included:

- A copy of the 4 January 2018 email from the owner of Basset & Gold referred to in the witness statement.
- Email correspondence regarding making B&G Plc an AR of BGF and the transfer of approved persons from January 2018.
- A list of the calls made by BG Ltd from April 2017 to February 2018 which Gallium had monitored.
- Copies of Gallium's Appointed Representative Monthly Compliance Report for 'Basset Gold' from February 2017 to February 2018.
- Copies of the documents sent by Gallium to the FCA on 1 March 2018 applying to terminate BG Ltd as Gallium's AR.

As there's been no agreement, the case was passed to me to make a 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 would say at the start that this service has issued a number of decisions on complaints against Gallium involving these bonds, so it should be aware of our approach. I note that it hasn't provided any recent submissions disagreeing with our approach or disputing how we've chosen to interpret its submissions around the interim period or the witness statement. I'm therefore satisfied I can issue my final decision on the estate of Mr H's complaint as my findings will come as no surprise to Gallium.

I note the points Gallium has raised about the 'interim period' – in short, that it is not responsible for the act(s) this complaint relates to. With that in mind I have firstly considered all the available evidence and arguments to decide whether we can consider the estate of Mr H's complaint.

From what I've seen, Mr H's application was done online. I think it's reasonable to say that his complaint is about the arrangement of his investment in the bond and being misled about the safety of the investment into the bond.

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'.

What I need to consider here is whether Mr H's complaint is about a regulated activity, carried on by an appointed representative of Gallium, for which Gallium accepted responsibility.

Is Mr H's complaint about a regulated activity?

I'm satisfied Mr H'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 of his investment in the bond, the RAO said regulated activities include arranging deals in investments.

Activities 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 Mr H 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 – 8 February 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 that Gallium has said that 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.

I think the evidence shows that it was BG Ltd that was responsible for arranging the investment, not BGF. I've listened to calls from 8 and 12 February 2018 where an advisor called Mr H to discuss his application. When she introduced herself on both occasions, she said *"It's ***** , calling from Basset and Gold"*.

Gallium says the available evidence suggests that Mr H applied to invest through a website process approved by BGF. 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 Gallium provided includes the following:

On 4 January 2018, I received an email from ..., 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. ... requested a meeting to discuss the best way to 'transition the regulatory business away from Gallium to the new firm'.

I met with ... in the hotel he was staying in London the week following his email. I believe the meeting took place on 11 January 2018 as ...'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, ... 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.

... 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.

I think several elements of the witness statement are unclear, and even if I were to accept what the statement says (and, for the avoidance of doubt, I don't) it does not conclusively show that BGF was responsible for Mr H's investment.

The reason I say this is because the witness statement says a meeting took place on 11 January 2018 to discuss a '*transition*' to BGF from Gallium's ARs. Gallium's ex-director says he recalls that at the time of the meeting Gallium would no longer be responsible '*with immediate effect*' and BGF '*now*' being responsible. This suggests that responsibility passed from Gallium to BGF on 11 January 2018.

However, I have not seen any evidence to show BGF took responsibility from 11 January 2018. I think the use of the phrase '*transition*' to BGF from Gallium's ARs is telling and doesn't indicate that BGF was taking responsibility for everything with immediate effect. I've also considered the AR agreements in place between Gallium and B&G Plc/BG Ltd. I note that 11 i) of the AR agreement says:

'This Agreement will remain in force for 6 months from the date of signing after which either party may terminate the Agreement by giving 1 month's written notice, which notice shall start from the end of the month of receipt by the Company of that said notice.'

Therefore, notice given in January would start from the end of that month and go on to the end of February. This is consistent with the emails I've seen from February 2018 where the footer stated they were from BG Ltd not BGF.

Additionally, the February 2018 Appointed Representative Monthly Compliance Report details the AR name as Basset Gold. This is the same name used in the compliance reports for the previous 11 months (apart from August and September 2017 where the AR name was handwritten, not typed as it was in the other reports, and the AR name was noted as Basset Gold Ltd/Basset & Gold Plc).

I think this shows that BGF hadn't started to arrange investments at that point, and it was BG Ltd / B&G Plc and therefore ultimately Gallium who was responsible for arranging investments in February 2018 at the time when Mr H took out the investment. The February 2018 report also contained a list of all the investment business undertaken that month - this included Mr H's investment.

The report also included questions which were asked of 'Basset Gold', some of which were:

- 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'.

Gallium also provided a call monitoring list which shows that they monitored 19 calls in February 2018, this was more than it had monitored in any of the previous months included in the report.

Taking everything into account, I'm satisfied that the available evidence shows that it was B&G Ltd arranging investments in B&G Plc bonds – including the investment Mr H made - 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 the transition having already taken place which would mean that BGF was responsible from that time.
- The Appointed Representative Monthly Compliance Report is evidence B&G Ltd was still being described as an AR 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 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.

In addition to this, I haven't seen any evidence specific to this investment which makes any reference to BGF. Therefore, I am satisfied that the estate of Mr H has complained about acts for which Gallium accepted responsibility and can be considered in a complaint against it.

The merits of Mr H's complaint

As I am satisfied Mr H's complaint is one I can look at, I will now go on to consider all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In doing so, 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). In my opinion Principle 6 (Customers' interests) and Principle 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 because of this there were rules restricting who they could be promoted to and how to test whether the investment was appropriate for potential investors. These rules are set out in COBS 4.7 and COBS 10.1, 10.2 and 10.3 and I've considered them 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've also considered these in coming to my decision.

Having considered all the available evidence and arguments I have reached similar overall conclusions to the investigator, for similar reasons. In summary:

- 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 H. In the circumstances Mr H would either not have proceeded or, acting fairly and reasonably, BG Ltd should have concluded it should not promote the bond to Mr H.

Overall, I am satisfied Mr H would either not have proceeded to make the investment or would not have been able to proceed, had Gallium acted fairly and reasonably to meet its regulatory obligations.

For these reasons – individually and cumulatively – my decision is that Mr H's complaint should be upheld. I am also satisfied Mr H 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 H for his 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 H as close to the position it would probably now be in if Mr H not invested in the bond.

I take the view that Mr H would have invested differently. It is not possible to say *precisely* what Mr H would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr H's circumstances and objectives when he invested.

What must Gallium do?

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

- Compare the performance of Mr H'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.
- Pay the estate of Mr H £350 for the distress Mr H suffered from the total loss of the

investment.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
B&G Plc Three Year Fixed Monthly Income IFISA Bond from February 2018	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 personal representatives of Mr H agree 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 personal representatives of Mr H that they repay to Gallium any amount they 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.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mr H 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 H's circumstances and objectives. It does not mean that Mr H 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 H in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr H to accept or reject my decision before 17 January 2024.

Marc Purnell
Ombudsman