DRN-3408544

Complaint

Mr W complains that he lost the money he invested into a three year bond issued by Basset & Gold Plc ("B&G plc"). He says he thinks the bond was mis-sold to him, and would like to be compensated for his loss.

Background

The B&G Plc Bond

Mr W invested in a Basset & Gold Plc Fixed Monthly Income Bond (3 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. I have set out details of the application process below and will set out, and consider, the rules in my findings.

Neither B&G Plc nor BG Ltd was authorised by the Financial Conduct Authority (FCA) in its own right at the time of Mr W'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.

I have seen copies of the appointed representative agreements between Gallium and B&G Plc and BG Ltd – both of which are dated 17 February 2017. I will set out below why I think Mr W's complaint is about something for which Gallium accepted responsibility.

Gallium also played a role in relation to the bond in its own right – it was responsible for approving BG Ltd's marketing and promotional material relating to the bond. Gallium has confirmed that the promotional material included the Invitation Document (which was the formal financial promotion document for the purposes of Section 21 of the Financial Services and Markets Act 2000), bassetgold.co.uk, and online advertising material (such as Google and Facebook adverts) issued by BG Ltd.

Mr W's investment in the bond

Mr W visited bassetgold.co.uk in early August 2017. He began but did not complete (or was unable to complete) an application on the website. This prompted BG Ltd to call Mr W on 11 August 2017 to ask him if he was looking to make an application "*for our savings bonds*". BG Ltd asked Mr W what bond he was looking to invest in and he confirmed it was the monthly income one. Mr W said to BG Ltd that he had intended to apply, and thought he had done

so. BG Ltd offered to send him a link to allow him to complete an application. It also undertook to follow up with Mr W once he had completed the application.

Mr W submitted an application through the website on 12 August 2017 (assumedly following the link BG Ltd had sent to him). Mr W and BG Ltd then spoke on the phone again on 14 August 2017. At the outset of this call BG Ltd confirmed receipt of Mr W's application and said they are going to give him instructions on how to transfer the investment sum to it. Mr W then asked some questions about the investment, which BG Ltd answered.

We have been provided with recordings of these calls. I have listened to these, and consider them in more detail in my findings.

The bond Mr W invested in offered an interest rate of 6.22% per year, payable monthly, with the invested capital to be returned after 3 years. Mr W decided to invest £15,000.

Mr W says he wanted an investment that would provide a good interest return without any risk to his capital. And he understood the bond met these criteria. He says the money he invested came from deposit accounts, and his only previous experience of saving was through the use of such accounts. Mr W also says he was not told how the funds he invested would be used and it didn't occur to him there was any risk – he thought his capital was secure, and took comfort from BG Ltd being regulated.

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. That email included the following:

"To date the vast majority of lending has been to an FCA regulated lender that currently holds approximately 36,000 consumer loans. We are happy with the way that investment is performing, and the underlying spread of loans across tens of thousands of borrowers provides strong levels of predictability and resilience."

"As Basset & Gold Plc is currently predominantly invested in a single lender, it is our responsibility to ensure that you are aware of the associated risk, known as "Concentration Risk". It might help to explain this risk if you think of the goose that laid the golden egg. It was a great asset, but it only took one goose to die for the asset to dry up. Basset & Gold's investment team has performed due diligence on more than 40 opportunities over the past year. Its investment philosophy has been to accept the risk of holding one good asset, rather than diluting quality in order to improve diversification. We hope that this will translate into improved diversification over time, but as an investor you should be aware that Basset & Gold will only proceed with an investment when they are happy with it, even if that prolongs the Concentration Risk."

This refers 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, Mr W has not had his invested capital returned to him (although he did receive the interest payments on the bond up until B&G Plc went into administration).

The online application process

I have seen an archive of the website bassetgold.co.uk from around the time Mr W made his investment. This shows consumers such as Mr W would have arrived at the home page of bassetgold.co.uk, which carried the title "*Basset & Gold | Your investment Goals, Achieved!*" and were invited to click a "*LEARN MORE*" button beneath each of three different bond products, one of which was the Fixed Monthly Income Bond (3 years) Mr W invested in.

After clicking on the button below Fixed Monthly Income Bond (3 years) Mr W would have been presented with the following:

"What are the Basset & Gold Fixed Monthly Income Bonds?

Basset & Gold was setup by a team of seasoned professionals with decades of experience in finance, in order to provide financing for online andpeer to peer lending platforms and loans. We look to provide every day investors with the opportunity to take advantage of an offer that has ***security levels previously available only to institutional and ultra-high net worth investors****, and gain attractive returns from as little as £1,000 by purchasing the Basset & Gold bonds.*

How are the funds used?

Basset & Gold is seeking funding in order to expand its business and lending capabilities. These include investing in, and providing facilities for online lending and peer-to-peer platforms and loans. Basset & Gold aims to get institutional returns and gain access to opportunities that are not readily available to everyday investors.

At a glance:

The Basset & Gold Bonds are designed to be a straightforward investment. Bondholders receive a predetermined fixed interest rate, which is paid every month, six months or at maturity, depending on the option chosen. At maturity, the full amount of your investment will be repaid. All interest is paid net of basic tax calculated at 20%, except in the case of tax-free investors. The Basset & Gold Bond is non-transferable and cannot be sold or

traded. Bondholders may submit a request to Basset & Gold that their bond be terminated early. All requests are subject to liquidity and are considered at the discretion of the company's management.

- *Minimum investment is £1,000 and thereafter in multiples of £10.*
- *Bonds are available to UK-based individuals, companies, charities and trusts*
- *The Basset & Gold Fixed Monthly Income Bond may be placed in a Self-Invested Pension Plan (SIPP) subject to the investment policy and procedures of the relevant SIPP trustee.*

Before you subscribe to one of the Basset & Gold Bonds, you should make sure that you fully understand the risks which are set out in the Invitation Document and you should determine whether the investment is suitable for you on the basis of all the information contained therein. In the event that the company becomes insolvent, you may lose some or all of your investment. If you are in any doubt about the contents of the Invitation Document,

this website, or the action you should take, you are strongly recommended to consult a professional financial advisor.

Frequently Asked Questions

Who is Basset & Gold?

Basset & Gold is a UK registered Public Limited Company (Registration number 05433451) that specialises in financing online and peer-to-peer lending. Our registered address is 6 Percy Street, London W1T 1DQ. For more details, click [link]

Are the Basset & Gold Fixed Income Bonds authorised and regulated by the FCA?

The Basset & Gold Fixed Income Bond program is approved as a financial promotion for UK publication by Gallium Fund Solutions Limited who are authorised by the Financial Conduct Authority (FCA) to conduct investment business (FRN: 431709).

What are the Basset & Gold Fixed Income Bonds?

The Basset & Gold Fixed Income Bonds are a straightforward investment. Bondholders lend the company money in return for a fixed rate of interest paid every month, in the case of 3 Year Bonds and 5 Year Bonds, and every six months in the case of 30 Day Easy Access Bonds. For more information on the investment options available to you, click [link].

Who do we lend to?

The B&G Guaranteed Income Bond seeks to maximise capital by initially focusing on short-term lenders who provide high returns, and later expanding to various verticals including invoice finance, small- to medium-sized enterprise lending, and both long- and short-term consumer lending.

What is a SIPP?

SIPP stands for Self Invested Personal Pensions and Basset & Gold Guaranteed Income Bonds are suitable for these. However, this does depend on the SIPP's trustee investment policy and you should consult your SIPP provider for further details.

I want to invest, can you help me understand the risks?

All investments carry some degree of risk. But we believe that our institutional level of protection, combined with our system of "ring fencing" your capital, affords you a level of protection which rivals that of any bank or building society. For more information, please review the Risk Factors section in the Invitation Document available through the application section.

How do I invest?

Applying is simple and should not take more than a few minutes. You should start off by registering online and follow the instructions to apply. Once completed you can purchase your bonds by bank transfer, debit card (if available to you) or cheque. We do not accept subscription in cash.

Are there any limits on who can purchase the bonds?

The bonds are available to any individual who is over 18 and resides in the UK (excluding the Channel Islands). We also accept trusts or companies that are residents in the UK and are not prevented by law against obtaining or holding the Basset & Gold Guaranteed Income Bonds. For more information, click here."

On this page consumers are invited to press a "*INVEST NOW!*" button, which begins the application process.

I have seen screen prints of each stage of the online application process. These show that consumers such as Mr W first arrived at a page titled "*APPLY NOW TO BECOME AN INVESTOR*" which asks the consumer to provide some basic details. The next page is titled "*PLEASE SELECT THE MOST ACCURATE INVESTOR PROFILE FROM THE LIST*

BELOW" and asks the consumer to select from "*EVERYDAY INVESTOR*", "*SELF CERTIFIED SOPHISTICATED INVESTOR*" or "*ADVISED INVESTOR*".

Mr W selected "*EVERYDAY INVESTOR*", which was described as follows:

"What Is An Everyday Investor?

Anyone can become an Everyday Investor. You just need to agree to not make more than 10% of your investments (including savings, stocks, ISAs, bonds and property excluding

your primary residence) in investments that cannot easily be sold (i.e. illiquid). This is why the FCA refers to these investors as 'Restricted Investors'."

Having selected this profile, Mr W was then asked to make a statement, confirmation and declaration as follows:

"Everyday Investor Statement

I make this statement so that I can receive promotional communications relating to non-readily realisable securities and investments as a restricted investor.

I declare that I qualify as a restricted investor because both of the following apply:

In the preceding twelve months, I have not invested more than 10% of my net assets in non-readily realisable securities.

I undertake that in the following twelve months, I will not invest more than 10% of my net assets in non-readily realisable securities.

Net assets for these purposes do not include:

(a) the property which is my primary residence or any money raised through a loan secured on that property;

(b) any rights of mine under a qualifying contract of insurance;

(c) any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependents are), or may be, entitled.

Investment Duration

I confirm that I am aware that the minimum duration of the current bonds on offer are as follows:

Cash Bond: 30 business days.

3 Year Monthly Income Bond: 3 years.

5 Year Monthly Income Bond: 5 years.

Compounding High-Yield Bond: 5 years.

Pensioner Bonds: 1 year extendable up to 5 years.

Declaration

I accept that the investments to which the promotions will relate may expose me to a significant risk of losing all of the money or other property invested.

I am aware that it is open to me to seek advice from an authorised person who specialises in advising on non-readily realisable securities.

I have made investments in similar products in the last 30 months and/or I am familiar with this type of investment. I am not planning on borrowing, remortgaging or liquidating

assets to invest into a Non-readily Realisable Security. I am not investing via a SIPP/SSAS created specifically for investment in a Non-readily Realisable Security. I will retain

access to sufficient liquid resources following investment. I am aware the Bond is intended to be an income producing product and not a product that provides capital growth.

I agree to Basset & Gold Plc and Gallium Fund Solutions Limited keeping a record of this declaration and providing them to the FCA in event of an investigation."

Mr G was required to click "*Next*" to make the required statement, confirmation and declaration. Having done this, he would then have arrived at a page titled "*JUST A FEW MORE QUESTIONS (REQUIRED BY LAW)"* which included the following multiple choice questions and answers, and a concluding confirmation:

"These questions are designed to check that this type of investment is appropriate for you. Please read each question carefully and select the answer that you believe is correct.

1) *AFTER YOU INVEST IN THIS OFFER CAN YOU TRANSFER YOUR BASSET & GOLD BONDS?*

The bonds are not transferable except in the case of the IFISA Bonds

Yes I can transfer them as a listed share

2) *THE EXPECTED RETURN FROM BASSET AND GOLD BONDS?*

is the fixed interest rate per annum paid over the term (plus my Money back at the end).

is dependent on movements in the financial bond and equity markets.

3) *IS YOUR CAPITAL SECURE?*

No, my capital is at risk and I might not get back all that I invested.

Yes, my capital is secure and I have no risk of losing.

4) *CAN THE BASSET & GOLD BONDS BE CONVERTED TO BASSET & GOLD SHARES?*

Yes

No

5) *DIVERSIFICATION IS A COMMON WAY TO HELP MANAGE RISK WHEN INVESTING; WHAT DOES THIS MEAN?*

That you should invest all of your money into a single bond.

That you should invest your money in a range of different bonds as well as other less risky investments.

I confirm that I have read, understood and agree to Basset Gold Ltd's terms and conditions of service and confirm that I would like to become a client of Basset Gold Ltd and receive financial promotions from time to time."

If any question was answered incorrectly the website displayed the following message (at the point of the particular question being answered incorrectly):

You have selected an incorrect answer. If this was an error please correct your answer, however please consider that if you are unfamiliar with the features of this investment then it might not be suitable for you.

Mr W completed the full process, so clearly answered the questions correctly – but it is not known if he answered any questions incorrectly initially and changed his answers, having seen this message.

Answering the questions correctly allowed the consumer to move the to the final stages, which involved selecting an ISA or bond, selecting which of the three products detailed on the website they wanted to invest in, and how much they wanted to invest. After completing these final stages consumers were able to click on a box to open the Invitation Document for the bond. However, it was not mandatory to do this – consumers were able to proceed without opening the Invitation Document. Mr W has told us he has no recollection of seeing the Invitation Document.

Gallium's response to Mr W's complaint

In its response to Mr W's complaint Gallium said it didn't agree it needed to compensate him for the money he'd lost. It said, in short, that it wasn't the issuer of the bonds – instead it had approved the marketing material – so it could not be responsible for how the invested money had been used outside the period for which it was responsible. It referred Mr W to the Financial Services Compensation Scheme (FSCS).

Mr W asked the FSCS for help, but as he had invested his money during the period when B&G Plc and BG Ltd were appointed representatives of Gallium, it would not consider a claim and suggested Mr W go back to Gallium or refer a complaint to us.

After Mr W referred his complaint to us, Gallium sent us submissions and also provided us with a copy of what it described as its "position statement", which set out general information on the background to complaints about B&G Plc bonds. I have considered these when reaching my provisional decision.

Our investigator's view

One of our investigators considered Mr W's complaint and concluded it should be upheld. He said, in summary:

- The investment Mr W made was in a "mini-bond", which is a non-readily realisable security. As such it could only be promoted to retail clients if certain conditions are met. These conditions were set out in the FCA's Conduct of Business Sourcebook at COBS 4.7.7 and the rules about appropriateness were set out in COBS 10.

- The point of the online application as well as gathering basic contact information was to ascertain what type of investor Mr W was and whether he had relevant knowledge

and experience applicable to the investment he was applying for.

- But the questions that Mr W had to answer in order for BG Ltd to assess if the investment was appropriate for Mr W were basic and not specifically related to the investment Mr W was applying for. As such he was not persuaded that Mr W's answers would've allowed BG Ltd to determine if the investment was appropriate for Mr W.

- He also thought it fair to say that if the questions in the online application had asked even some basic information about Mr W's previous investment experience BG Ltd would've known that Mr W might not have met the requirements of the FCA rules.

- During the 14 August 2017 call, Mr W asked questions about how any Bank of England base rate changes would affect the interest rate of his investment. As one of the questions Mr W had to answer was about the bond interest rate this should've made BG Ltd aware that the investment might not have been appropriate for Mr W and he had not answered its questions accurately.

- Also during the call Mr W was told inaccurately that his capital would be completely secure, the bond was "asset backed" and that BG Ltd/B&G Plc were regulated businesses. The information provided to Mr W during the call conflicted with the information Mr W would've needed to provide to correctly answer the questions asked in the online application.

- The investment was a higher risk one. But during the call Mr W was told that his capital was completely secure. As Mr W was looking for a low risk investment that would provide security for his capital, he thought it reasonable to conclude that being told the capital was completely secure by BG Ltd would have had an impact on Mr W's decision to invest.

- Risk warnings were given during the online application but they were contained within the small print below the 'next' button which Mr W needed to press to proceed with the application. As such he could not be sure Mr W would have seen this warning. Even if the warning had been given sufficient prominence, he could not reasonably conclude that Mr W would have known this was a higher risk investment from the warning alone. It doesn't say the investment is higher risk and as Mr W wasn't an experienced investor, it was fair to say that he would put more weight on what he was told during the call with BG Ltd.

- If a fair and reasonable appropriateness assessment had been carried out in line with the applicable rules, BG Ltd should have concluded that the investment wasn't appropriate for Mr W.

- If this had been the case the rules required BG Ltd to warn Mr W that the investment wasn't appropriate for him. In this case he did not think Mr W would have wanted to proceed with the investment. Mr W wanted a safe, capital secure investment. This was not what Mr W was investing in and had this been made clear it was more likely than not that Mr W would've looked to invest his monies differently.

The investigator also said he did not think the Invitation Document was clear, fair and not misleading, as required by the FCA's rules.

Gallium's response to the view

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

- Mr W hadn't detailed why he thought the bond had been mis-sold – though it appreciated our inquisitorial remit, it felt we had gone significantly beyond the scope of the complaint made. It thought the case ought to have been dismissed as Mr W had not established a proper basis for a complaint.

- It is important to recognise when appropriateness testing or suitability testing is required. As businesses structure their approach based on this, any incorrect application can wholly undermine their business model. There is significant cost to designing and implementing the approach. Our investigator had not applied the requirements correctly.

- COBS 10.2.6G allowed BG Ltd to have relied on knowledge when assessing whether Mr W understood the risks in relation to the product.

- COBS 10.2.2R says it may be appropriate to ask about similar investment experience but there is no requirement to do that in each case. And the regulator provided guidance to the crowdfunding industry allowing firms to satisfy themselves of what information was pertinent to their investment process – this meant the regulator did not insist on questions about education or prior investment experience had to be included. This was confirmed in the regulator's 2014 policy statement (PS 14/4) too.

- The bonds were not complex products – it involved lending money to B&G Plc, at a fixed rate of return which was contingent on B&G Plc generating sufficient revenue from its lending activities to meet its obligations to investors.

- The FCA has provided guidance on its expectations around appropriateness since Mr W made his investment, and the regulatory environment has changed. At the time of the investment, however, the FCA had publicly articulated different expectations. We must apply regulatory expectations as they existed at the relevant time and not seek to apply the different standards that exist today in a retrospective manner.

- In 2014 there had been discussions between the FCA and crowdfunding industry as to what the FCA expected businesses to do to ensure investments were appropriate for investors. The guidance took the form of two question and answer sessions with the FCA's Head of Investment Policy and UK Crowdfunding Association ("UKCFA"). These sessions addressed, in particular, the question of whether investor experience and education needed to form part of an appropriateness assessment. Gallium had regard to this guidance when considering BG Ltd's appropriateness testing.

- Its understands that guidance provided by the FCA in those industry meetings clarified that firms were able to satisfy themselves of what information was pertinent to their investment process. Importantly, in appropriate circumstances, the FCA would not insist on an appropriateness test containing questions about education or prior investment experience.

- BG Ltd's appropriateness test (this refers to the "*JUST A FEW MORE QUESTIONS (REQUIRED BY LAW)"* set out above) was adequate – information was obtained about an investor's knowledge and experience of the key characteristics of the bonds.

- Mr W confirmed he had invested in similar products within the last 30 months, that he was familiar with the type of investment, and he had accepted other confirmations along the lines that bond might expose him to significant risk of losing all his money. Mr W also confirmed he had read and understood the Invitation Document, inclusive

of the risk warnings on pages 27 – 31 of that document.

- If Mr W got any of the appropriateness questions wrong, he would have been presented with a warning. If he then changed an answer to the correct one, he would have been considered as correcting his knowledge.

- BG Ltd was entitled to rely on the answers Mr W gave. It would not be fair or reasonable to expect Mr W to have given misleading answers. Had he done so, there is no basis to suppose he would have given accurate information had further questions been asked.

- Ultimately, BG Ltd was entitled to conclude Mr W had sufficient knowledge and experience of the same or similar products to understand the risks involved such that the investment was appropriate for him. The investigator had disregarded the confirmations and appropriateness test responses given – and had reached a wholly irrational and unsupported conclusion.

- The available evidence demonstrated that being notified of any lack of diversification of B&G Plc's lending activities would not have deterred Mr W from investing, as it did not cause him to disinvest when he became aware of it following the January 2019 update email.

- In any event, it demonstrates that Mr W became aware of the concentration risk in 2019, had the option to seek to exit his investment in the bonds, and chose not to do so. His loss is not therefore caused by having failed to understand the level of concentration risk posed by the bonds at the time of purchase; it is caused by his decision not to exit his investment when that risk was made clear to him in 2019.

- Mr W made his application, gave confirmations, and completed the appropriateness test prior to his conversation with BG Ltd on 14 August 2017 – so any representations made then could not be said to have influenced his decision to apply for the bonds.

- Though our investigator said Mr W wanted a safe, secure, low risk investment, the redress proposed said he didn't want to risk *any* of his capital. This is inconsistent with the warnings Mr W saw when applying for the bond – every page of the process contained a risk warning, he accepted that he may be exposed to a significant risk of losing all his money, the appropriateness test confirmed understanding that capital was at risk and the invitation document outlined the risks. So it cannot now be suggested Mr W didn't want to risk any of his money.

- The 6.22% interest rate evidences Mr W knew the investment was not risk free – the Bank of England Base Rate was only 0.25% so it's not realistic to suggest he did not appreciate or accept the risk. Our investigator had misunderstood the risk-reward nature of securities markets and if every investor who had acknowledged their capital was at risk were to become entitled to capital protection this would bring about the end of retail participation in investment markets.

Gallium also said it did not agree with the investigator's finding the Invitation Document did not meet the regulatory standard of clear, fair and not misleading.

After receiving this response our investigator shared some evidence with Gallium. This included two recordings of the calls I refer to above – those that took place on 11 and 14 August 2017. Having reviewed these Gallium was not minded to change its position. So Mr W's complaint was passed to me to consider.

My provisional decision

I issued a provisional decision on 1 February 2022 and upheld the complaint. As I set out my findings again below, I won't repeat them here.

Mr W accepted my provisional decision. Gallium said it did not accept the majority of my findings but, based on my findings under the heading "*Mr W's calls with BG Ltd*", it was prepared to accept that representatives of BG Ltd communicated with Mr W during those calls in a manner that was not clear, fair, and not misleading. It said that, as a matter of law, it was questionable whether a call which takes place after an investment has been made can be relied upon in reaching a conclusion as to what the investor understood about the investment at the point it was entered into, but it had decided to take a pragmatic view, and was prepared to pay compensation as set out in my provisional decision.

My findings

I've first reconsidered all the available evidence and arguments to decide whether this complaint is one I can look at. And I have not been persuaded to depart from my provisional findings on this. So I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Neither Gallium nor Mr W provided any substantive comments on my provisional findings. So I see no reason to depart from those findings. As I have not been persuaded to depart from my findings, my final decision is the same as my provisional decision, and I have repeated my provisional findings below.

Is the complaint one I can look at?

There are a number of jurisdiction tests that must be met in relation to all complaints referred to us. Broadly speaking, these are that the complaint must be made by an eligible complainant, be about the acts or omissions of a regulated business, be about a regulated activity carried on from an establishment in the United Kingdom, and be brought within the time limits set out in the rules.

In this case there is no question Mr W is an eligible complainant, that what he complains about was an activity carried on from an establishment in the United Kingdom, and that his complaint was brought within the time limits set out in the rules. There no dispute, as such, about whether Mr W's complaint is about a regulated activity – but Gallium does dispute what acts we should be considering under this complaint. And, as BG Ltd and B&G Plc were appointed representatives of Gallium, I need to be satisfied the complaint is about acts or omissions for which Gallium accepted responsibility and the complaint is therefore about acts or omissions of Gallium. So I have considered these points.

Rule DISP 2.3.1R says we can;

"*consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a firm in carrying on…regulated activities…or any ancillary activities, including advice, carried on by the firm in connection with them*".

And the guidance at DISP 2.3.3G says:

"*complaints about acts or omissions include those in respect of activities for which the firm…is responsible (including business of any appointed representative or agent for which the firm…has accepted responsibility)*".

This guidance is drawn from the relevant legislation, which is paragraph 3 of s39 to the Financial Services and Markets Act 2000 (FSMSA):

"the principal [here, Gallium] *of an appointed representative is responsible, to the same extent as if he had expressly permitted it, for anything done or omitted by the representative in carrying on the business for which he has accepted responsibility".*

So to answer these points I need to:

- Identify the specific acts the complaint relates to.
- Consider whether those acts are regulated activities or ancillary to regulated activities.
- Consider whether Gallium was responsible for those activities by reason of s39 FSMA (i.e. whether the complaint is therefore about acts or omissions of Gallium).

What are the specific acts the complaint relates to?

As mentioned, there is some dispute from Gallium about what we should be looking at when considering Mr W's complaint. Gallium says our investigator made findings on matters significantly beyond the scope of the complaint Mr W has made. It also said complainants *"must establish a proper basis for a complaint about Gallium to be upheld and Mr [W's] complaint did not do that".*

The Financial Ombudsman Service is an informal dispute resolution forum. A complaint made to us need not be, and rarely is, made out with the clarity of formal legal pleadings. As recognised by the High Court in R (Williams) v Financial Ombudsman Service [2008] EWHC 2142, our service deals with complaints, not causes of action. Our jurisdiction is inquisitorial, not adversarial.

Mr W is clearly not financially sophisticated and his complaint is vaguely put – he simply says he thinks the bond was "mis-sold" to him. But Mr W is referring to the sale of the bond when making his complaint and, by describing the sale as a "mis-sale", he is clearly saying he thinks the bond was unsuitable or inappropriate for him – or was misrepresented to him in some way. And it's clear from the available evidence Mr W does not understand the investment he made. In these circumstances, I think it is appropriate to consider all the acts or omissions which relate to the sale of the bond. That will include:

- The advertising/marketing of the bond – both on the bassetgold.co.uk website and the wider internet.
- The online application process.
- Any other interactions Mr W had with BG Ltd or B&G Plc relating to the bond.

In this case I think that means the focus is therefore on the acts or omissions of BG Ltd, as it was BG Ltd which was responsible for the advertising/marketing of the bond and the online application process. And it was BG Ltd who Mr W spoke to before and after submitting his application.

Are the acts the complaint relates to regulated activities or ancillary to regulated activities?

The bond was a security or contractually based investment specified in the Financial

Services and Markets Act 2000 (Regulated Activities) Order 2001 ("RAO"). At the time Mr W made his investment, the RAO said regulated activities include arranging deals in investments. This regulated activity was defined in Article 25 as:

25. Arranging deals in investments

"(1) Making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite a particular investment which is—

(a) a security…

is a specified kind of activity.

(2) Making arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments falling within paragraph (1)(a) … (whether as principal or agent) is also a specified kind of activity."

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 online application process and the conversations Mr W had with BG Ltd before and after making his application both fall within the scope of Article 25(1). These all involved making arrangements for Mr W to invest in the bond, and had the direct effect of bringing about the transaction. I am further satisfied the advertising/marketing of the bond was ancillary to these acts.

So I am satisfied Mr W's complaint is about regulated activities.

Was Gallium responsible for the acts the complaint relates to?

As mentioned, I think the acts Mr W's complaint relates to were all carried out by BG Ltd. So I have looked at the agreement between Gallium and BG Ltd to see if they are acts Gallium accepted responsibility for.

The appointed representative agreement (which I note mistakenly refers to Basset & Gold Ltd, rather than Basset Gold Ltd) at Section 3, "*The Appointment*" said at (i):

"The Company (i.e. Gallium) *hereby appoints the AR* (i.e. BG Ltd) *as an agent of the Company for the purpose only of carrying on the Business including introducing applications by associates of the AR for new contracts, for submission to Exempt Investors specifically by the AR and approved by the Company…"*

And at (iii) in the same section, the agreement said:

"The Company hereby grants the AR the right under its authorisation with the FCA to give advice (only in accordance with the rules of the FCA and the Financial Services and Markets Act 2000) in connection with advising, arranging, or dealing in investment products for present and prospective clients and in connection therewith to display, advertise, promote, demonstrate and offer for sale at or from premises subject to the terms contained hereunder for the sole purpose of promoting the sale of the same and in relation thereto use the Company's as well as its own trade name. The Company hereby accepts responsibility, to the same extent as if it had expressly permitted it, for anything the AR does or omits to do in the carrying on the business for which the Company has accepted liability."

Where "*Business"* was defined as:

".. the promoting activities in respect of potential or existing collective investment schemes, or corporate bonds where the Company has approved the financial promotion."

And where 'Exempt Investors' was defined as:

- *"persons to whom promotions may lawfully be made, such persons being exempt under FSMA 2000 (The Financial Promotions Order 2005, for example: Article 48 Certified high net worth individuals*
- *Article 50 Sophisticated Investors*
- *Article 50A Self Certified Sophisticated Investors*
- *Article 51 Association of high net worth or sophisticated Investors*

And for corporate bonds only:

- *Persons who confirm that they will receive regulated investment advice from an FCA authorised person*
- *Persons who certify that they will not invest more than 10% of their net investable financial assets."*

So, in relation to corporate 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.*

In this case, Gallium had approved the financial promotion of the bond Mr W invested in and, as part of the application process (at the "*EVERYDAY INVESTOR*" stage), Mr W had been asked to declare he would not invest more than 10% of his net assets in non-readily realisable securities. And the acts the complaint is about were all done in connection with arranging Mr W's investment in the bond. So I am satisfied the acts the complaint is about are acts for which Gallium accepted responsibility. They are therefore acts of Gallium and can be considered in a complaint against it.

As I am satisfied Mr W'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.

Relevant considerations

I have carefully taken account of the relevant considerations to decide what is 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.

In my view the key consideration as to what is fair and reasonable in this case is whether Gallium met its regulatory obligations when BG Ltd, acting on its behalf, carried out the acts the complaint is about. I consider the following regulatory obligations to be of particular relevance here.

The Principles for Businesses

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 and 7 are relevant here. They provide:

Principle 6 – Customers' interests – A firm must pay due regard to the interests of its customers and treat them fairly.

Principle 7 - Communications with clients - A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading"

COBS 4 – Communicating with clients, including financial promotions

Principle 7 overlaps with COBS 4.2 - Fair, clear and not misleading communications, which I also consider to be relevant here:

COBS 4.2.1R:

(1) A firm must ensure that a communication or a financial promotion is fair, clear and not misleading.

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. I have set out below what I consider to be the relevant rules, in the form they existed at the time.

COBS 4.7 - Direct offer financial promotions

COBS 4.7.7R:

(1) Unless permitted by COBS 4.7.8 R, a firm must not communicate or approve a direct-offer financial promotion relating to a non-readily realisable security to or for communication to a retail client without the conditions in (2) and (3) being satisfied.

(2) The first condition is that the retail client recipient of the direct-offer financial promotion is one of the following:

(a) certified as a 'high net worth investor' in accordance with COBS 4.7.9 R;

(b) certified as a 'sophisticated investor' in accordance with COBS 4.7.9 R;

(c) self-certified as a 'sophisticated investor' in accordance with COBS 4.7.9 R;

(d) certified as a 'restricted investor' in accordance with COBS 4.7.10 R.

(3) The second condition is that firm itself or the person who will arrange or deal in relation to the non-readily realisable security will comply with the rules on appropriateness (see COBS 10) or equivalent requirements for any application or order that the person is aware, or ought reasonably to be aware, is in response to the direct offer financial promotion.

COBS 4.7.10R

A certified restricted investor is an individual who has signed, within the period of twelve months ending with the day on which the communication is made, a statement in the

following terms:

"RESTRICTED INVESTOR STATEMENT *I make this statement so that I can receive promotional communications relating to non-readily realisable securities as a restricted investor. I declare that I qualify as a restricted investor because:*	
(a)	*in the twelve months preceding the date below, I have not invested more than 10% of my net assets in non-readily realisable securities; and*
(b)	*I undertake that in the twelve months following the date below, I will not invest more than 10% of my net assets in non-readily realisable securities.*
Net assets for these purposes do not include:	
(a)	*the property which is my primary residence or any money raised through a loan secured on that property;*
(b)	*any rights of mine under a qualifying contract of insurance; or*
(c)	*any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be entitled; or*
(d)	*any withdrawals from my pension savings (except where the withdrawals are used directly for income in retirement).*
I accept that the investments to which the promotions will relate may expose me to a significant risk of losing all of the money or other property invested. I am aware that it is open to me to seek advice from an authorised person who specialises in advising on non-readily realisable securities. *Signature:* *Date:"*	

COBS 10 – Appropriateness (for non-advised services)

At the time COBS 10.1.2 R said:

"This chapter applies to a firm which arranges or deals in relation to a non-readily realisable security, derivative or a warrant with or for a retail client and the firm is aware, or ought reasonably to be aware, that the application or order is in response to a direct offer financial promotion."

COBS 10.2.1R:

"(1) When providing a service to which this chapter applies, a firm must ask the client to provide information regarding his knowledge and experience in the investment field relevant

to the specific type of product or service offered or demanded so as to enable the firm to assess whether the service or product envisaged is appropriate for the client.

(2) When assessing appropriateness, a firm:

(a) must determine whether the client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service offered or demanded;"

COBS 10.2.2 R:

"The information regarding a client's knowledge and experience in the investment field includes, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:

(1) the types of service, transaction and designated investment with which the client is familiar;

(2) the nature, volume, frequency of the client's transactions in designated investments and the period over which they have been carried out;

(3) the level of education, profession or relevant former profession of the client"

10.2.6G – Knowledge and experience:

"Depending on the circumstances, a firm may be satisfied that the client's knowledge alone is sufficient for him to understand the risks involved in a product or service. Where reasonable, a firm may infer knowledge from experience."

COBS 10.3 Warning the client

COBS 10.3.1R

(1) If a firm considers, on the basis of the information received to enable it to assess appropriateness, that the product or service is not appropriate to the client, the firm must warn the client.

COBS 10.3.2R

(1) If the client elects not to provide the information to enable the firm to assess appropriateness, or if he provides insufficient information regarding his knowledge and experience, the firm must warn the client that such a decision will not allow the firm to determine whether the service or product envisaged is appropriate for him.

COBS 10.3.3G

If a client asks a firm to go ahead with a transaction, despite being given a warning by the firm, it is for the firm to consider whether to do so having regard to the circumstances.

I note Gallium has also 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 had regard to the policy statement, and to Gallium's recollections of the two question and answer sessions.

Having taken careful account of these relevant considerations, to decide what is fair and reasonable in the circumstances, my provisional conclusion is as follows:

- The advertising or marketing of the bond by BG Ltd, on Gallium's behalf, was not consistent with Gallium's regulatory obligations. It was not clear, fair and not misleading. By advertising or marketing the bond in the way it did, BG Ltd did not act in a way that was in Mr W's best interests, or treat him fairly. Had BG Ltd's advertising or marketing been clear, fair and not misleading Mr W would likely have concluded the bond was not the sort of investment for him.

- BG Ltd, acting on Gallium's behalf, led Mr W 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 asking for this certification in the context of the misleading information about the bond it had given. This was not treating Mr W fairly or acting in best interests. Had BG Ltd followed the rules and not misled Mr W, it is unlikely he would have certified himself as being a restricted investor.

- The appropriateness test carried out by BG Ltd, on behalf of Gallium, did not meet the requirements of the rules. And, had it done so, it would have been apparent the bond was not an appropriate investment for Mr W. In the circumstances Mr W would either not have proceeded to invest in the bond or, acting fairly and reasonably, BG Ltd should have concluded it should not allow Mr W to invest.

- Mr W was given further information which was not fair, clear and not misleading during the calls he had with BG Ltd on 11 and 14 August. Had BG Ltd, on behalf of Gallium, acted fairly and reasonably to meet its regulatory obligations at this time Mr W would likely have realised the investment was not appropriate for him and BG Ltd should, in any event, have drawn that conclusion given the clear lack of understanding Mr W showed during these calls.

For these reasons – individually and cumulatively – my provisional decision is that Mr W's complaint should be upheld.

BG Ltd's advertising /marketing

Mr W has told us he first came across B&G Plc's bond when searching online for accounts with good interest rates. Gallium has told us BG Ltd created online advertising material – such as Google and Facebook adverts – which it approved. It has not provided copies of this advertising material. And I have only seen one example of the advertising material BG Ltd used at the time, which is a Google advert which carries the tagline "*Pensioner Bonds Are Back – Achieve Your Retirement Goals".* This referred to a return of 4.24% per year, paid monthly and included four links, one of which was to "Monthly Income Bonds", which directed to bassetgold.co.uk. However, as Mr W cannot remember what he saw I cannot be sure it was the advertisement which led him to the website. But what is clear is that he did search on the internet and was led to the website – and so I have focussed here on what Mr W would have seen on the website at the time.

I have set out in the background the initial pages of the website which would have been seen by Mr W. In my view, much of the material on the website at the time was not consistent with Gallium's regulatory obligation to communicate in a way which was clear, fair and not misleading. In my view, it was not fair or reasonable for BG Ltd (representing Gallium) to communicate in relation to the bond in the way it did on the website and, by doing this, it did not pay due regard to the interests of Mr W and treat him fairly.

Before setting out my findings in more detail I want to first comment on a point made by Gallium in its response to the investigator's view. It says the bond Mr W invested in was a straightforward product, as it simply involved lending money to B&G Plc, at a fixed rate of return which was contingent on B&G Plc generating sufficient revenue from its lending

activities to meet its obligations to investors. In my view this significantly understates the complexity of the product B&G Plc was offering.

Risk factors associated with the bond included the track record of B&G Plc, the detail of its due diligence on the businesses it would be lending to, the criteria B&G Plc applied to its lending and the conditions on which the loan was made. The credit history of the business the loan was made to would also need to be considered, its capacity to repay, and its capital position. Furthermore, as the business B&G Plc was lending to was itself lending, the lending criteria it applied, the default rate and the success of its past lending would need to be considered. All of these points (and this is not an exhaustive list) would need to be considered in order to understand the investment.

In the market for corporate bonds listed on the main exchanges, institutions – credit reference agencies – carry out credit analysis work to assess the risk associated with a bond and express a view (a "rating"), and investment mangers often carry out further credit analysis before deciding to invest in a bond. Here there were no such aids to a consumer's understanding of the product. There was also a liquidity risk. The bond was not listed on a recognised exchange, and so could not be readily sold (in fact it seems to have been a condition of the investment that it could not be transferred). And, as Gallium has pointed out, the Invitation Document which set out the details of the bond was over 40 pages long. I have read the document and it contains a lot of complex technical information which may not be readily understood by the average investor.

So I do not accept the bond could be reasonably described as a straightforward product. It was complex, risky and specialist. In my view this is why the bond fell into a category of investment which the FCA puts restrictions on the promotion of (something I consider in more detail below).

Returning now to the website, I note it initially described the bond as a "*straightforward product"* with "*100% of principal returned on exit"* and explains that B&G Plc "*look to provide every day investors with the opportunity to take advantage of an offer that has* ***security levels previously available only to institutional and ultra-high net worth investors****, and gain attractive returns."* (emphasis copied from the website).

In the "*At a glance*" section the website says the bonds "*are designed to be a straightforward investment. Bondholders receive a predetermined fixed interest rate, which is paid every month, six months or at maturity, depending on the option chosen".*

The question and answer section again describes the bond as a "*straightforward investment"* and says B&G Plc's "*institutional level of protection, combined with our system of "ring fencing" your capital, affords you a level of protection which rivals that of any bank or building society."*

In my view describing the bonds as "*straightforward*" was misleading. It was not fair and reasonable to describe the bonds in such a way. It was also misleading – and unfair – to describe, in bold, the bond as having "*security levels previously available only to institutional and ultra-high net worth investors",* which "*ringfenced capital*", "*institutional level of protection* ", and as an investment which "*offered a level of protection which rivals that of any bank or building society".* There is no apparent basis for these statements, which appear to be completely at odds with the true nature of the bond.

I acknowledge there was a risk warning that "*In the event that the company becomes insolvent, you may lose some or all of your investment"* and potential investors were told "

you should make sure that you fully understand the risks which are set out in the Invitation

Document.". But these warnings do nothing to correct the misleading and unfair statements made otherwise. They also do not carry the same prominence as those statements, and are undermined by them. I also note, at this point, Mr W was not able to access the Invitation Document – and so was reliant on the selected, misleading, information BG Ltd provided.

The website gives further misleading – and unclear – information, in relation to the regulatory status of the bonds. As set out in the background, in response to the question *Are the Basset & Gold Fixed Income Bonds authorised and regulated by the FCA?,* the website says:

The Basset & Gold Fixed Income Bond program is approved as a financial promotion for UK publication by Gallium Fund Solutions Limited who are authorised by the Financial Conduct Authority (FCA) to conduct investment business (FRN: 431709).

However, the answer to the question is "no". The bond was not authorised or regulated. It was correct to say Gallium, the approver of the promotion of the bond, was FCA regulated. But that was not the question asked. At the very least, to meet regulatory standards, the reference to Gallium's regulatory status is not the only thing that should have been said in response to the question, as it puts undue emphasis on the approval of the promotion being done by an FCA regulated firm (and also refers to the approval as of the "program", suggesting a more extensive role for Gallium). The response should say the bond itself does not come with any regulatory protection and explain there is no safety net in the event of the failure of the bond.

Overall, this had the effect of the bond appearing to be being something it was not - suitable for an average retail investor seeking a straightforward fixed interest product. I think the website led Mr W into believing he was investing something akin to a savings bond – not a complex, risky and specialist product. This was not treating Mr W fairly, or acting in his best interests.

Mr W was looking for investment that would provide a good interest return without any risk to his capital. I think it is likely that if these first sections of the website had been clear, fair and not misleading Mr W would have concluded the bond was not the sort of investment for him and not proceeded beyond this point. And I think it would be fair and reasonable to uphold Mr W's complaint on this basis alone. I have however, for completeness, gone on to consider the other acts carried out by BG Ltd in relation to the sale of the bond.

The online application process

There were a number of regulatory obligations which applied to the sale of the B&G Plc bond. As mentioned, 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. The online application took steps toward meeting the regulatory obligations which applied here. I have set out above the rules detailing each of these sets of obligations. I will consider the steps taken by BG Ltd, on behalf of Gallium, in relation to each in turn.

Certification

The first condition, set by COBS 4.7.7R required a retail client, such as Mr W, to be certified as being in one of four categories of investor. In this case, Mr W was certified as a "restricted investor". Although when completing its process for this BG Ltd did not use this term – it instead used the term "*everyday investor*".

4.7.10R sets out how a retail client can be certified to be a restricted investor. The statement, confirmation and declaration Mr W was asked to make included some of the wording set out in 4.7.10R – but not all of it. And additions had been made. The title of the statement also departed from the wording set out in 4.7.10R – it was described as a "*Everyday Investor Statement*". So the certification was not completed in a way which was compliant with the rules.

I have considered the changes to the wording set out in 4.7.10R and also the overall context to Mr W making the statement, confirmation and declaration – including the basis on which Mr W was brought to the point of making them, which I have set out in the previous section of this decision.

As set out in the background above, Mr W was offered the option of three "investor profiles", after he had completed the first stages of his application. The options, other than "everyday investor" were "self certified sophisticated investor" or "advised investor".

In my view, the change of the term "restricted investor" to "everyday investor" had the effect of making the restricted investor category appear to be one into which retail investors like Mr W would naturally fall.

"Restricted" is, by its common and ordinary meaning, something which is limited in amount or range. Synonyms include words like *limited, constricted* and *controlled.* "Everyday" is, by its common and ordinary meaning, something which ordinary, typical or usual. So the change of the term was likely to alter how it was perceived. The "*What Is An Everyday Investor?"* question and answer ("*Anyone can become an Everyday Investor")* also has this effect.

In my view this put undue emphasis on the "everyday investor" option, and led consumers like Mr W to selecting this option when they may not have done so otherwise. I do not think it was fair or reasonable for BG Ltd to act in this way. It was not treating Mr W fairly or acting in best interests. BG Ltd ought to have known that changing the term created a risk of consumers perceiving a "restricted investor" to be something different to what it was, and certifying themselves incorrectly as a result, and risked consumers skipping through this as a formality.

When our investigator asked Mr W which of the categories he thought he would fall into he immediately said "everyday investor" – he didn't pause to think, ask for a definition, or question it, just said he was "everyday". I think this illustrates the point well – an "everyday investor" is an option Mr W immediately understood or could resonate with. In my view Mr W was attracted to this profile based on his understanding and perception of the word "everyday".

As set out in the previous section Mr W had, by this point, already been misled as to the nature of the bonds. So he arrived at the point of being asked if he was an "everyday" investor having been told the bonds were straightforward, with high levels of security and protection. This is likely to have been at the forefront of his mind, and to have given him confidence to select the "everyday" option.

Mr W did not qualify as a restricted investor. Mr W had around £65,000 in savings at the time of investment, which was split with around £40,000 on deposit and £25,000 in a fixed rate cash ISA. His £15,000 investment therefore represented 23% of his net assets. He was also not aware of the bonds had risk associated with them and had not made investments in similar products in the last 30 months. And so he should not have made the statement, confirmation and declaration.

However, I think it unlikely Mr W knowingly gave a false statement. I think it instead likely that he did not consider the detail of what he was being asked to agree to as he understood it to be “everyday” i.e. ordinary, typical or usual, and was encouraged by the misleading assurances as to straightforwardness, security and protection which he had seen on the website before reaching this stage. These assurances are likely to have been at the forefront of his mind and he may well have viewed the statement, confirmation and declaration as a formality and not therefore have considered the detail.

I also think it is unlikely Mr W would have made the statement at all, had he not been misled as to the nature of the bonds, had the correct “restricted investor” term being used and had the website not presented the restricted investor category was one into which he would naturally fall. I also think it unlikely he would have described himself as a “self certified sophisticated investor” or “advised investor” as it would have been clear from the descriptions of those categories that he did not fit into them.

So I am satisfied if BG Ltd, acting on behalf of Gallium, had acted fairly and reasonably to meet Gallium’s regulatory obligations Mr W would not have got beyond this stage. And I think it would be fair and reasonable to uphold Mr W’s complaint on this basis alone. I have however, for completeness, gone on to consider the other acts carried out by BG Ltd in relation to the sale of the bond.

Appropriateness

The second condition, set by COBS 4.7.7R, required BG Ltd to comply with the rules on appropriateness, set out in COBS 10 and quoted in the relevant considerations section above.

The rules at the time (COBS 10.2.1R) required BG Ltd, acting on behalf of Gallium, to ask Mr W to provide information regarding his knowledge *and* experience – and for this information to be relevant to the product offered (the first limb of the rule). The rules required that information to then be assessed, to determine whether Mr W did have the necessary experience and knowledge in order to understand the risks involved (the second limb of the rule).

As set out above, COBS 10.2.2 R required BG Ltd, acting on behalf of Gallium, when considering what information to ask for, to consider the nature of the service provided, the type of product (including its complexity and risks) and for it to include, to the extent appropriate to the nature of the client:

(1) the types of service, transaction and designated investment with which the client is familiar;

(2) the nature, volume, frequency of the client's transactions in designated investments and the period over which they have been carried out;

(3) the level of education, profession or relevant former profession of the client”

In my view BG Ltd failed to ask for an appropriate amount of information about Mr W’s knowledge and experience, as required by COBS 10.2.1R and COBS 10.2.2 R.

BG Ltd did not refer to an appropriateness test on the website – it instead referred to “*just a few more questions (required by law)*”. As set out above, under this, it asked five questions which tested knowledge. These questions asked whether Mr W knew if the bonds were transferable, if the return was fixed, if their capital was secure, if the bonds could be converted to shares and the meaning of diversification. Nothing was asked about Mr W’s

experience. And if Mr W got a question wrong, he would be told his answer was wrong and prompted to reconsider it.

Even if Mr W did know the correct answer to all five questions without prompting (which seems very unlikely, as his interactions with us show he has very limited knowledge, and no experience) this only showed he understood the bonds were not transferrable, the return was fixed, capital was at risk, whether the bonds could be converted into shares and was able to select a correct answer from two options as to what the definition of diversification was.

This falls a long way short of adequately testing whether Mr W had the knowledge to understand the risk associated with the bonds – particularly in circumstances were the multiple-choice options were limited to two and Mr W was allowed repeated efforts to get them right. The risks, as I set out earlier, were complex and multifactorial. It was not, for example, a question of whether Mr W simply understood money could be lost – but whether he was able to understand how likely that might be and what factors might lead to it happening.

BG Ltd did ask Mr W to declare, at the previous stage "*I am familiar with this type of investment."* and "*I have made investments in similar products in the last 30 months"*. So it might argue it did have some information about Mr W's experience, and additional information about his knowledge. However, even accounting for the declaration, an appropriate level of information was not asked for. I also think the declaration could not reasonably be relied on when, at the point of giving it, Mr W had been led to believe the type of investment or product was a straightforward one where there was a high level of protection and security and may have viewed it as a formality due to it being described as part of something "everyday".

As the first limb of COBS 10.2.1R was not met, BG Ltd was unable to carry out the assessment required under the second limb. BG Ltd should have been confident, from the information it asked for, that it was able to assess if Mr W had the necessary experience and knowledge in order to understand the risks involved with investment in the bond. But it was not in a position to make such an assessment, based on the information it obtained.

Gallium refers to 10.2.6G which says there may be circumstances in which *a firm may be satisfied that the client's knowledge alone is sufficient for him to understand the risks involved in a product or service.*

I do not think these were such circumstances – not least because BG Ltd did not ask for an appropriate amount of information about Mr W's knowledge. The guidance in any event does not supplant the rules and in my view it is clearly meant to apply where the client has been asked about both knowledge *and* experience, as the rules require, and the information obtained shows knowledge is high and experience is low. It does not say a business can ask only about knowledge when conducting an appropriateness test.

Gallium also refers to industry conferences with the FCA. But I have seen no evidence to show it was told by the FCA that it did not have to follow the rules i.e. that it did not have to ask about experience *at all.* In any event – and notwithstanding what I say above about COBS 10.2.1R and 10.2.6G - as it did not ask for sufficient information about Mr W's knowledge it was not in a position to assess whether his knowledge alone was sufficient.

Gallium also suggests the FCA has provided guidance on its expectations around appropriateness since Mr W made his investment in 2017, and the regulatory environment has changed since then. To be clear, my findings are based on the rules that existed *at the time*.

Gallium has referred to the FCA's policy statement PS14/04. This relates to the regulation of firms operating online crowdfunding platforms or conducting other similar activities. I have read the statement. In my view it simply confirms the rules on appropriateness apply and must be followed. I note, for example, the statement confirms, at 4.24, that firms are required to assess whether the client has the necessary experience and knowledge to understand the risk involved. In relation to the crowdfunding coming under its regulation the FCA's proposal (which was adopted), summarised at 4.6, was:

"*where no advice was provided, that all firms (MiFID and non-MiFID) must check that clients have the knowledge and experience needed to understand the risks involved before being invited to respond to an offer*"

The policy statement does not therefore change my view that BG Ltd, acting on behalf of Gallium, did not meet its regulatory obligations.

Had the process been consistent with what the rules required - had Mr W been asked for appropriate information about his knowledge *and* experience - the only reasonable conclusion BG Ltd could have reached, having assessed this, was that Mr W did not have the necessary experience and knowledge to understand the risks involved with the bond.

If BG Ltd assessed that the bond was not appropriate, COBS 10.3.1 R said a warning must be given and the guidance at COBS 10.3.3G said a business could consider whether in the circumstances to go ahead with the transaction if the client wished to proceed, despite the warning.

But this envisages the test being completed, and a result determined, before the warning was given. As BG Ltd designed the test the only warning was in response to incorrect answers and simply said "*if you are unfamiliar with the features of this investment then it might not be suitable for you".* In my view this does not meet what is required by COBS 10.3.1R, which is a warning that the product is *not* appropriate. And, by allowing Mr W the opportunity to effectively silence the warning through selecting a different answer, the impact of it was reduced in any event. The process also did not give BG Ltd the opportunity to whether in the circumstances to go ahead with the transaction if Mr W wished to proceed, despite the warning.

In my view a warning which told Mr W clearly an investment in the bond was not appropriate for him would likely have put Mr W off proceeding further. That is a clear, emphatic statement which would have left Mr W in no doubt the bond was not an appropriate investment for him. And this statement should of course have been given alongside clear, fair and not misleading information about the bond which did not leave Mr W with the impression the investment was a straightforward one where there was a high level of protection and security.

Furthermore, had BG Ltd given itself the opportunity to consider in the circumstances whether to go ahead with the transaction if Mr W wished to proceed, having asked for appropriate information about Mr W's knowledge *and* experience, it would have been fair and reasonable for BG Ltd to conclude it should not allow Mr W to proceed. Had Mr W been asked for appropriate information about his knowledge *and* experience this would have shown he may not have the capacity to fully understand the risk associated with the bond. As I set out below, it is clear Mr W did not have even a basic understanding of investments such as the bond - he simply did not understand the product he was investing in. In these circumstances, it would not have been fair and reasonable for BG Ltd to conclude it should proceed if Mr W wanted to, despite a warning.

All in all, I am satisfied BG Ltd, acting on behalf of Gallium, did not act fairly and reasonably

when assessing appropriateness. If it had acted fairly and reasonably to meet the relevant regulatory obligations when assessing appropriateness, Mr W would not have got beyond this stage. And I think it would be fair and reasonable to uphold Mr W's complaint on this basis alone. I have however, for completeness, gone on to consider the other acts carried out by BG Ltd in relation to the sale of the bond.

Mr W's calls with BG Ltd

As noted above, I have been provided with recordings of conversations Mr W had with BG Ltd. And I have listened to the two which I think are key – the one preceding Mr W's investment application and the one immediately following it.

In my view these recordings show two things. Firstly, that Mr W was given further information by B&G Ltd which was not clear, fair and not misleading. And, secondly, that Mr W lacked even a basic understanding of the product he was investing in.

Having failed to complete an adequate appropriateness test – and hence not being in a position to assess whether Mr W had the capacity to fully understand the risk associated with the investment – BG Ltd had the opportunity to correct that during the second call. It also had the opportunity to correct the clear misunderstanding Mr W had reached (perhaps as a result of the misleading information it had provided to him earlier) during both calls. However, it instead compounded matters. And this is a further example of it not treating Mr W fairly or acting in his best interests.

The call preceding Mr W's investment application took place on 11 August 2017. At the outset of this call BG Ltd's representative says they are calling "i*n regards to some information you requested about our savings bonds*". Mr W says "*that's right I was looking online at…the application form*". BG Ltd's representative then says "*I can see it came through as you began but, erm, it didn't come through as completed. Were you looking to make an application?"* to which Mr W said "*um, I thought I'd completed it*".

Following this, Mr W says, when asked what he was looking for that it was "*err, the 3 year bonds, the cash bonds*". BG Ltd's representative then says they will send link to the application, and follow up to let him know when it comes through.

I think two things emerge from this initial exchange – that Mr W does not understand the bond and that BG Ltd continued to misrepresent the bond. "Cash bond" and "savings bonds" are terms used to describe deposit-based products offered by banks and building societies – not complex, risky and specialised unlisted debt securities like the B&G Plc bonds.

As the call continues, Mr W attempts to explain why he may have failed to submit the application. He says "*I think what I did was, er, I thought I'd completed it and then I ticked the box at the bottom and it went on to the, erm, the pages of your policy*". In reply BG Ltd's representative says "*I know what you've done, there's a button which says download Information Document* (sic), *what you've probably done is that's opened a new window. You've probably come off off that and not actually submitted it".* BG Ltd's representative then offers the following advice:

"What I would suggest doing is that next time you go in to complete the application, when you get to that last bit, erm, don't press download invitation document just leave that there, click the two buttons underneath then press submit and it will come though. Cause we send you all the information anyway….I wouldn't worry too much about that"

In my view, this further illustrates Mr W's lack of understanding, in describing the Invitation Document as a "*policy document*". But the key point here is BG Ltd's representative advises

Mr W *not* to open the Invitation Document and to not "*worry too much about that".* It does say that Mr W would sent a copy of the Invitation Document through the post. But, on my understanding, that would not happen until after the investment had been made. So Mr W was effectively advised not to consider the Invitation Document before investing – in circumstances where BG Ltd ought to have known, or suspected, Mr W did not understand the product. And BG Ltd downplayed the importance of the Invitation Document. Acting fairly and reasonably BG Ltd should have said the bond was a complex high risk investment to which the regulator attached restrictions on its promotion. And that the Invitation Document was an important document which should be considered in full before any investment decision was made.

The call immediately following Mr W's investment application took place on 14 August 2017. During the call BG Ltd's representative asks Mr W "did you have any questions regarding the application itself?". One question Mr W asks is "*I get guaranteed every months the interest paid into the account?"* to which BG Ltd's representative replies "*that's it, yeah, every month"*

Mr W then asks:

"I did read in the small print, you know in the policy information, what happens if the government say decides to put interest rates up by 1%? Then it, erm, it says that you're not likely to, erm, to receive or you could lose the amount that you invested originally - you're not forced to get back what you invested. Is that, is the government, erm?"

In reply BG Ltd's representative says:

"Right, so in terms of the actual securities, I mean we've got everything in terms of your investment, your capital is completely secured by asset backed, so it's fully asset backed, erm so in terms of the actual erm interest rate, now naturally as you probably declared on the application you'll have seen it always says that there's an element of risk involved just to point out this is an investment and it's not a deposit, so there's always going to be an element of, you know, risk in terms of it, but of course we've got 100% success rate as you can see on our website and we are a regulated company so we can only put on there what is true, so we've never missed an interest payment, we've never you know never lost a penny of anyone's capital or anything like that, erm it's just due to the fact it's an investment we have to advise that there's an element of risk involved erm, but every single penny of your investment is completely covered by assets as well as the fact that we've got the FSCS coverage £50,000 that is in terms of the initial sale, arranging and marketing of the bond and of course you've also got the fact that we are a regulated company as well but, erm, we just have to put the disclaimer out there that's all"

Mr W then asks:

"Yeah, so just going back to that question if the government were to put interest rates up what would happen to, the, my interest would it, it wouldn't affect my interest, would it, if its fixed?"

In reply BG Ltd's representative says:

I would assume so no, because it is fixed it isn't dependent on anything, we deal with back to back investments so it makes no difference to us because we've already got the deals in place, so we already know how much is going to be paid to us before we actually release the investment amount, if that makes sense? Erm, so we've got the deals in place already so we know exactly how much we can pay you, so its not dependent on performance of anywhere else, that doesn't factor the interest rate whatsoever. Erm, we've already got the deals and that's what secures the rate so your rate will not change throughout the entirety you hold the

bond it would remain exactly the same

Mr W then says

"I'm just a bit concerned that's all. I thought if the government put interest rates up that could affect the interest that I'm you know, that you're giving…."

In reply BG Ltd's representative says:

"No, it wouldn't affect erm, that, because we deal with market place lending so we've already got the deals, its personal deals we have that are already in place"

I think BG Ltd's communication here, again, was not clear, fair and not misleading – in a number of respects. And, again, Mr W shows a clear lack of understanding.

When Mr W described the interest as guaranteed BG Ltd should have corrected him. Whilst the bond had the objective of paying interest monthly this was of course not guaranteed, and was subject to the multiple risk factors I have already set out. By simply agreeing to Mr W's statement BG Ltd continued to mislead him.

I also think that when Mr W begins to refer to "*government*" interest rates this suggests he fundamentally does not understand the bond. And I think it also shows this lack of comprehension was making him uncertain. However, rather than take the opportunity to at least check Mr W's understanding, BG Ltd offered further misleading assurances.

In my view the response by BG Ltd to Mr W's questions significantly downplays the risks and complexities associated with the bond. The term "asset backed" should not have been used in the way it was (to persuade Mr W his investment was secured) without explaining what this meant i.e. what those assets were, and the basis of the security they provide. In this case it seems the only asset was the loan book of a sub-prime lender – and the statement should have been qualified on this basis. It was misleading to simply offer up the term "*asset backed*" as making Mr W's investment "*completely secured*". Particularly as reassurance to a concerned consumer who clearly did not understand the product. This was, by any measure, a high risk investment. Mr W's money was being lent to one high risk lender – in the circumstances this should not have been the basis for assurances about security.

It was also misleading to suggest the returns on the bond were already secured. A "deal" might have been in place insofar as B&G Plc had decided which business to lend to and on what terms. But whether that generated the anticipated returns was dependent on a number of factors and a fair and balanced view should have explained that although deals were in place to secure returns there was no guarantee that would happen, and there were multiple risk factors associated with this.

BG Ltd did give a warning about risk but it did not fully warn Mr W of the risk (only saying there is an "element") and the warning is in any event undermined by the misleading information given otherwise. The warning itself is also presented as a formality – something BG Ltd had to do as a matter of course but nothing that should concern Mr W. BG Ltd essentially says it is only giving risk warnings because it has to – that there is nothing to worry about.

The fact B&G Plc had a 100% track record is also not something which should have been given as assurance without qualification. B&G Plc's track record was short and of course past performance is no guide to future performance.

Gallium says Mr W had committed to invest by the point so what was said during this call

cannot have had an influence. However, Mr W had not by this point sent any money. And he clearly had concerns. Furthermore, as mentioned, this was an opportunity for BG Ltd to correct things. It ought to have been clear at this stage that the bond simply was not appropriate for Mr W. It was obvious that he had very limited understanding and simply did not have the capacity to understand the Invitation Document. And so the calls ought to have highlighted BG Ltd's failure to adequately assess appropriateness and, acting fairly and reasonably, it should have taken steps to address this i.e. it should have concluded the bond was not appropriate for Mr W. The calls were also an opportunity for BG Ltd to finally communicate in a way which was clear, fair and not misleading – and to therefore afford Mr W an opportunity to reflect on that basis.

I am satisfied that if BG Ltd had communicated during the calls in a way that was clear, fair and not misleading, Mr W would not have proceeded to make the investment. Had BG Ltd acted fairly and reasonably to meet its regulatory obligations, it should have concluded it should not allow Mr W to proceed, in the circumstances, in any event – as the bond was clearly not appropriate for Mr W. As with the previous points, I think it would be fair and reasonable to uphold Mr W's complaint on this basis alone.

Invitation Document

The investigator considered the Invitation Document. However, considering the available evidence, I am satisfied Mr W did not look at the Invitation Document in any detail and that he did not in any event have the capacity to understand it. And, for all the reasons I have given, I think Mr W should not have got as far as being given the opportunity to see the document anyway. So I have not considered its contents here.

The January 2019 update

Gallium has pointed out that the January 2019 update email did not lead to Mr W taking any action. So it says disclosure of the lack of diversification at the time of investment would not have deterred Mr W from investing. It also says that when Mr W became aware of the lack of diversification and had the option to sell his investment, he chose not to do so. So his loss is not caused by having failed to understand the level of concentration risk posed by the bonds at the time of purchase, it is caused by his decision not to exit his investment when that risk was made clear to him in 2019.

As I have set out, there are a number of things which, acting fairly and reasonably, BG Ltd should have done differently. And so if it is to be presupposed that a disclosure of the concentration risk arising from a lack of diversification of the type made in January 2019 was made at the time of the investment, that needs to be considered alongside all the other things which should have happened at the time. For all the reasons I have given, I am satisfied that Mr W would not have proceeded to invest, had these things happened.

In any event, as I've set out in my findings, I am satisfied Mr W had limited capacity to understand the risks associated with the bond. He simply did not have the required knowledge and experience. So I am not persuaded the concentration risk arising from a lack of diversification is something Mr W would have fully understood at the outset, had it been explained to him. Setting that aside, the concentration risk was not the only risk. If a risk disclosure was to be made (and it is not clear when in the process Gallium considers this disclosure would have been made) then concentration risk should have been described as part of a full, balanced, explanation of *all* the risks – not just the concentration risk.

I think Gallium's other point is essentially that Mr W had a duty to mitigate his loss, after receiving the 2019 update. But I do not think it would be fair in the circumstances to say Mr W is responsible for the loss he has suffered due to him not reacting to this update. As

mentioned, I am not persuaded he had the capacity to fully understand this risk – and he was in this position because BG Ltd, acting on behalf of Gallium, did not act fairly and reasonably to meet its regulatory obligations at the outset.

In conclusion

Taking all of the above into consideration – individually and cumulatively – I think in the circumstances it is fair and reasonable for uphold the complaint. I am satisfied, for all the reasons given, that Mr W would not have invested in the bond had BG Ltd, on behalf of Gallium, acted fairly and reasonably to meet its regulatory obligations. So I think it is fair to ask Gallium to compensate Mr W for the loss he has suffered

Putting things right

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

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

What should Gallium do?

To compensate Mr W fairly, Gallium must:

- Compare the performance of Mr W'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 pay interest as set out below.

- It is also clear that Mr W has been caused some distress and inconvenience by the loss of his investment. Given his circumstances, this is money Mr W cannot afford to lose, nor is it money he is able to replace. I do not believe Mr W foresaw such a drastic loss and I recognise the considerable worry he will have felt when B&G Plc failed. I consider a payment of £500 is fair compensation for the upset caused.

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 Mr W 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 Mr W that he repays to Gallium any amount he 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.

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 chosen this method of compensation because:

- Mr W 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 W's circumstances and objectives. It does not mean that Mr W 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, for the reasons given. Gallium Fund Solutions Limited should calculate and pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 April 2022.

John Pattinson
Ombudsman