Complaints Commissioner

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29th August 2013

Dear Complainant,

Your complaint against the Financial Services Authority
Reference Number: GE-L01543

I write with reference to your letters of 27th June and 14th August 2013 in connection with the above.

I need to explain my role and powers. Part 6 of the Financial Services Act (the 2012 Act) requires the regulators to maintain a complaints' scheme for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of their relevant functions. Section 84(1)(b) of the 2012 Act provides that an independent person is appointed as Complaints Commissioner charged with the task of investigating those complaints made about the way the regulators have themselves carried out their own investigation of a complaint that comes within that scheme. The appointment has to be approved by H.M. Treasury. I currently hold that role.

From 1st April 2013, as part of the changes implemented by the Government, the FSA was replaced by the FCA, the Prudential Regulation Authority (PRA) and the Bank of England as regulators of the UK's financial services industry. I would add that although the FSA has been replaced, transitional provisions have been put in place to enable the continued consideration of complaints against the FSA. As your complaint relates to the inactions of the FSA, in relation to its objectives and duties under the Financial Services and Markets Act 2000 (FSMA) your complaint has been considered by me under the new transitional complaints' scheme.

As set out in the consultation paper (CP12/30 Complaints against the regulators) and confirmed in the policy statement (PS13/7 Complaints against the regulators), any complaints which have not been concluded as of 1st April 2013 will continue to be investigated by the FCA Complaints Team with the cooperation of the PRA if needed and my office. In practice, this means that, although the governing legislation will have changed there will be no change to the manner in which, or the terms under which, your complaint is investigated.

Your complaint

From your recent letters, I believe that your specific complaint relates to the following issues:

- You are unhappy with the outcome of the FSA's investigation into your complaint. You say that between "*December 2011 and January 2012 [you] had been actively considering handing over the management of [your] investments to a reputable Investment Company*". You add that although you had received literature from a number of companies you had thrown these out. As such, you say that when you received a 'cold call' from Firm G in late January 2012 you believed it to be one of the firms from which you had requested literature.

- Following the call you received further information from the 'firm' (boiler room operation) which you say looked professional and reassured you that the firm was genuine. However, as you had not dealt with the firm before you say that you checked the website which the 'firm' directed to you to and which you say showed a FSA firm reference number.

- You then "*accessed the FSA website online and found that (a) [the individual purporting to be from Firm G with whom you spoke's] claim appeared to be genuine upon examining the FSA Register and (b) upon looking at the alerts list there were no adverse comments or alerts against the Company*"

- You say that following receipt of further information from Firm G (the 'boiler room') you contacted the FSA's Consumer Contact Centre (CCC), on the morning of 25th January 2012, to obtain further reassurance that Firm G "*was in good order and was legitimate*". As a result of this call you say you received some reassurance about the firm which, although allaying some of your concerns did not prevent you carrying out further due diligence which included seeking further information from the French Regulator, the Autorité De Contrôle Prudential (ACP).

- You add that the further due diligence you conducted included seeking further information from the ACP. You also add in your letter to me of 14th August 2013, that, although you were not entirely happy with the information provided to you by the ACP, you "*considered it to be sufficient for [you] to proceed to do business*" with Firm G (the 'boiler room'). As a result, on 26th January 2012, you made the first of what turned out to be a number of 'investments' with the firm which ultimately amounted to around £55,000.

- Although you made the first of your investments on 26th January 2012, you subsequently discovered, on or around 3rd May 2012, that, although you had contacted the FSA's CCC on the morning of the 25th January 2012, the FSA issued an alert about a 'boiler room' operation which was purporting to be the genuine Firm G on the afternoon of 25th January 2012.

- Subsequently you learnt, on 5th May 2012, that the 'cold call' you received from Firm G was not from a genuinely FSA authorised firm but from a fraudulent organisation which was purporting to be Firm G and which was in effect carrying out a share fraud. For the sake of completeness I would set out here that such organisations are commonly referred to as a 'boiler room' operation.

- In your recent correspondence with me following receipt of my Preliminary Decision you have indicated that you "*wish to stress that [your] complaint is not directed against the FSA's CCC Operative, but is directed against the procedures within which the FSA was operating*".

- You feel that at the time you called the FSA it was aware that there was a 'boiler room' purporting to be Firm G in operation and the FSA should have made you aware of this. Alternatively, if the FSA could not for whatever reason make you aware of its concerns at the time of the call, you believe that the FSA "*should have had a proactive system in place for advising consumers of an alert on a firm if that consumer had already made an enquiry on that firm instead of remaining passive*". You have added that this is particularly true in your situation as you had telephoned the FSA four hours before it posted the alert regarding the 'boiler room'.
- Given this you do not feel that "*the FSA was serious about protecting consumers*" and are now looking for the FSA to reimburse you for the losses you say you have incurred as a result of the investments you made with the 'boiler room' which was purporting to be Firm G and, in addition, make a further payments to you in respect of the interest which you have paid on the equity release mortgage you have now taken out to address the losses you have incurred.
- In your letter to me of 14th August 2013 you added that you are looking for the FCA (on behalf of the FSA) to do this as the "*FSA was supposed to be a responsible organisation protecting the consumer by way of its regulation duties. [You] believe that it failed to do that in this instance*". In arriving at this view you have listed a number of other reasons which include your views that "*the details on the FSA Register concerning Company G were not sufficient, or misleading insofar as the only address which was given was the London address*" and that "*at the time there was no address given in the FSA register of the main Company G in Paris*".

Coverage and scope of the transitional complaints scheme

The transitional complaints scheme provides as follows:

9.1 The transitional complaints scheme provides a procedure for enquiring into and, if necessary, addressing allegations of misconduct by the FSA arising from the way in which it has carried out or failed to carry out its functions under FSMA. The transitional complaints scheme covers complaints about the way in which the FSA has acted or omitted to act, including complaints alleging:

a) mistakes and lack of care;

b) unreasonable delay;

c) unprofessional behaviour;

d) bias; and

e) lack of integrity.

9.2 To be eligible to make a complaint under the transitional complaints scheme, a person must be seeking a remedy (which for this purpose may include an apology) in respect of some inconvenience, distress or loss which the person has suffered as a result of being directly affected by the regulators' actions or inaction.

9.3 The transitional complaints scheme does not apply to the Bank's functions under Part 5 of the Banking Act 2009 (overseeing inter-bank payment systems) as this was not previously subject to these complaints arrangements.

I should also make reference to the fact that my powers derived as they are, from statute contain certain and clear limitations in the important area of financial compensation. FSMA (as the relevant legislation in place at the time) stipulated in Schedule One that the FSA is exempt from "*liability in damages*". It stated:

(1) Neither the Authority nor any person who is, or is acting as, a member , officer or member of staff of the Authority is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the Authority's functions.

(2) (Irrelevant to this issue under investigation)

(3) Neither subparagraph (1) nor subparagraph (2) applies

(a) if the act or omission is shown to have been in bad faith; or

(b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the [1998 c.42] Human Rights Act 1998.

I have referred to FSMA here as it was FSMA which was the relevant legislation when the FSA considered your complaint. This exemption has been rehearsed in sections 25(3) and 33(3) of Part 4 of Schedule 3 of the 2012 Act. You have not adduced evidence of any act of bad faith on the part of the FSA which would have the effect of bringing 3(a) above into play.

The transitional complaints scheme nevertheless then goes on to provide in paragraph 6.6 that:

Where it is concluded that a complaint is well founded, the relevant regulator(s) will tell the complainant what they propose to do to remedy the matters complained of. This may include offering the complainant an apology, taking steps to rectify an error or, if appropriate, the offer of a compensatory payment on an ex gratia basis.

If I find your complaint justified, it is to that paragraph that I must refer in order to decide any question of a "*compensatory payment on an ex-gratia basis*".

If you were to take the view that Schedule One referred to above was relevant in the context of the Human Rights Act 1998 I should explain that Section 6(1) of that Act that is referred to, provides as follows:

It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

The only Convention rights that I consider may be relevant are contained in Article 1 of the First Protocol set out in the Human Rights Act of 1998.

Article 1 of the First Protocol provides:

> *Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
>
> *The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*

It is my view, given my views in this matter, that Article 1 of the First Protocol has no application in your case. There is no act taken by the FSA (or indeed by the FCA) which is incompatible with the Human Rights Act 1998 which directly caused you to lose your possessions.

The loss you say you have incurred is the direct result of your decision to invest a considerable amount of money following 'cold calls' from a firm, with which you had had no previous dealings. It was a firm purporting to be one authorised by the FSA when in fact it was a fraudulent 'boiler room' operation (ran by individuals whose aim was to steal money from unsuspecting consumers) and in order to do so had deliberately cloned the details of an FSA authorised firm. Although you say you checked with both the FSA and the ACP the loss you incurred was orchestrated by those running the boiler room with which you invested and *not* (my emphasis) by the FSA or the ACP.

My Position

As part of my investigation into your complaint I requested a full copy of the FSA's investigation file. I have now had the opportunity to review this file and while I can appreciate why you are unhappy with the situation, I am also of the view, which I set out later, that there were clear irregularities which you appear to have ignored. It is also my view that there were sufficient circumstances to cause you to be far more cautious than appears to have been the case.

Before I comment further on your specific concerns I feel it may be useful if I comment generally on the manner in which those running 'boiler room' operations operate. As consumers are becoming more aware of potential scams, those running 'boiler rooms' often now look to giving their 'firm' an appearance of authenticity. From the cases I have seen this often results in those running the 'boiler room' operation cloning the details of a genuinely authorised firm (specifically its name and FSA registration number albeit it will operate from a different address), which may or may not be based in the United Kingdom, and which has received approval to conduct regulated activity within the United Kingdom.

I also feel that it may be useful if I provide some background on the genuine firm which was *not* (my emphasis) the one which contacted you. Firm G is a French firm which is authorised by the ACP, which is one of France's financial services regulators. As a result of the ACP issuing Firm G with an '*EEA Inward Services Passport*' ('passport') the genuine Firm G was able to conduct regulated activity within the UK. I would also add that the granting of an EEA Inward Services Passport by the ACP also allowed the genuine Firm G to register a UK Branch Office.

For the sake of completeness I must also point out that under the EU Investment Services Directive (ISD)[1], once a firm's home state regulator (in this case of the genuine Firm G this was the ACP) has authorised a firm and, if requested by the firm, granted the firm a 'passport' the firm is then allowed to undertake regulated activity (or operate) in another EEA member state (such as the United Kingdom). In granting the 'passport', it is the home state regulator's responsibility to ensure that the firm meets the general fitness and propriety requirements. In the case of the genuine Firm G, as the ACP was satisfied that Firm G had met all of the necessary criterion, it granted Firm G the 'passport' and notified the host state regulator (the FSA) of this and, in doing so, provided the FSA with the details required under the Luxembourg Protocol. The details ACP provided to the FSA included (but are not limited to):

- Firm G's full name;
- The name of the current home state regulator;
- The address of the firm's head office and/or the firm's home state registration number;
- The address of Firm G's intended branch office; and
- The type of business Firm G was intending to conduct.

As the genuine Firm G had been granted a 'passport' by the ACP the FSA was required to authorise Firm G and to allow it to conduct business/operate in the United Kingdom. I would add that, under the protocols which continue to exist (and which form part of EU Law) regulators are *unable* (my emphasis) to 'gold plate' or increase their individual requirements above those set out under the protocol. As such, no matter how much the FSA may have wished to require additional information, such as a telephone number for an overseas firm operating in the United Kingdom on a 'passport', under the law it simply is unable to do this.

Following notification that Firm G (the genuine entity) had been granting a 'passport' by the ACP and that Firm G had intended to open a branch office in the UK, the FSA granted it Part IV permissions and added Firm G's details (including the Branch Office address it had been given by the ACP) to it register of authorised firms. The information the FSA had set out on its register accurately reflected the information which had been given to it by the ACP.

At the time of making its 'passport' application, Firm G (the genuine entity) was looking to open a UK Branch *and* (my emphasis) had provided a branch office address. Given that the FSA was required to grant Firm G (the genuine entity) authorisation, I believe that it was reasonable for the FSA to include the information on the 'passport' application on its Register. I would add that I have noted your comments regarding the omission of Firm G's French parent's address from the FSA Register and although I can understand your comments, given that Firm G intended to open and operate from a UK address I do not believe that there was a requirement or indeed a need for the FSA to show the French parent's address on its Register as UK consumers would contact the branch office in London rather than its French parent's office in Paris. Likewise, although the FSA held details of Firm G's parent company's address, as this was not contained on the Register the CCC operative would not have had access to it (as it was not deemed at that time to have been needed by the public due to the UK branch office).

[1] Markets in Financial Instruments Directive (MiFID) replaced the ISD. MiFID came into force on 1st November 2007.

It is clear from the papers presented to me by the FSA that the perpetrators of the 'boiler room' scam had produced a website and literature which clearly cloned Firm G's details and which also gave the boiler room they were running an air of authenticity. This is unfortunate and is, regrettably, something which is, as I have indicated above, becoming all too common. Whilst the FSA tried to raise awareness of this (and this is something the FCA is continuing to do) it is not possible always to prevent frauds of this nature occurring.

I appreciate that, as a direct result of the cold calls you had received (and your desire to move your investments) you contacted the FSA's CCC to establish the question/clarify the authenticity of Firm G. Having viewed a transcript of the call, while I can understand your view that that you consider that you received some reassurance from the comments the FSA's CCC operative made to you I take a different view from the transcript when considered as a whole particularly given that the approach to you had been a 'cold call' from an unknown person. The CCC operative reassured you that based upon the limited information presented to him (the stated correspondence address and FSA reference number) it appeared that you *could* (my emphasis) be dealing with the genuine firm.

However, the transcript also shows that the CCC operative did raise a number of concerns with you over the firm. You will note from the transcript, a copy of which I understand that the FSA has previously sent to you, that the operative was concerned over the way the name of the firm was being presented to you (specifically that Firm G had abbreviated part of its name to initials when this was not shown on the register). He was also concerned over the fact that you had been 'cold-called' from the UK when a UK land line number was not shown on the register. All those concerns when coupled with the manner in which the investment monies were eventually to be paid should have raised far more awareness of the possibility that you were to be the victim of a fraud than appears to be the case.

Whilst the CCC operative gave you what in my opinion could amount to a 'qualified' reassurance by stating:

> "*Well I mean with the records we have on our register it looks like it is the same company*"[2]
>
> he then stated
>
> "*...But having said that, there is really nothing much we can confirm with*"[3].

This, in my opinion, shows that the operative had concerns and suggested that you may wish to ask the firm to clarify who its 'home state' regulator was and also contact the French Regulator to confirm this information[4]. The operative also indicated that some firms (that is 'boiler room' operations) had cloned the details of FSA regulated firms and some operated with names which were only slightly different from the genuine firms[5]. I believe that, as a result of these concerns, the CCC operative also arranged for further details to be sent to you to help protect you from fraud.

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[2] At line 573
[3] At line 578
[4] This was suggested at line 680
[5] Between lines 634 and 673 with the term clone being raised by the CCC operative at line 634

I would also add that, the practice adopted by the FSA's CCC is simply to undertake a review of the FSA's register and relay the basic information to a consumer. The only information the CCC will provide is whether or not a firm is authorised by the FSA and, if it is, the CCC will simply confirm the firm's FSA registration number, the firm's full registered address (which is in the case of the genuine Firm G was 'passported' into the UK from France and had a UK Brank Office).

Given that the 'boiler room' operation had cloned Firm G's basic details, the only response the CCC gave you in relation to the question of "*is Firm G authorised?*" would have been answered that it was. I would add that this appears to be the correct answer as the genuine Firm G was (and remains) authorised by the FSA.

You are, understandably unhappy with the information the CCC operative provided to you over the telephone and suggested that when was combined with that shown on the FSA's Register, although not entirely reassuring you, did offer some comfort. However, I note that you did not rely solely upon this information in making your investments, instead you have indicated that you continued to make further enquiries to satisfy yourself of the authenticity of the firm and that you *only* (my emphasis) made your investments after you had received subsequent information from the ACP which, upon reflection, you "*considered it to sufficient for [you] to proceed to do business*" with Firm G.

I appreciate that you say you felt reassured by the fact that Firm G appeared upon the FSA Register and by the telephone confirmation you say you were given. However, this does not mean that the FSA acted incorrectly or provided misleading information to you. In this case *it must be remembered* (my emphasis) that those running the 'boiler room' operation had simply cloned the name of a genuinely authorised firm (which had no involvement whatsoever in the fraud in which you were a victim). It would be still impossible for the FSA to give the kind of guarantee you appear to be seeking given the limitations that it is constrained by and which I have outlined to you. Indeed the FSA CCC had raised concerns regarding the possibility of the cloning of a genuine firm with you.

As I have indicated above, by cloning the details of genuinely authorised firms, those running 'boiler room' operations give their fraudulent firms/operations an air of authenticity. This is unfortunately something which the FSA is unable to prevent. Although the FSA has taken steps to protect consumers by issuing general warnings about the existence of 'boiler room' operations and similar scams, together with details of how consumers can protect themselves, ultimately it is unable to prevent consumers being targeted by and investing in these types of scams. The CCC operative did raise these concerns with you but despite that you proceeded to deal with the 'firm' in question.

When any area of the FSA becomes aware of the existence of a potential 'boiler room' operation, it passes the information to its Unauthorised Business Division (UBD). The UBD will investigate the concerns, particularly where there is a belief that the 'boiler room operation' is purporting to be a genuinely authorised firm. Until the UBD has sufficient evidence to show that the alleged activity is being conducted by a 'boiler room' operation (rather than the genuinely authorised firm) it is inappropriate for the FSA to make any comment on the matter.

However, once the FSA has sufficient evidence to show that the suspect activity is not being conducted by the genuinely authorised firm, the FSA will issue an alert or announcement on its website (as was the case here). I would add here that, in the case of the 'boiler room' operation which was purporting to be Firm G, there is nothing in the documentation I have received to indicate that the FSA failed to issue an alert in a timely manner.

It is unfortunate that the FSA posted the alert only a matter of hours after you had contacted the CCC about the firm. However, until an alert (or warning) has been posted it is not possible for the FSA to make any further or anticipatory comments regarding a potential 'boiler room' operation. I would add that, for the avoidance of doubt, at the time the CCC operative spoke to you he would in any event have been unaware of the existence of a potential 'boiler room' operation which had cloned Firm G's details. The FSA does not distribute internally any details of potential boiler rooms until a formal consumer alert or warning is posted.

Whilst I can understand why you feel the FSA should have contacted you to make you aware that the alert had been posted, it is, in my opinion, not possible for the FSA to do this. At the time of your call the FSA had a number of CCC spread around different areas of the country. The FSA also receives many hundreds of calls each day. It is not possible for the FSA to review all of the calls it receives on a daily basis to identify whether a consumer has contacted it regarding a specific firm (particularly as I believe that any search would be based upon a review of the manually entered records of calls received and would therefore still be subject to typographical errors).

I would add that making investments as a result of 'cold-call' sales tactics from organisations with which you have had no previous business arrangement or indeed any dealings whatsoever is *always* (my emphasis) a dangerous and risky practice . Frankly it should never be done. Those who chose to do so, do so at considerable risk to themselves. I appreciate that you take the stance in your letter of 14th August 2013 that "*a cold call in itself does not necessarily mean that the contact was illegitimate*". I am bound to say that my experience in this field leads me to the conclusion that invariably fraud is at the bottom of such calls. Logically anyone wishing to push such investments in such a way must give rise to the questions "why?" Large investments of the kind you were involved in should surely not be instigated in such a way with any degree of safety and any further reputable investment company would wish to deal with customers known to it and not ones solicited by means of 'cold calls "out of the blue". It makes no sense whatsoever to part with large sums of money based upon promises made in unsolicited telephone calls regardless of the 'due diligence' you say you conducted.

This is particularly true when you have had no previous dealings with the firm and where the firm concerned alleges to be based in the UK but then the subsequent investment involves your money being transferred to a bank account which is overseas and/or is in a different name to that of the firm from which the 'cold call' originated. That in itself must be suspicious as well as highly unusual. I would also add that where a number of transactions are to take place and involve money is to be transferred to accounts having numerous different names and which are in different geographical locations, those factors should equally place the consumer on alert that things are just not right.

I would also add that in this case, Firm G provided you with documentation which showed it was based in London, and had been since 1991 yet the FSA CCC operative confirmed (as did the FSA register) that the firm operated in the UK on a 'passport' with its head office being in France and had only recently been authorised. Irrespective of what you have stated about being hindered by the information you were able to obtain from the FSA through both its CCC and its Register this significant discrepancy, particularly as you say you contacted the French Regulator, the ACP, before investing, should have raised your concerns.

Likewise, when making your first investment I understand that you were asked to transfer money to a bank account in a Dubai based bank which was not in the name of Firm G. That alone is highly suspicious and is indicative of fraud in my view particularly in light of the comments made by the FSA's CCC operative regarding the possible 'cloning' of firms.

Similarly, when making your subsequent 'investments' you were asked to transfer the money electronically to an account in a Hong Kong based bank which was neither in the name of Firm G nor the same name as that to which your previous transfer was made. Given the events which appear to have occurred here the *direct cause* (my emphasis) of the loss you say you have suffered was to make the ill-advised investments that you freely chose to do which ultimately stemmed from the receipt of unsolicited telephone calls from an individual with whom you had had no previous dealings.

In my opinion, having considered the information provided by both you and the FSA, I do not believe that you have provided any evidence to show that the actions of the FSA *directly* (my emphasis) led to the loss you say you have incurred. This last aspect is important since the issue of what caused the loss is relevant.

Effectively what caused your loss was relying, what are for you large and important investments, entirely on telephone calls from someone with whom you had had no previous contact, who was totally unknown to you and who had cloned the identity of a genuine and legitimately authorised firm. The money was then to be transferred overseas banks in a number of different countries and a number of bank accounts which were in different names none of which were in the name of the authorised body. In summary that is as clear an indication of fraud as it is possible to imagine. The combination of all those factors can only lead inexorably to the conclusion that fraud is involved.

Conclusion

When arriving at my decision I have to consider the facts identified by the FSA during its own investigation together with the arguments and further evidence submitted by the complainant, together with the possible outcome or recommendations I could make.

I appreciate that you contacted the FSA prior to investing, however as I have explained above, although the FSA has confirmed that although the overall standard of the call fell below the level it would expect from its operatives, you *were not provided with factually incorrect information* (my emphasis) and were made aware that 'fraudsters' do clone the details of firms which hold 'passports' allowing them to conduct regulated activity in the UK. The CCC operative also suggested that you make further checks of the ACP and/or Firm G's French office to establish if the 'cold-calls' you had received originated from its UK branch. When the overall tone of the call is allied to a number of worrying factors that are referred to in the call, the manner of remitting the investment monies, as well as the fact that the approach came to you via a 'cold call' from an unknown person, it is clear to me that the direct cause of your loss is that you proceeded to 'invest' a large sum of money ignoring all those warning signals, particularly when the disparity in the information you were given by the firm from that provided by both the FSA and the ACP is considered.

It is unfortunate that the 'boiler room' operation had cloned the basic details of a genuine firm and this action led you to believe that you were actually dealing with genuine firm, but this is not the fault of the FSA. I would add here that the Register contained the correct contact details the FSA had been given for Firm G's UK branch office Firm G (the genuine entity) was intending to open and which were included on its passport application and that these had also been cloned by those running the 'boiler room'.

Although one of the FSA's statutory obligations is consumer protection, the FSA is only able to offer consumers a certain amount of protection. Consumers must *also* (my emphasis) look to protect themselves as well by acting sensibly and with care at all times. Whilst the FSA has tried to make consumers aware that certain groups and individuals will try to steal money from unsuspecting consumers by acting fraudulently (i.e. by running 'boiler room' schemes or other such scams), the FSA is unable to 'monitor' each and every telephone call a consumer may receive and/or financial transaction a consumer may undertake.

It is my experience from reviewing these kind of complaints, that increasingly those running boiler room scams are frequently using the details (names and FSA authorisation numbers) of firms which are 'passported' into the UK from other European countries. Those running the boiler rooms do this to give an air of legitimacy to their operation and to suggest that they are authorised by the FSA. Clearly, as the firms have provided an FSA authorisation number and UK address, any general check with the FSA will indicate that the firm (boiler room) is authorised by it.

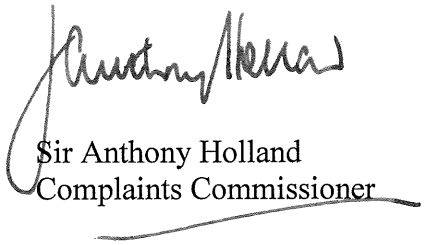
I am also aware that those running the boiler rooms in question can be persuasive. Despite that careful consideration would indicate that making any investment decision based on a 'cold call' approach is highly dangerous and more likely than not to lead to a loss caused by fraud as happened in your case (particularly when your own 'due diligence', through both the FSA and the ACP, produced clear warning signs which you appear to have ignored). Given this and that ultimately *consumers must take some responsibility for their own actions* (my emphasis) I cannot look to pass direct blame upon the FSA when, despite the FSA's best endeavours, an 'investment' decision does not result in the outcome the consumer desired or expected.

I would further add that FSMA required the FSA to maintain a record of all authorised firms and approved individuals. The FSA fulfilled this statutory obligation by way of the Register. In this instance, as there was (and remains) a genuinely authorised Firm G, the FSA is *required* (my emphasis) to record Firm G's details on its Register. Whilst I appreciate that you took reassurance from the fact that Firm G was shown on the FSA Register, it must be remembered that the firm to which you transferred money to *was not* (my emphasis) Firm G. but a 'boiler room' operation which was simply purporting to be Firm G and which had no connection whatsoever with the genuinely authorised Firm G. For the avoidance of doubt, as I have indicated above, the FSA had correctly recorded the details it was given of Firm G's intended UK branch office details on the Register.

I can also understand why you feel that the FSA should have contacted you following the issue of its alert relating to the boiler room which was purporting to be Firm G. However, as I have indicated above, due to the number of calls the FSA received across its CCCs it is, in my opinion, not possible for it to have reviewed all of the calls and then contacted those who may have contacted it regarding Firm G particularly as typographical errors may result in some who contacted the CCC being missed or not be contactable.

Although I do have sympathy for the position you find yourself in, as you have clearly lost a considerable amount of money, ultimately, from the information presented to me by both you and the FSA, there is nothing to suggest that the FSA acted inappropriately or provided you with incorrect or misleading information in respect of the authorisation status of Firm G. Given my views it is my Final Decision that I am unable to make a recommendation to the FCA that it (on behalf of the FSA) should offer you any form of redress.

Yours sincerely



Sir Anthony Holland
Complaints Commissioner