This Decision Notice has been referred to the Upper Tribunal by One Insurance Limited. The Upper Tribunal has the power to dismiss the reference or to remit the matter back to the FCA with directions. In so far as they refer to OIL, the findings in this Notice reflect the Authority's belief as to what occurred.

FINANCIAL CONDUCT AUTHORITY

DECISION NOTICE

To: One Call Insurance Services Limited

FRN: 302961

Date: 13 June 2016

1. ACTION

1.1. For the reasons given in this notice, the Authority has decided to:

(1) impose on One Call Insurance Services Limited ("One Call") a financial penalty of £684,000; and

(2) impose, pursuant to section 206A of the Act, a restriction on One Call for a period of 121 days from the date the Final Notice is issued, so that One Call is restricted during that period from charging renewal fees to its customers, which is anticipated to cost the firm approximately £4,620,000.

1.2. One Call agreed to settle at an early stage of the Authority's investigation and therefore qualified for a 30% (Stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £977,147 and a restriction for a period of 182 days, anticipated to cost the firm approximately £6,600,000, on One Call.

2. SUMMARY OF REASONS

2.1. On the basis of the facts and matters described below, during the Relevant Period, One Call failed to arrange adequate protection for its client money, breaching Principle 10 of the Authority's Principles for Businesses, and the Client Money Rules, including CASS rules 5.5.3R, 5.5.5R and 5.5.63R.

2.2. One Call is an insurance intermediary, primarily selling motor and household insurance through price comparison websites. Its business consisted of receiving insurance premiums from customers and later paying these premiums on to relevant insurers from One Call's panel of insurers to secure and purchase insurance products. One Call's business grew substantially during the Relevant Period; its turnover increased from £1.2 million in 2005 to approximately £30 million for the year ended 31 October 2013.

2.3. Throughout the Relevant Period, One Call received money, in the course of its activities as an insurance intermediary, which was client money under the Client Money Rules. One Call was therefore required to ensure it protected that client money, by complying with these requirements. However it failed to comply with the Client Money Rules because One Call:

(1) failed to appreciate that certain Terms of Business Agreements it wrote business under did not provide effective risk transfer and failed to operate its client money account in accordance with the Client Money Rules; and

(2) more significantly, from 1 December 2009, failed to treat funds advanced by a third party premium finance provider in respect of years two and three of an annual motor policy with a subsequent two-year renewal price guarantee as client money.

2.4. As a result of those failings, One Call failed to comply with the rules and requirements of the Client Money Rules. These failures may have arisen as a result of honest mistakes but failures to comply with these rules mean client money was not adequately protected. Had One Call appointed a competent, knowledgeable person (or persons) and followed industry good practice of placing this function within an appropriately resourced finance function, the failings may not have been as serious. The result was that, One Call inadvertently then spent for its own benefit monies over and above those due to it in commission, fees and charges earned; resulting in a substantial client money deficit. In January 2014, following Authority intervention, One Call calculated that deficit as being approximately £17.3 million.

Use of client money by One Call

2.5. Despite receiving warnings from its external auditors that its treatment of client money may have been inadequate, from December 2009 onwards One Call failed to appreciate that monies from the T36 Policies meant it was holding client money and withdrew client money from the account into which it was paid (the "Client

Money Bank Account"). It appears that One Call inadvertently used sums from the Client Money Bank Account to finance its own working capital requirements, make payments to directors and, indirectly, to capitalise a connected company, One Insurance Limited ("OIL") (no allegation of wrongdoing is made against OIL).

2.6. Use of these sums may have provided One Call with a competitive advantage because it did not have to raise the funds itself and this may have enabled One Call to offer customers lower insurance prices than its competitors which did comply with the Client Money Rules.

Customers exposed to significant risk of loss

2.7. One Call's failings as regards client money exposed its customers to a significant risk of loss. The existence of a deficit meant, had One Call entered into insolvency proceedings, the available pool of client money would have been insufficient to refund T36 customers or pass on to insurers to effect customers' insurance policies for those small number of customers where effective risk transfer was not in place. Had motor insurance policies not been effected, these customers may have been left without compulsory insurance cover, thereby exposing them to the risk of being unable to claim on insurance they believed they held. Those customers also faced being asked to pay their insurance premiums twice over.

2.8. One Call identified the deficit only after a visit by the Authority and was unable to repay this £17.3 million client money deficit on the same day that the deficit was discovered. Following Authority intervention, One Call repaid the deficit. Had One Call been unable to remedy the deficit, customers would have been put at an increased risk of loss for a prolonged period of time.

Why One Call's failures are so serious

2.9. The Authority expects insurance intermediary firms to establish and maintain competent oversight of their client money handling arrangements at all times.

2.10. This case is particularly serious because, despite advice from the firm's external auditors, it took Authority intervention before One Call arranged adequate protection for client money.

2.11. Further, if a firm introduces a variant to its mainstream insurance products, such as One Call's T36 Policies, due diligence of that product should cover assessing whether that product impacts the firm's position in relation to client money.

2.12. One Call co-operated both with the Authority investigation, and in remedying the failings identified in this Notice, through a number of section 166 Skilled Persons Reports, in order to ensure that its business was now in compliance with the Client Money Rules. Those reports confirmed that One Call has made widespread improvements in its governance framework, finance function and CASS controls environment. In May 2015, One Call commenced a 'wind-down' of all its CASS balances in order to transfer to a pure risk transfer model, which is scheduled to conclude in March 2016.

2.13. This action against One Call supports the Authority's operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

3. DEFINITIONS

3.1. The definitions below are used in this Decision Notice.

"Act" means the Financial Services and Markets Act 2000;

"Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

"BIBA" means the British Insurance Brokers Association;

"CASS" means the Client Assets section of the Handbook;

"CII" means the Chartered Insurance Institute;

"Client Money Rules" means the rules set out in CASS 5.1 to 5.5 of CASS;

"Client Money Bank Account" means the bank account into which One Call received client money;

"DEPP" means the Decision Procedure and Penalties Manual section of the Handbook;

"EG" means the Enforcement Guide part of the Handbook;

"FCA" means the Financial Conduct Authority;

"Handbook" means the Authority's Handbook of rules and guidance;

"New Penalty Regime" means the Authority's new penalty regime, in force from 6 March 2010;

"OIL" means One Insurance Limited;

"Old Penalty Regime" means the Authority's old penalty regime, in force until 5 March 2010;

"One Call" or the "Firm" means One Call Insurance Services Limited;

"Principles" means the Authority's Principles for Businesses;

"Relevant Period" means the period 14 January 2005 to 30 September 2014;

"T36 Policies" means a motor insurance policy with a three year price guarantee, which operated as three separate annual contracts with no obligation on the customer to renew from one year to the next;

"TOBAs" means Terms of Business Agreement; and

"Tribunal" means the Upper Tribunal (Tax and Chancery Chamber).

4. FACTS AND MATTERS

Background

One Call

4.1. One Call was established in 1995 and operates as an insurance intermediary, primarily selling motor and household insurance. It has been authorised and regulated by the Authority since 14 January 2005 and was permitted to hold and control client money only in respect of non-investment insurance contracts for the duration of the Relevant Period.

4.2. As an insurance intermediary, One Call's business focussed on selling motor insurance to customers, primarily through price comparison websites. Following receipt of insurance premiums from customers, One Call paid these premiums to its panel of insurers to purchase insurance products. One Call received insurance premiums both directly from its customers and from a third party premium finance provider on behalf of the customer.

4.3. During the Relevant Period, One Call's business grew substantially. One Call's turnover increased from £1.2 million in 2005 to approximately £30 million for the

year ended 31 October 2013. In January 2014, One Call had a customer base of approximately 230,000 and it was placing approximately 300-400 pieces of new business per day.

Client money requirements

4.4. The CASS rules were specifically created to provide confidence in the UK regulatory regime's ability to deliver adequate protection of client money and client assets. The CASS rules set out the requirements with which firms must comply when holding or controlling client assets. For insurance intermediary firms such as One Call, those rules are set out in CASS 5. The Client Money Rules relevant to One Call's conduct are set out at Annex A.

4.5. Principle 10 requires firms to arrange adequate protection for clients' money when they are responsible for it.

4.6. In March 2007, the Authority published a "Guide to Client Money for General Insurance Intermediaries", aimed at firms such as One Call. The guide explained, amongst other things, that there are two possible approaches to protecting client money, and the requirements associated with these respective approaches.

4.7. The two possible approaches which firms can take to ensure adequate protection of any client money it holds, including premiums, when acting as an insurance intermediary are:

(1) the firm segregates the client money and holds it on trust in a client bank account(s), in accordance with the Client Money Rules. If a firm fails, funds from this account(s) are returned directly to customers or, for money received after a firm failure, the money is used to complete the customer's insurance transaction, and cannot be used to reimburse other creditors of the firm; or

(2) a risk transfer agreement is established between the intermediary broker and the insurer which transfers the risk of a shortfall in client money to the insurer. The effect of such an agreement is that both parties agree that the intermediary receives the sums due to or from customers as the agent of the insurer and therefore the insurer bears the risk for any client money shortfalls incurred as a result of the insurance intermediary's failure, rather than the customer. This is because the money is deemed to have been received by the insurer when it is received by the insurance intermediary, and paid over by the insurer (in the event of a claim or refund) to the

customer only once the customer receives the money from the insurance intermediary.

4.8. Firms which hold money under a risk transfer agreement for an insurer (as outlined in paragraph 4.7(2) above) must comply with the Client Money Rules and can only be exempt if they only conduct business under risk transfer. A firm should never make advances of credit to itself out of a client money trust account. If a firm wishes to co-mingle, it must follow the Client Money Rules in relation to all money contained within the account. It must also obtain the insurer's agreement to co-mingle funds held under risk transfer and obtain the insurer's consent to its interests under the trust being subordinated to the interests of the firm's customers.

Conduct in issue

Inadequate assessment of risk transfer

4.9. Throughout the Relevant Period One Call:

(1) was authorised to hold client money;

(2) informed the Authority that it was holding client money; and

(3) held significant amounts of client money.

4.10. During the Relevant Period, One Call had a number of relationships with insurers with which it did business under TOBAs. One Call's intention was to only undertake business with insurers where effective risk transfer was in place. Primarily on the basis of verbal assurances from new insurers that risk transfer would form part of the TOBA, One Call considered that it had effective risk transfer in place with all insurers. However, it did not. Although some checks of the TOBAs were conducted, One Call failed to identify that some TOBAs through which it placed a small volume of business did not provide effective risk transfer.

4.11. The processes and systems One Call had in place for reviewing and approving TOBAs for risk transfer were clearly inadequate, as these failings were not identified until after the Authority's visit. As such, One Call did not provide all its customers with the protection offered by risk transfer.

4.12. However, One Call thought it was protecting client money because it paid monies from customers into its Client Money Bank Account and only withdrew its

commissions from that Client Money Bank Account once the insurer had been paid.

4.13. Monies not covered by risk transfer were paid into the same Client Money Bank Account as monies from customers in respect of business placed with insurers on a risk transfer basis. The effect of co-mingling money covered by risk transfer with money not covered by risk transfer in the Client Money Bank Account was that the whole of that account should have been treated as client money and held in accordance with the Client Money Rules. By failing to carry out adequate client money calculations and by maintaining a surplus in the Client Money Bank Account, One Call failed to comply with the Client Money Rules throughout the majority of the Relevant Period.

4.14. These deficiencies meant that, in the event of insolvency, it would not have been clear whether money held under these TOBAs should be treated as belonging to the insurer or to One Call's customers, litigation may have been required in order to determine ownership, and it would have meant inevitable delay and expense whilst this was resolved. Where risk transfer was not in place, One Call's customers faced being asked to repay insurance premiums, or having their insurance policies cancelled.

Failure to assess the T36 Policies

4.15. From the start of the Relevant Period, One Call sold its clients annual motor insurance policies. In December 2009, One Call introduced and commenced selling to its renewal customers annual motor policies with a 'three year price guarantee', known internally as the "'T36 Policies". These policies operated as three separate annual contracts with no obligation on the customer to renew from one year to the next. Accordingly, customers who purchased this policy entered into a contract which had the option to renew that contract for two further years at the same price. This 'option to renew' guaranteed customers that their insurance premiums would not increase on renewal and would remain the same for a period of three years, provided that there was no change in the customers' circumstances.

4.16. These policies were sold by One Call and were predominantly underwritten by a connected company, OIL. OIL is based in Malta and passports into the UK. Save as in the circumstances outlined in paragraph 4.17 below, upon inception of the policy, a third party premium financing company, as part of its commercial agreement with One Call, advanced One Call with three years' worth of customer

premiums upfront to support the three individual annual policies in advance of receiving the premium from the customer. At the same time, the third party premium finance provider entered into a parallel credit agreement with the customer to collect the advanced premium in monthly or periodic instalments.

4.17. One Call also offered clients premium finance through its own internal premium finance arrangements, although this represented a small proportion of its premium finance business.

4.18. In January 2014, One Call estimated that approximately 46,000 customers held a T36 Policy, which accounted for approximately 20% of its total customer base at that time.

4.19. One Call commenced a trial of T36 Policies in December 2009, alongside its other annual policies. This trial was successful and in mid-2010 One Call commenced selling T36 Policies to appropriate customers. The customers paid their monthly/periodic premiums to the third party premium financing company. When customers cancelled a T36 Policy part way through a particular year, or the customer was in default, or chose not to renew their T36 Policy for the following year, under the agreement with the premium financing company One Call was required to pay back to the premium financing company any outstanding amount under the customer's credit agreement. This included obtaining a premium refund from the insurer and applying this to the outstanding balance.

4.20. However, One Call should have held all the money for years two and three it received from the third party premium finance company as client money in accordance with the Client Money Rules. This is because it was money received in the course of or in connection with insurance mediation activity. It was not money received under a contract for insurance.

4.21. One Call did not turn its mind to whether these monies might be client money; it considered they were a debt owed by One Call to the third party premium finance provider. As a result, it failed to recognise that the advanced premiums for years two and three of the T36 Policies should have been treated as client money and appropriately segregated under the Client Money Rules. In its published accounts, One Call classified the receipts from the third party premium finance provider in respect of years two and three of the T36 Policies as a non-insurance creditor, when these receipts should have been classified as insurance creditors and included in any client money calculation.

4.22. As a result of this failure, One Call did not apply the protections afforded by the Client Money Rules to the funds received in respect of years two and three of the T36 Policies.

One Call's knowledge of the Client Money Rules

4.23. One Call's knowledge of the Client Money Rules fell well below the standard which is expected by the Authority which caused it to continually fail to appreciate the basis upon which it held client money. This is despite having received various warnings which should have alerted it to the need to reassess and reconsider its approach to the treatment and handling of client money.

4.24. One Call staff members attended various compliance forums and conferences run by the Authority, BIBA and CII during the Relevant Period at which the importance of CASS compliance was highlighted. The materials from these forums and conferences served to highlight the importance of ensuring TOBAs were clear and unconditional with regards to risk transfer provisions.

4.25. Furthermore, One Call also received warnings from its external auditor that its treatment of client money may have been inadequate. For example:

(1) in March and April 2012, One Call's auditor highlighted to One Call that it may have been in breach of the Client Money Rules and should perform a client money calculation at least every 25 days followed by a reconciliation to One Call's records. One Call also discussed with the auditor the treatment of T36 Policies; and

(2) in June 2013, One Call's auditor also raised further concerns to it during an audit of its accounts in relation to risk transfer not being in place for all insurers, and recommended One Call to seek specific advice as to whether any client money audit was required.

4.26. Despite these warnings, and without seeking any advice as to the validity of its position, One Call continued to consider that effective risk transfer was in place with all insurers. One Call considered that years two and three monies from the T36 Policies was not client money, but was equivalent to a loan from the premium finance provider that it could use, although this arrangement was not contained in the contract between the two parties. It was not until the Authority visited One Call in December 2013 that One Call reviewed the treatment of the T36 Policy premiums.

Failure to undertake client money calculations in accordance with the Client Money Rules

4.27. From January 2005 until 2009, One Call undertook regular calculations before it paid its insurers. One Call thought these calculations were sufficient to determine its requirement for client money. However, they did not comply with the Client Money Rules. For example, the calculation did not compare One Call's client money requirement with its resource. Although some changes were made in 2010 to record monies in the Client Money Bank Account, items were not fully reconciled in the records which One Call maintained and the calculations therefore continued to be non-compliant. These deficiencies may have resulted in One Call being unable to determine whether there was sufficient excess for money to be transferred to the office account.

4.28. As a result of a change in the person responsible for client money at One Call in September 2011, One Call reviewed the calculation method used. One Call became aware of factors missing in the calculation and it was subsequently amended. As a result, between November 2011 and May 2013 One Call periodically performed additional calculations. However, it failed to do these additional calculations every 25 business days as required by CASS 5.5.63(1)(a). It was only after May 2013 that One Call performed this calculation on a monthly basis. However, even when these calculations were performed monthly, they were still not performed in accordance with the Client Money Rules, as One Call failed to recognise that the sums received in respect of years two and three of the T36 Policies were client money, and consequently these amounts were not included within the calculation.

Consequences at One Call

4.29. As a result of the failings outlined above, during the Relevant Period, One Call did not apply the protections afforded by the Client Money Rules to its client money. From 2010, One Call frequently withdrew sums of money, which included client money, from the Client Money Bank Account following its calculations of fees and commissions earned on the premiums received. These withdrawals included substantial amounts of client money that One Call was not entitled to. These monies appear to the Authority to have been used inadvertently to fund:

(1) its own working capital requirements;

(2) payments to its directors; and

(3) indirectly, the ongoing capital to a connected company, OIL (no allegation of wrongdoing is made against OIL).

4.30. Use of these sums may have provided One Call with a competitive advantage because it did not have to raise the funds itself and this may have enabled One Call to offer customers lower insurance prices than its competitors which did comply with the Client Money Rules.

4.31. Without performing a compliant client money calculation prior to the withdrawals, One Call was unable to properly assess whether or not the amounts left in the Client Money Bank Account were sufficient to meet One Call's obligations to its clients, or whether the withdrawals generated a deficit on the Client Money Bank Account.

4.32. In fact, during the Relevant Period and because of the way One Call treated the T36 monies, One Call withdrew substantial amounts of client money which were funds over and above the amounts due to it from commission, fees and charges. Due to One Call's failure to perform an adequate client money calculation, or to correctly identify the T36 monies were client money, it is not possible to calculate when the Client Money Bank Account was first put into a deficit by One Call's withdrawals. It has also not been possible to calculate to what extent One Call continued to maintain a deficit on the Client Money Bank Account throughout the Relevant Period, or whether any of the payments noted in paragraph 4.29 above consisted solely of client money. However, following a visit by the Authority in December 2013, One Call calculated that it had a deficit of approximately £17.3 million (as at January 2014), which it was unable to repay on the same day that the calculation was performed, in breach of CASS 5.5.63R(1)(b)(i). Following Authority intervention, One Call repaid the deficit.

4.33. One Call's failure to treat client money appropriately was particularly serious. The Client Money Rules are designed to protect consumers' money in the event of the failure of a firm and One Call's failings meant that this protection would not have been offered to some of its customers. As a result of its failings, in the event that One Call became insolvent and a primary pooling event occurred, the client money that it held at the time would have been pooled and then distributed among customers in proportion to the amount they paid to One Call. For the small number of customers who did not have the benefit of risk transfer this may have meant, for example, having to pay again for their insurance. These customers may also have been left without compulsory insurance cover, thereby

exposing them to the risk of being unable to claim on insurance they believe they held.

4.34. One Call's customers were also likely to have been exposed to significant delays in receiving any funds back from One Call due to the deficiencies and lack of clarity in the risk transfer provisions in a number of the TOBAs. It is likely that these deficiencies could have only been resolved through litigation to determine who bore the risk with regards to certain TOBAs, and therefore which customers were due money from the Client Money Bank Account. Although no actual detriment crystallised because One Call was able to pay all customers' premiums to the insurer when they fell due, customers' interests still faced serious and significant risks as a result of One Call's actions.

5. FAILINGS

5.1. The regulatory provisions relevant to this Decision Notice are referred to in Annex A.

5.2. One Call failed to adequately protect client money because it did not:

(1) ensure that the person responsible for client money at One Call had adequate client money knowledge, including the requirements of the Client Money Rules;

(2) appreciate that certain TOBAs it wrote business under did not provide effective risk transfer. Where risk transfer was not in place, this put One Call's customers at significant risk of being uninsured, or being asked to repay their premiums;

(3) appreciate that the premiums advanced by the third party premium finance provider in respect of years two and three of the T36 Policies should have been treated as client money, as they were monies received in the course of or in connection with its insurance mediation activity as they were not immediately received under a particular contract of insurance, and therefore could not have been subject to risk transfer provisions. One Call also failed to respond adequately to a number of clear warnings on this; and

(4) identify client monies as a result of paragraphs 5.2(1) to (3) above, and as a result failed to:

(a) treat all relevant monies in the non-statutory account as client money and have adequate systems and controls (including governance controls) to safeguard that money;

(b) ensure that client money was segregated from One Call's own money at all times;

(c) separately hold risk transfer funds (which were not allowed to be co-mingled unless written authority was obtained) and client money;

(d) ensure it understood its fiduciary duty to safeguard client money and how to correctly discharge that duty;

(e) perform a compliant client money calculation every 25 business days and reconcile the balance on the Client Money Bank Account with its records within 10 business days of the calculation;

(f) recognise a shortfall in the Client Money Bank Account and make good this shortfall by the close of business on the day the calculation should have been performed;

(g) ensure that the firm only withdrew money that became due and payable to the firm; and

(h) ensure its auditor performed an annual client assets report.

5.3. For the reasons set out in paragraphs 4.1 to 4.34 in this Decision Notice, as summarised in paragraph 5.2 above, One Call breached Principle 10 by failing to arrange adequate protection for its clients' assets when it was responsible for them and has breached the Client Money Rules including CASS rules 5.5.3R, 5.5.5R and 5.5.63R during the Relevant Period.

5.4. One Call has since invested heavily in additional directors and its systems and controls. A recent report by a skilled person observed there had been widespread improvements in the Firm's governance framework, finance function and CASS controls environment.

6. SANCTION

6.1 In determining the financial penalty, the Authority has had regard to its policy on the imposition of financial penalties which is set out in Chapter 6 of DEPP and forms part of the Authority's Handbook.

6.2 On 6 March 2010, the Authority's new penalty framework came into force. One Call's failings cover a period across 6 March 2010. Significant proportions of One Call's conduct occurred under both the Old Penalty Regime and the New Penalty Regime. The Authority has therefore assessed the financial penalty under both regimes, as set out below.

6.3 Under both the Old Penalty Regime and the New Penalty Regime, in cases involving breaches of the Client Money Rules, the Authority would ordinarily calculate a penalty using a percentage of the daily average amount of client money or assets held by a firm over the whole relevant period, as opposed to relevant revenue, as revenue may not be an appropriate indicator of the potential harm caused over the relevant period.

6.4 Due to One Call's failure to perform regular, accurate client money calculations throughout the Relevant Period and to appropriately identify the T36 Policies as client money, there is limited reliable data available on which to base the calculation. The Authority has therefore calculated One Call's penalty using a percentage of the monthly average of monies held in the Client Money Bank Account between 24 January 2014 and 1 October 2014.

6.5 Based on these figures, the monthly average client money balance for One Call is £21,242,350.

Old Penalty Regime

6.6 The period of One Call's breach for the purposes of calculating the final penalty under the old Penalty Regime is the period from 14 January 2005 to 5 March 2010. References to DEPP in these paragraphs relate to DEPP as at 5 March 2010.

Deterrence (DEPP 6.5.2G(1))

6.7 The Authority views compliance with the Client Money Rules to be of significant importance. The Authority considers there to be a continuing need to send a strong message to the industry that firms must handle client money in a way that is consistent with the Principles and Client Money Rules.

6.8 The principal objectives of the Client Money Rules to which this Notice relates are to ensure that client monies are clearly identified as such and are ring-fenced from the firm's assets in the case of insolvency.

6.9 The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring approved persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches and demonstrating generally the benefits of compliant behaviour. The Authority considers that a financial penalty would be an appropriate sanction in this case, given the serious nature of the breaches, the significant risks created for customers of One Call and the need to send out a strong message of deterrence to others.

Nature, seriousness and impact of the breach (DEPP 6.5.2(2))

6.10 The Authority considers One Call's breach of Principle 10 and associated Client Money Rules to be serious for the following reasons:

(1) the failings resulted in a deficit of over £17.3 million at One Call;

(2) failings were found throughout One Call's client money processes, indicating that One Call's client money arrangements were inadequate, for example in its review of the TOBAs;

(3) the breaches of Client Money Rules took place over a prolonged period of time; and

(4) had One Call become insolvent, customers not covered by risk transfer were at risk of loss.

The extent to which the breach was deliberate or reckless (DEPP 6.5.2(3))

6.11 The Authority does not consider that One Call committed the breaches deliberately or recklessly.

The size, financial resources and other circumstances of the firm (DEPP 6.5.2(5))

6.12 In deciding on the level of penalty, the Authority has had regard to the size of the financial resources of One Call.

6.13 The Authority has no evidence to suggest that One Call is unable to pay the financial penalty.

Conduct following the breach (DEPP 6.5.2(8))

6.14 For almost all of the Relevant Period, One Call failed to identify or act upon the failings set out in this Notice.

6.15 After the visit to One Call in December 2013 and two section 166 Skilled Persons' Reports, it took steps to consider and resolve the issues identified. Since that time, One Call has invested in external consultants and restructured its operational model to bring the firm into compliance with the Client Money Rules.

Disciplinary record and compliance history (DEPP 6.5.2(9))

6.16 One Call has not previously been the subject of an adverse finding by the Authority.

Other action taken by the Authority (DEPP 6.5.2(10))

6.17 The Authority has had regard to previous cases involving the failure to protect adequately client money.

Conclusion in relation to the old penalty regime

6.18 The Authority considers that the seriousness of One Call's failings merits a financial penalty. In determining the financial penalty, the Authority has considered the need to send a clear message to the industry of the need to ensure that client money is properly protected in accordance with the Client Money Rules. Failure to ensure that appropriate measures are in place to protect client money will result in severe consequences.

6.19 The Authority has therefore decided to impose a total financial penalty under the old penalty regime of £148,696 (£212,423 before application of a 30% settlement discount) on One Call for its breach of Principle 10 and associated Client Money Rules. This amount is approximately 1% of the average monthly client money balances held over the Relevant Period.

New Penalty Regime

6.20 DEPP 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms.

Step 1: disgorgement

6.21 Pursuant to DEPP 6.5A.1G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this.

6.22 The Authority has not identified any financial benefit that One Call derived directly from the breach in connection with regulated activities.

6.23 Step 1 is therefore £0.

Step 2: the seriousness of the breach

6.24 Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach.

6.25 In assessing the seriousness of the breach, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. The Authority considers the following factors to be relevant.

(1) Impact of the breach

6.26 One Call put customers at risk of significant losses by not handling client money in accordance with the Client Money Rules and failing to recognise that its existing practices resulted in a significant client money deficit at One Call. Had One Call not been able to meet its liabilities to insurers, those customers not covered by risk transfer faced a risk of their policy being voided unless they paid the insurer directly for their insurance or risk becoming uninsured. If a customer is left uninsured, then the customer might also face being unable to make a claim – this could have left customers distressed at times when they may have been more vulnerable, for example due to an accident.

6.27 As at February 2014 (shortly after the deficit was discovered), One Call had approximately 230,000 policies in place.

6.28 One Call's failings did not have an adverse effect on markets.

(2) Nature of the breach

6.29 The Client Money Rules are fundamentally important to the protection of client money and assets. The breaches by One Call of the Client Money Rules occurred over a significant and prolonged period of time, and were only brought to light following a visit by the Authority in December 2013. Significantly, until the Authority visited One Call, it did not identify that the Client Money Bank Account had a substantial deficit. This demonstrates serious weaknesses in the firm's management and procedures relating to dealing with client money over a prolonged period of time.

(3) Whether the breaches were deliberate or reckless

6.30 There is no evidence to suggest that the breaches by One Call were deliberate or reckless. Therefore it is considered by the Authority that the breaches were negligent.

6.31 Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 4 and the Step 2 figure is 3% of £21,242,350.

6.32 Step 2 is therefore £637,270.

Step 3: mitigating and aggravating factors

6.33 Between March 2012 and June 2013, One Call received warnings from its external auditor that it may be in breach of the Client Money Rules, which it failed to adequately address.

6.34 The importance of compliance with the Client Money Rules and CASS has been well publicised by the Authority during the Relevant Period, including numerous enforcement actions which have drawn firms' attention to the need for improved focus on this area and the importance of protecting client money, and so the Authority considers this to be an aggravating factor.

6.35 The Step 2 figure should therefore be increased by 20% to take into account those aggravating factors.

6.36 There are no mitigating factors.

6.37 The Step 3 figure for One Call is £764,724.

Step 4: adjustment for deterrence

6.38 We consider that the penalty figure reached after Step 3 is suitable for the purposes of credible deterrence when combined with the restriction outlined at paragraph 6.46 below.

6.39 Therefore, the Step 4 figure for One Call is £764,724.

Step 5: settlement discount

6.40 Applying the Stage 1 settlement discount (30%), the Step 5 figure is £535,306.

Total penalty

6.41 Having applied the frameworks set out in DEPP under the Old Penalty Regime and the New Penalty Regime, the Authority has decided that the appropriate level of financial penalty to be imposed on One Call is £977,147 (being £212,423 under the Old Penalty Regime and £764,724 under the New Penalty Regime) for breaches of Principle 10 and the Client Money Rules.

6.42 When applying a 30% settlement discount to both penalties, the total financial penalty under both regimes totals £684,000 (£684,002 rounded down to the nearest 100).

Restriction

6.43 In accordance with DEPP 6.2, the Authority will consider it appropriate to impose a restriction where it believes that such action will be a more effective and persuasive deterrent than the imposition of a financial penalty alone.

6.44 Due to One Call's failure to perform regular, accurate client money calculations and to appropriately identify client monies throughout the Relevant Period, there is limited reliable data available on which to calculate a penalty using a percentage of the daily average amount of client money. The Authority has therefore calculated One Call's penalty using a percentage of the monthly average of monies held in the Client Money Bank Account during a period of nine months after the client money deficit was identified. The Authority therefore considers that this figure is unlikely to be reflective of One Call's client money balances during the whole of the Relevant Period, where One Call is likely to have held a significantly more client money.

6.45 The Authority therefore considers that the penalty outlined at paragraph 6.41 above is too low and One Call should not benefit from its failure to comply with the Client Money Rules.

6.46 Pursuant to section 206A of the Act, in addition to the penalty outlined at paragraph 6.41 above, the Authority has decided to impose a restriction on One Call's ability to charge renewal fees to its customers for a period of 121 days for breaches of Principle 10 and the Client Money Rules. This is anticipated to cost the firm approximately £4,620,000. The Authority considers that this reflects the seriousness of the breaches in this case.

7. PROCEDURAL MATTERS

Decision maker

7.1. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

7.2. This Decision Notice is given under section 208 and in accordance with section 388 of the Act. The following statutory rights are important.

The Tribunal

7.3. The person to whom this Decision Notice is given has the right to refer the matter to which this Decision Notice relates to the Tribunal. The Tax and Chancery Chamber is the part of the Upper Tribunal, which, among other things, hears references arising from decisions of the Authority. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the person to whom this Decision Notice is given has 28 days to refer the matter to the Tribunal.

7.4. A reference to the Tribunal is made by way of a reference notice (Form FTC3) signed by the person making the reference (or on their behalf) and filed with a copy of this Notice. The Tribunal's correspondence address is 5th Floor, The Rolls Building, Fetter Lane, London EC4A 1NL.

7.5. Further details are available from the Tribunal website:

http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal

7.6. A copy of Form FTC3 must also be sent to Rachel West at the Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS at the same time as filing a reference with the Tribunal.

Access to evidence

7.7. Section 394 of the Act applies to this Decision Notice.

7.8. The person to whom this Notice is given has the right to access:

(1) the material upon which the Authority has relied in deciding to give this Notice; and

(2) the secondary material which, in the opinion of the Authority, might undermine that decision.

Third party rights

7.9. A copy of this Decision Notice is being given to OIL as a third party identified in the reasons above and to whom in the opinion of the Authority the matter is prejudicial. OIL has similar rights of representation and access to material in relation to the matter which identifies it.

Confidentiality and publicity

7.10. This Decision Notice may contain confidential information and, unless it has been published by the Authority, should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). Under s391(1A) of the Act a person to whom a decision notice is given or copied may not publish the notice or any details concerning it unless the Authority has published the notice or those details.

Authority contacts

7.11. For more information concerning this matter generally, contact Catherine Harris at the Authority (direct line: 0207 066 4872).

……..

Mark Steward

Settlement Decision Maker,
for and on behalf of the Authority

……

Simon Green

Settlement Decision Maker,
for and on behalf of the Authority

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. RELEVANT STATUTORY PROVISIONS

1.1. The Authority's operational objectives, set out in section 1B(3) of the Act, include the consumer protection objective.

1.2. The Authority is authorised, pursuant to section 206 of the Act, if it considers that an authorised person has contravened a requirement imposed on it by or under the Act, to impose on such person a penalty in respect of the contravention of such amount as it considers appropriate in the circumstances.

2. RELEVANT REGULATORY PROVISIONS

Principles for Businesses

2.1. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Authority's Handbook. They derive their authority from the Authority's rule making powers set out in the Act.

2.2. Principle 10 states:

"*A firm must arrange adequate protection for clients' assets when it is responsible for them*".

The Authority's policy for imposing financial penalties

2.3. Chapter 6 of DEPP sets out the Authority's statement of policy with respect of imposition and amount of financial penalties under the Act.

Client Money Rules

2.4. CASS sets out the requirements relating to holding client assets and money.

2.5. Set out below are the relevant extracts from CASS 5:

(1) **CASS 5.1.1R** CASS 5.1 to CASS 5.6 apply, subject to (2), (3) and CASS 5.1.3R o CASS 5.1.6R, to a *firm* that receives or holds *money* in the course of or in connection with its *insurance mediation activity*.

(2) **CASS 5.2.1G** If a firm holds money as agent of an insurance undertaking then the firm's clients (who are not insurance undertakings) will be

adequately protected to the extent that the premiums which it receives are treated as being received by the insurance undertaking when they are received by the agent and claims money and premium refunds will only be treated as received by the client when they are actually paid over. The rules in n CASS 5.2 make provision for agency agreements between firms and insurance undertakings to contain terms which make clear when money should be held by a firm as agent of an undertaking. Firms should refer to n CASS 5.1.5 R to determine the circumstances in which they may treat money held on behalf of insurance undertakings as client money.

(3) **CASS 5.5.1G** Unless otherwise stated each of the provisions in *CASS 5.5* applies to *firms* which are acting in accordance with *CASS 5.3* (Statutory trust) or *CASS 5.4* (Non-statutory trust).

(4) **CASS 5.5.2G** One purpose of *CASS 5.5* is to ensure that, unless otherwise permitted, *client money* is kept separate from the *firm's* own *money*. Segregation, in the event of a *firm's* failure, is important for the effective operation of the trust that is created to protect *client money*. The aim is to clarify the difference between *client money* and general creditors' entitlements in the event of the *failure* of the *firm*.

(5) **CASS 5.5.3R** A *firm* must, except to the extent permitted by *CASS 5.5*, hold *client money* separate from the *firm's money*.

(6) **CASS 5.5.5R** A *firm* must segregate *client money* by either:

(1) paying it as soon as is practicable into a *client bank account*; or

(2) paying it out in accordance with *CASS 5.5.80 R*.

(7) **CASS 5.5.6G** The *FCA* expects that in most circumstances it will be practicable for a *firm* to pay *client money* into a *client bank account* by not later than the next *business day* after receipt.

(8) **CASS 5.5.62G**

(1) In order that a *firm* may check that it has sufficient *money* segregated in its *client bank account* (and held by third parties) to meet its obligations to *clients* it is required periodically to calculate the amount which should be segregated (the *client money* requirement) and to compare this with the amount shown as its *client money* resource. This calculation is, in the first instance, based upon the *firm's* accounting records and is followed by a

reconciliation with its banking records. A *firm* is required to make a payment into the *client bank account* if there is a shortfall or to remove any *money* which is not required to meet the *firm's* obligations.

(2) For the purpose of calculating its *client money* requirement two alternative calculation methods are permitted, but a *firm* must use the same method in relation to *CASS 5.3* and *CASS 5.4*. The first refers to individual *client* cash balances; the second to aggregate amounts of *client money* recorded on a *firm* business ledgers.

(9) **CASS 5.5.63R**

(1) A *firm* must, as often as is necessary to ensure the accuracy of its records and at least at intervals of not more than 25 *business days*:

(a) check whether its *client money* resource, as determined by *CASS 5.5.65 R* on the previous *business day*, was at least equal to the *client money* requirement, as determined by *CASS 5.5.66 R* or *CASS 5.5.68 R*, as at the close of business on that day; and

(b) ensure that:

(i) any *shortfall* is paid into a *client bank account* by the close of business on the day the calculation is performed; or

(ii) any excess is withdrawn within the same time period unless *CASS 5.5.9 R* or *CASS 5.5.10 R* applies to the extent that the *firm* is satisfied on reasonable grounds that it is prudent to maintain a positive margin to ensure the calculation in (a) is satisfied having regard to any unreconciled items in its business ledgers as at the date on which the calculations are performed; and

(c) include in any calculation of its *client money* requirement (whether calculated in accordance with *CASS 5.5.66 R* or *CASS 5.5.68 R*) any amounts attributable to *client money* received by its *appointed representatives*, *field representatives* or other agents and which, as at the date of calculation, it is required to segregate in accordance with *CASS 5.5.19 R*.

(2) A *firm* must within ten *business days* of the calculation in (a) reconcile the balance on each *client bank account* as recorded by the *firm* with the

balance on that account as set out in the statement or other form of confirmation used by the bank with which that account is held.

(3) When any discrepancy arises as a result of the reconciliation carried out in (2), the *firm* must identify the reason for the discrepancy and correct it as soon as possible, unless the discrepancy arises solely as a result of timing differences between the accounting systems of the party providing the statement or confirmation and those of the *firm*.

(4) While a *firm* is unable to resolve a difference arising from a reconciliation, and one record or a set of records examined by the *firm* during its reconciliation indicates that there is a need to have a greater amount of *client money* than is in fact the case, the *firm* must assume, until the matter is finally resolved, that the record or set of records is accurate and either pay its own *money* into a relevant account or make a withdrawal of any excess.