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## FINAL NOTICE

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To: **Liberty Mutual Insurance Europe SE**

Firm Reference Number: **202205**

Address: **20 Fenchurch Street, London, EC3M 3AW**

Date: **29 October 2018**

### **1. ACTION**

- 1.1. For the reasons given in this Final Notice, the Authority hereby imposes on Liberty Mutual Insurance Europe SE ("Liberty") a financial penalty of £5,280,800.
- 1.2. Liberty 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 £7,544,000 on Liberty.

### **2. SUMMARY OF REASONS**

- 2.1. Between 5 July 2010 and 7 June 2015 ("the Relevant Period") Liberty breached Principle 3 (Management and Control) and Principle 6 (Customers' interests) of the Authority's Principles for Businesses ("the Principles") in its oversight of its mobile phone insurance ("MPI") claims and complaints handling processes administered through a third party retail Coverholder (the "Third Party"). The

Third Party was itself authorised but not in respect of the underwriting of insurance.

- 2.2. Liberty is a large UK insurance underwriter authorised to carry out and effect contracts of insurance across a range of insurance types. In 2010, Liberty entered into a new relationship in the UK with the Third Party to enable the Third Party to provide MPI to retail customers in the UK, underwritten through Liberty. The Third Party and Liberty's parent entities had an established relationship in the USA, and the Third Party was a large market participant in MPI markets in the USA and elsewhere (other than Europe). The UK venture was intended to support the pre-existing relationship.
- 2.3. Under the terms of their arrangement, the Third Party agreed to undertake all administrative functions associated with the MPI on Liberty's behalf, including all claims and complaints handling functions. Such claims and complaints outsourcing arrangements are permissible. However, the insurer retains primary responsibility for ensuring that the outsourced claims and complaints handling arrangements comply with regulatory requirements.
- 2.4. Prior to entering into the relationship, Liberty's Board of directors (the "Board") and other individuals responsible for the day-to-day oversight of the Third Party had recognised that the new, consumer-facing, venture carried regulatory risk and that Liberty had limited experience in dealing with the additional risks associated with MPI or in dealing with retail consumers. Although Liberty and the Third Party discussed the Third Party's compliance plan and made the Third Party's commitment to meet UK regulatory requirements a term of the arrangement, Liberty did not undertake an adequate risk assessment, review or adequately plan for ongoing monitoring before the commencement of the arrangement to ensure that the Third Party would administer claims and complaints on Liberty's behalf in a way which would ensure that Liberty complied with its regulatory obligations.
- 2.5. Liberty delegated the oversight of the relationship to its Audit Committee who in turn received information from the Compliance function. The Compliance function was in regular contact with the Third Party and provided quarterly compliance reports to the Audit Committee during the Relevant Period.
- 2.6. There was a lack of oversight from the Board and senior management on the development of conduct risk controls. As a result, the design and implementation of an enhanced conduct risk framework did not progress with sufficient speed. Had the Senior Managers and Certification Regime applied to Liberty during the

Relevant Period, it is likely that it would have resulted in clearer responsibility for the MPI business on the Board, and as a result many of the failings may have been mitigated or avoided.

2.7. The result of these failings was that certain of Liberty's 2.6 million MPI customers were exposed to unfair treatment in respect of MPI claims and complaints, including:

- (1) Approximately 6,000 customers were unfairly denied cover for claims for loss or theft if they had failed to comply with a requirement existing between June 2012 and February 2015 to download and install the Mobile Rescue App;
- (2) A proportion of the 3,171 claims that were declined up to December 2015 due to suspicion of fraud were denied when there was insufficient evidence to support that suspicion, and some customers did not have their claims investigated adequately, due to an overreliance on voice analytics software operational between August 2012 and May 2015;
- (3) Approximately 1,707 customers were unfairly denied cover through the inappropriate use of a policy exclusion for unattended loss which existed between July 2010 and December 2015;
- (4) The great majority of the 1,627 customers who complained about denials of cover for late notification of their claim or for failure to install the Mobile Rescue App had the original decision overturned, creating a de facto two-stage claims process, which risked causing unfair outcomes for customers; and
- (5) The approximately 11,000 customers who complained during the Relevant Period were at risk of having their complaints dismissed without a proper investigation having been undertaken, and were otherwise put at risk of their complaints not being handled fairly due to inadequate processes being in place for ensuring that complaints were dealt with fairly, impartially and consistently.

2.8. Liberty only began to look at its MPI claims and complaints handling arrangements in more detail following the Thematic Review report published in June 2013 by the Authority entitled "*Mobile phone insurance – ensuring a fair deal for consumers (TR 13/2)*" (the "Thematic Review"). Liberty enhanced its oversight of the Third Party by creating two business oversight roles with specific responsibility

for the Third Party relationship; a designated relationship manager supported by another individual who was responsible for the oversight of the Third Party (and one other administrator). These individuals and a member of Liberty's compliance function attended formal monthly meetings to discuss compliance matters that were instituted from the end of 2013. This led to Liberty's Internal Audit function undertaking a review of the Third Party in 2014. This was followed by further review exercises and the appointment of a Skilled Person in July 2015. It took considerable time for Liberty to understand the Third Party's business model and whilst it had identified some areas of concern from early 2014 as a consequence of the work undertaken to produce the report completed by the Internal Audit function in June 2014 (the "June 2014 IA Report"), it was not until June 2015 that Liberty fully understood the Third Party's claims and complaints processes and corrective measures had been implemented.

- 2.9. Throughout the Relevant Period Liberty retained regulatory responsibility for ensuring that claims and complaints made by customers were handled fairly. This responsibility is important, particularly where the insurer is providing insurance to retail customers, such as consumers of MPI. It is not acceptable for an insurer to permit a third party to design and administer insurance of this nature, and settle claims and handle complaints on its behalf, without first having in place clear and adequate systems and controls to ensure that the outsourced processes of the third party comply with the relevant regulatory requirements, including as regards claims and complaints handling.
- 2.10. The customer base for MPI designed and administered by the Third Party and underwritten by Liberty grew from approximately 40,000 in February 2011 to 380,000 at the start of 2013, and to 1.3m by the end of the Relevant Period. In February 2016, the Third Party commenced a redress exercise for approximately 14,000 customers potentially adversely affected by claims and complaints handling failings. Liberty has ceased underwriting MPI for new customers.
- 2.11. The Authority considers Liberty's failings to be serious for the following reasons:
  - (1) The breaches caused a risk of loss to individual consumers; and
  - (2) The breaches revealed systemic weaknesses in Liberty's procedures or in the management systems or internal controls relating to its MPI business and arose from failings on the part of Liberty's senior management and those entrusted with overseeing the compliance of the MPI business who identified that there were risks associated with undertaking the MPI business

but delegated compliance oversight to a function that lacked the resources and expertise to understand the nature of the risks and what would be needed to mitigate them.

2.12. The Authority has taken into account that:

- (1) Liberty has cooperated throughout the investigation, and has not previously been subject to disciplinary action in respect of these or similar failings;
- (2) Liberty made improvements in its oversight from late 2013 onwards in response to the Thematic Review and identified some issues as a result of its own audit reviews;
- (3) Liberty has ceased to write new MPI business;
- (4) Liberty hired external consultants to assist it in revising and strengthening its controls in this area, and has also proactively sought to further improve its systems and controls relevant to conduct risk and MPI since June 2015; and
- (5) Prior to the commencement of the Enforcement investigation, the Third Party commenced a voluntary redress and remediation exercise in relation to claims which may have been unfairly rejected. This exercise was undertaken following discussions with the Authority, but was otherwise initiated by the Third Party in conjunction with Liberty. The total amount of redress offered to customers who may have suffered detriment was £3,963,540, with a total of £3,087,655.28 paid out (see further paragraph 4.52).

2.13. Ensuring that insurance industry outsourcing arrangements in relation to claims and complaints handling are carried out with proper oversight measures in place and having regard to the obligation to treat customers fairly supports the Authority's operational objective of securing an appropriate degree of protection for consumers.

2.14. The Authority hereby imposes a financial penalty on Liberty in the amount of £5,280,800 pursuant to section 206 of the Act.

2.15. Any facts or findings in this Notice relating to any function, committee or group of persons should not be read as relating to all the members of that function, committee or group, or even necessarily any particular individual.

### **3. DEFINITIONS**

3.1. The definitions below are used in this Notice:

“the 2015 RC Report” means the report dated May 2015 setting out findings of a review Liberty had undertaken of the claims and complaints files that the Authority had considered in the Follow-Up Review.

“the Act” means the Financial Services and Markets Act 2000.

“the Authority” means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority.

“Board” means the Board of Directors of Liberty.

“Coverholder” means a company or partnership authorised by an insurer to enter into a contract or contracts of insurance to be underwritten by the insurer (or members of its syndicate) in accordance with the terms of a binding authority or similar agreement.

“DEPP” means the Decision Procedure and Penalties Manual contained in the Authority’s Handbook.

“DISP” means the Dispute Resolution: Complaints section of the Authority’s Handbook.

“the Follow-Up Review” means the follow-up review to the Thematic Review conducted by the Authority and summarised in “*Mobile phone insurance: Follow-up review findings*” published on 10 December 2015.

“the FOS” means The Financial Ombudsman Service, set up by Parliament to resolve individual complaints between UK-based financial businesses and their customers.

“UK MPI GWP” means the gross written premium arising from Liberty’s underwriting of MPI in the UK.

“ICOBS” means the Insurance: Conduct of Business sourcebook in the Authority’s Handbook.

“Internal Audit” means the internal audit function of Liberty.

“June 2014 IA Report” means the report produced by Internal Audit setting out its findings from its audit of the MPI business undertaken in the first half of 2014.

“Liberty” means Liberty Mutual Insurance Europe SE.

“Mobile Rescue App” means a specific piece of software designed to assist with locking and locating lost or stolen portable electronic devices, which certain policies underwritten by Liberty and provided to customers at no extra cost pursuant to the arrangements with the Third Party described in this notice required customers to download and install in order to benefit from theft and loss cover.

“MPI” means mobile phone insurance.

“Principles” means the Authority’s Principles for Business set out in section 2.1 of the Principles for Business section of the Authority’s Handbook.

“Relevant Period” means the period between 5 July 2010 and 7 June 2015 (inclusive).

“Skilled Person” means the third party appointed to produce the Skilled Person’s Report.

“the Skilled Person’s Report” means the report produced by the Skilled Person into an aspect of a regulated firm’s activities (as further explained at paragraph 4.31), pursuant to that person’s appointment under section 166 of the Act.

“SYSC” means the Senior Management Arrangements, Systems and Controls sourcebook in the Authority’s Handbook.

“TCF” means Treating Customers Fairly. TCF focuses on the delivery of the Authority’s statutory consumer protection objective.

“TCF Policy” means Liberty’s “TCF Policy Statement”.

“Thematic Review” means the Thematic Review report published in June 2013 by the Authority entitled “Mobile phone insurance – ensuring a fair deal for consumers (TR 13/2)”.

“the Third Party” means the entity that entered into an agreement from 5 July 2010 with Liberty to enable the Third Party to provide MPI to retail customers in the UK, underwritten through Liberty. The Third Party is an authorised insurance

intermediary which designs, markets and administers MPI products. At no time during the relevant period was it authorised to effect and carry out contracts of insurance.

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

#### **4. FACTS AND MATTERS**

##### **Background**

- 4.1. Liberty is an established UK insurer. It is part of an international group of companies, headquartered in Boston USA, which provides a range of insurance products on a global basis.
- 4.2. One of Liberty’s related companies based in the USA has a long standing relationship with the Third Party’s parent company. Part of that relationship involved the provision of MPI sold through mobile phone companies. The possibility of replicating this successful relationship through the Third Party and Liberty in Europe was brought to the attention of the Board in May 2008. There was acknowledgment throughout the Relevant Period that the pre-existing relationship between other entities in the Third Party’s and Liberty’s groups in the USA was influential.
- 4.3. The Board identified at this time that the relationship with the Third Party would represent a departure from Liberty’s traditional focus of providing insurance for commercial clients. Further, it noted that this would pose a number of challenges and that in response Liberty would need to establish stronger controls and policies around sales training, remuneration policies, complaints procedures and claims practices.
- 4.4. In June 2008, the Third Party became an Appointed Representative of Liberty to enable the parties to engage in market research activity in continental Europe and thereby determine the scale of the opportunity. The Third Party thereafter entered into “Programme Agreements” with third parties under which the third parties each sold the MPI to customers at the point of selling a device. The Third Party designed and administered the MPI product. The Third Party ceased to be an Appointed Representative in December 2009.
- 4.5. Liberty’s senior management continued to discuss the proposed relationship with the Third Party between 2008 and 2010. These discussions included a presentation by the Third Party to Liberty’s senior management, a discussion of

the proposed arrangements and the risks posed, and meetings to discuss the Third Party's product offering and commitment to customer service, and (on 29 September 2009) a meeting at which one agenda item was the Third Party's proposed compliance plan.

- 4.6. In March 2010, the Board recognised that as "these [MPI] products are aimed at retail customers it is critical that [Liberty's] [TCF] procedures are robust." To manage the risks posed by this new retail venture, the Board decided that the Audit Committee should have responsibility to oversee an update of its TCF policy for this area of business.
- 4.7. Liberty decided to enter into the relationship with the Third Party shortly before 5 July 2010, the date on which the agreement between the Third Party and Liberty governing the relationship was signed. Under that agreement, the Third Party was required by Liberty to keep appropriate records relating to complaints received, to ensure the fair treatment of customers and to take responsibility for compliance with all regulatory matters relating to the agreement except for matters for which Liberty was responsible.
- 4.8. Prior to entering into the relationship with the Third Party, Liberty, briefly reviewed some of the Third Party's materials including the policy documentation for the one MPI product active at that time and provided high level comments on certain standard form customer letters that the Third Party proposed to use. Apart from this, and the 29 September 2009 meeting described in 4.5 above, Liberty did not take any steps to assess for itself whether the processes and procedures that the Third Party would have in place for handling claims and complaints would be compliant with the requirements of the UK regulatory system relating to the fair treatment of customers.
- 4.9. Liberty received a fronting fee, based on a small percentage of premiums during the Relevant Period. Liberty had no other retail coverholder arrangements comparable in scale or product type to the arrangements with the Third Party. The Third Party was authorised to deny claims on behalf of Liberty. Liberty entered into back-to-back arrangements to reinsure 100% of the losses arising from the MPI to parties connected to the Third Party. Liberty had not underwritten MPI in the UK, or elsewhere, prior to entering into the arrangement with the Third Party.

#### **Liberty's oversight of the Third Party – the commencement of the arrangement**

- 4.10. From July 2010, Liberty started selling MPI through third parties engaged by the Third Party. The Board delegated the responsibility for overseeing and monitoring the work undertaken by the Third Party to the Audit Committee and received reports from that Committee. There was no individual assigned from the business to oversee the performance of the MPI product or the relationship with the Third Party. The Compliance function was in regular contact with the Third Party and provided quarterly compliance reports to the Audit Committee, which would discuss matters connected to the Third Party when they arose. Where matters were deemed sufficiently important, it was envisaged that the Audit Committee would escalate any issues to the Board.
- 4.11. Although Liberty did not undertake a full audit of the Third Party's claims and complaints practices until the work undertaken to produce the June 2014 IA Report, an entity incorporated in the USA and in the same corporate group as Liberty conducted two "Operational Reviews" in 2011 and 2012. The first of these expressly stated that it was a "non-audit related review" and described its purpose as being "to get an understanding of [the Third Party's] operations by doing walkthroughs with key employees of policy issuance, claim handling, and billing and collection processes." The second review described its objective in broader terms, but said that it "focused on the reporting and payment of policy premium and claims." The only finding made in the review related to the timing of reporting of claims and premiums to the Third Party by a sub-contractor.
- 4.12. Neither review evidenced that claims or complaints were reviewed in detail. Neither of them raised any serious issues in relation to the UK MPI business. Liberty's Compliance function, tasked by the Audit Committee with undertaking the necessary monitoring of the Third Party, was not involved in undertaking these reviews, but did receive the results and convey these to the Audit Committee.

#### **Liberty's oversight of the Third Party – 2010 to 2013**

- 4.13. In October 2010, Liberty's Compliance function sought certain information about the Third Party's business and approach to complaints to better understand the process. In particular, Liberty sought a copy of the Third Party's complaints policy and reports on complaints made by MPI customers following the commencement of the relationship. Liberty also listened to some customer calls. Later that month Liberty senior management attended a presentation by the Third Party. This included limited claims and complaints data.

- 4.14. In May 2011, the Audit Committee considered a report from Liberty's Compliance function which noted that nine complaints had been received by the Third Party relating to the MPI business for the quarter, and noted that this was a higher number of complaints when compared to Liberty's own business. Although the Audit Committee sought further information on the complaints data, it considered that the comparatively high levels of complaints received were to be expected and reflected the fact that more customers would be likely to complain about retail insurance products than commercial clients with other types of insurance. The additional information sought was not provided to Liberty in 2011. In May 2012, the Audit Committee again discussed the complaints relating to the MPI business when reviewing a quarterly compliance report detailing the 57 UK complaints received by the Third Party in the quarter. It noted that it would be helpful to have a summary of the complaints by category, together with denial ratios and an outline of the action being taken to address them, and for this information to be included in a quarterly report.
- 4.15. Throughout 2011 and 2012, Liberty continued to receive information from the Third Party that it considered to be insufficiently detailed and inadequate for monitoring purposes. During this time, Liberty made requests for information from the Third Party, but did not follow up on these requests in a timely manner. The Third Party and Liberty met in October 2012 to discuss the complaints reporting format and management of complaints. The Third Party asked Liberty for a "dummy report" so that the Third Party could understand the type of information that Liberty required.
- 4.16. In November 2012, the Audit Committee met and agreed that Liberty would focus more attention on the operations at the Third Party, highlighting "the importance of eliminating any customer service issues that could result in reputational risk for Liberty." This included a proposal that Liberty's Internal Audit function should conduct a review of the Third Party as part of the 2013 auditing schedule "subject to discussion with" a related entity incorporated in the USA. In late 2012, the Compliance function attended the Third Party's offices and received an "end-to-end" description of the Third Party's complaints process.
- 4.17. In December 2012, Liberty noted that its existing TCF Policy would need to be revised to document some of the additional measures that ought to be in place to address the new risks arising from the relationship with the Third Party and the expansion of its customer base to include private individuals. Despite this, Liberty did not update the TCF policy with any such revisions until February 2014.

### **Liberty's oversight of the Third Party – 2013 to 2015**

- 4.18. In June 2013, the Authority published the Thematic Review. The Thematic Review identified concerns as to how market participants handled claims and complaints arising from MPI. Neither the Third Party nor Liberty participated in the Thematic Review, but each was aware of the findings.
- 4.19. Following the publication of the Thematic Review, Liberty increased its focus on the Third Party and wrote to the Third Party to request documentary evidence to better understand how the Third Party was adhering to the guidance set out in the Thematic Review. This included requesting copies of the Third Party's claims handling policies and procedure. In response, the Third Party provided initial feedback giving a summary of its processes. In October 2013 Liberty met with the Third Party to discuss the issues raised in the Thematic Review and requested management information for each of the Third Party's MPI programmes. This information was provided to Liberty in relation to one of the Third Party's MPI programmes in December 2013.
- 4.20. In or around November 2013, also in response to the publication of the Thematic Review, Liberty presented the Third Party with a draft proposal that Liberty create two full time compliance roles to oversee the Third Party. The Third Party suggested that such work would be duplicative of the Third Party's own work. Liberty did not proceed with the proposal to engage further compliance personnel. However, from November 2013, it did appoint a relationship manager in respect of the Third Party. In December 2013 Liberty introduced monthly meetings with the Third Party (attended by Liberty's newly appointed relationship manager, a delegated underwriting manager and a member of Liberty's Compliance function) where the parties discussed claims and complaints information, and from May 2014 this included monthly business reviews.
- 4.21. The Audit Committee also discussed the relationship with the Third Party in some detail in November 2013. During this meeting, although the Compliance function expressed that it had a "good impression of [the Third Party]" and that based on "what [they] had been advised of, and had seen" the Third Party was "professional and well run", it was agreed that "[Liberty] needed to spend more time understanding the business model of [the Third Party]" and was otherwise "entirely reliant" on information being provided by the Third Party at that stage to understand the Third Party's business and practices. The Audit Committee also noted that the publication of the Thematic Review would make it "easier for

[Liberty] to request information and ask the difficult questions needed to understand [the Third Party's] business fully", but that the "slim margins on the [the Third Party] business" meant that Liberty would have to put "a lot of effort into an arrangement where they don't make much money or any money back from it." These meeting minutes were presented to the Board on 5 February 2014.

- 4.22. Between November 2013 and January 2014, Liberty's Internal Audit function undertook a review of the Third Party's control framework to better understand the processes in place at the Third Party. This concluded that there was a "need to improve the compliance monitoring and internal control framework in relation to [the Third Party] business" and that there was "no formalised [Liberty] process or control documentation pertaining to the [Third Party] Programme business."
- 4.23. Liberty subsequently updated its TCF Policy in February 2014 highlighting that the expansion of Liberty's business meant that it had come into contact with less sophisticated insurance customers and identifying those customers as being "very vulnerable and whose needs have to be carefully considered to ensure they are treated fairly."
- 4.24. To better understand the processes in place at the Third Party, and following the Internal Audit function's review of Liberty's control framework in respect of the Third Party between November 2013 and January 2014, in April 2014 Liberty's Internal Audit function undertook a more in-depth review.
- 4.25. The Internal Audit function's conclusions from this review were set out in the June 2014 IA Report. This highlighted the following principal concerns:
- (1) The Third Party did not have a formalised and documented conduct risk framework, giving rise to a risk of control gaps which could result in consumer detriment. The June 2014 IA Report noted, however, that Liberty and the Third Party's management were working together to develop the conduct risk framework, including the internal procedures and management information, which it was thought would increase the visibility of customer treatment, ultimately leading to better outcomes.
  - (2) The lack of a formalised conduct risk framework meant that certain potential risks of adverse customer outcomes had not been prevented, detected or analysed. The report identified a number of themes requiring further analysis, including:

- (a) The requirement to install the Mobile Rescue App in order to make a claim for theft or loss. Feedback from the FOS indicated this was an onerous requirement. Where customers had complained about their claim being denied on the basis of this requirement, 90% of the sample considered by Internal Audit had the original decision overturned; and
  - (b) Internal Audit's consideration of a sample of complaints about claims being denied for late notification found that 90% had been upheld, suggesting that customers who complained were treated differently from those who did not.
- 4.26. The June 2014 IA Report highlighted that these areas required "significant improvement". Liberty's senior management acknowledged this to be the case. Subsequently, in February 2015, Liberty's Executive Committee noted that the identified "significant improvement" issues "would have probably been raised in earlier years if these areas were subject to audit".
- 4.27. Liberty's Internal Audit function had provided a draft of the June 2014 IA Report findings to the Third Party in April 2014, and the parties discussed the findings and recommendations extensively in the period to August 2014. Liberty expressed concerns regarding the requirement for customers to download the Mobile Rescue App in order to be eligible to make a successful claim, noting that 2,535 claims had been denied for this reason. Liberty asked that the Third Party reconsider the requirement for existing customers to use the Mobile Rescue App. Despite this request, Liberty did not subsequently insist that the requirement to download and install the Mobile Rescue App be removed or amended, and permitted it to continue to be used in the claims and complaints handling process.

#### **Response to the Authority's Follow-Up Review – March 2015 to June 2015**

- 4.28. In March 2015, the Authority undertook the Follow-Up Review, in which Liberty was required to participate. The purpose of the Follow-Up Review was to assess whether firms were responding to the findings of the Thematic Review. The findings of the Follow-Up Review were published in December 2015. The Follow-Up Review found that concerns identified during the Thematic Review in relation to claims and complaints handling remained.
- 4.29. The Third Party also participated in the Follow-Up Review and, before its publication, undertook its own review of the manner in which MPI claims and

complaints were being handled. Liberty did not, however, initially respond to the Authority's request for information, instead relying on the Third Party to submit a response on its behalf. As a result of its involvement in the Follow-Up Review and discussions with the Authority regarding the findings of the Follow-Up Review, the Third Party provided the Authority with an 'action plan' to remedy identified issues.

- 4.30. In April 2015, the Authority also undertook a visit of Liberty, to assess the governance arrangements in place relating to conduct risk and coverholder oversight. This visit identified that although the Board was supportive of the Authority's conduct risk agenda, its management of conduct risk in relation to the Third Party was weak.
- 4.31. Prior to the publication of the Follow-Up Review, and as a result of concerns raised during the April 2015 visit, in July 2015 the Authority required Liberty under section 166 of the Act to appoint a Skilled Person to carry out a review of the "adequacy and appropriateness of the current risk and control framework within Liberty relevant to Coverholders and Third Party Administrators (TPA)". In June 2015, once Liberty had received documentation provided to the Authority by the Third Party in connection with the Follow-Up Review, it conducted work to understand specific MPI claims and complaints processes. The Third Party also reviewed its processes as part of the Follow-Up Review. These reviews identified a number of concerns in the MPI claims and complaints handling processes.

### **Concerns identified by Liberty's reviews**

#### *Mobile Rescue App*

- 4.32. During the Relevant Period, ICOBS 8.1.2(3)R provided that it was unreasonable to reject a claim (except where there is evidence of fraud) if the rejection is for breach of a condition, unless the circumstances of the claim are connected to the breach and the condition is material to the risk and was drawn to the customer's attention before the conclusion of the contract.
- 4.33. Between June 2012 and February 2015 some of Liberty's MPI policies required customers to install the Mobile Rescue App on their phone. Failure to do so was given as a reason for declining claims for loss and theft. As noted above, the June 2014 IA Report first raised concerns about reliance on this term, highlighting that the FOS had identified this type of requirement as "onerous". In a memo dated 22 August 2014, senior management at Liberty noted that 38% of customers did

not download the Mobile Rescue App and it was not used in the claims management process. To avoid the perception that this requirement was actually a “barrier to claim and therefore unfair to customers”, the memo noted that Liberty would ask the Third Party to reconsider relying on the term.

- 4.34. In November 2014, the Third Party removed the term requiring installation of the Mobile Rescue App from policies providing cover to new customers of the MPI product. The term continued to apply to MPI customers who were covered by the policy before November 2014, but from February 2015 the Third Party ceased declining claims made by existing customers where the customer had failed to install the Mobile Rescue App.

*Approach to fraud detection*

- 4.35. Firms must not decline claims on the basis of fraud allegedly committed by a customer without adequate evidence to support this assessment and without conducting an appropriate investigation of the circumstances of the claim. ICOBS 8.1.1R requires insurers to handle claims promptly and fairly, and to not unreasonably reject a claim.
- 4.36. In May 2015, Liberty’s Risk and Compliance Department produced the 2015 RC Report, which set out findings of a review it had undertaken of the claims and complaints files that the Authority had considered in the Follow-Up Review. The 2015 RC Report set out Liberty’s concerns about the way in which the Third Party declined claims on grounds of suspected fraud. These concerns included failings in claims determination letters and final responses to complaints, which merely identified the exclusion relied on without explaining the context and specific reasons for refusal. Where fraud was relied on, it was particularly difficult for customers to understand the basis for the refusal and to respond to it. The 2015 RC Report also noted that a “key action” was to “Explain how the claims process distinguishes between fraudsters and genuine claimants who cannot remember their exact details usage prior to a claim”. Prior to this point, Liberty had not identified the risk that claims declined on the basis of fraud may have been declined unfairly.
- 4.37. Liberty sent the Third Party a copy of the 2015 RC Report shortly after preparing it. The Third Party conducted its own review and found that in a material number of cases claims were declined on the basis of fraud where there was insufficient evidence of fraud. In particular, whilst there may have been suspicious circumstances relating to some of the relevant claims, insufficient evidence had

been gathered and examined before a claims decision was reached. Customers whose claims had been declined on this basis were included in the redress exercise undertaken by the Third Party.

- 4.38. In these cases, customers were often informed that they had provided “inconsistent information” when submitting their claim, rather than given a clear explanation that the claim had been denied on the grounds of fraud. When raising its concerns in June 2015, Liberty noted the FOS’ public position that: “Where a firm suspects fraud, it should make its view known to the customer, who can then respond to the allegations. [The FOS is] unlikely to support a firm’s position if, instead, it uses a separate and spurious reason to justify rejecting a claim”. Firms must inform customers of the reason for their claim being denied, even where the claim is denied on the grounds that the claim has been assessed to be fraudulent.

*Unattended loss exclusion*

- 4.39. When declining a claim on the basis of any policy exclusion, a firm must satisfy itself that it is fair in all of the circumstances of the claim to do so. An insurer must handle claims promptly and fairly, and not unreasonably reject a claim.
- 4.40. In June 2015, Liberty raised a concern with the Third Party’s approach to the application of an exclusion which had the effect of invalidating a claim where a customer had been proven to have behaved “recklessly” or shown to have left their device unattended. The Third Party’s response confirmed that it was undertaking file reviews in respect of this exclusion, and was finding that “this has generally resulted in an unfair outcome for customers.” The exclusion had originally been designed so that customers who were deliberately reckless with their phone and had no regard for its safety were not covered. However, based on file reviews, the Third Party acknowledged that “this is not how we see it playing out in practice and we think it best to just remove it.” The Third Party also included customers that had claims declined due to the application of this policy exclusion in a redress exercise.

*Voice Analytics Software*

- 4.41. As part of its fraud prevention measures, between August 2012 and around May 2015, the Third Party used telephone voice analytics software to analyse the way in which the claimant responded to certain questions on claims that had been flagged as representing a higher risk of fraud. Between December 2014 and January 2015, as a result of noticing a high rate of decisions to decline claims

being overturned following complaint, the Third Party recognised that this software may have been causing unfair outcomes to customers and ultimately decided to cease using it in around May 2015.

- 4.42. It does not appear that Liberty had sufficient, if any, understanding of how the software operated or of how it was being used as part of the claims process until June 2014. In June 2015, Liberty sought, because it still did not have, a complete understanding as to how the software had been used.

*Claims overturns for late notification and failure to install the Mobile Rescue App*

- 4.43. In preparing the June 2014 IA Report, Liberty identified that there was a high proportion of claims denials that were overturned upon complaint. The June 2014 IA Report itself noted that, where those of the 4,168 customers who had claims denied on the grounds it had been notified late, or for failure to install the Mobile Rescue App complained, in 90% of the sampled cases, the decision was overturned. The June 2014 IA Report noted that there was a risk that customers who were persistent in their claims were treated more favourably than those who were not.

- 4.44. Following this, Liberty reviewed data relating to all overturn decisions (not just those relating to late notification of claim) for the period April to July 2014. This review found that 47% of complaints for late notification resulted in the claim being overturned (as opposed to 90% in the sample considered for the June 2014 IA Report). Of these overturns, 57% were said to be as a result of the customer "providing additional information". These findings revealed that:

- (1) A high proportion of denials for late notification were being overturned when a customer complained, indicating a risk that claims were not being handled appropriately;
- (2) A high proportion (57%) of the overturns decisions were attributed to "additional information" being provided with the complaint, indicating that there was a risk the initial claims handling process was failing to obtain adequate information prior to the decision to accept or deny a claim being made.

- 4.45. As the Third Party discovered in late 2014, at least at certain times during the Relevant Period, it appears that the Third Party in practice adopted the approach of always overturning claims denials based on failure to install the Mobile Rescue App if a customer complained.

- 4.46. Subsequently, the Third Party presented the Authority with a report dated 22 February 2017. This report analysed complaints seeking to overturn claims denials in the period January 2013 to December 2015. It showed that:
- (1) 665 complaints were made about denials based on late notification of the claim. Approximately 90% of these complaints were upheld.
  - (2) 962 complaints were made about denials based on failure to install the Mobile Rescue App. Approximately 75% of these complaints were upheld.
- 4.47. The Third Party's report stated that "For the complaints that were related to claims denied on the basis of the policy terms ... commercial decisions were taken to uphold their complaints by reversing the denials in respect of the [Mobile Rescue App] requirement and late reporting. These decisions were taken by [the Third Party] in order to increase customer and client satisfaction levels, despite considering that the policy terms were appropriate and the additional costs to [the Third Party] that it resulted in."
- 4.48. In substance, therefore, customers whose claims were denied for late notification or failure to install the Mobile Rescue App were subject to a "two-stage" claims process, where those who complained were far more likely – and in some cases, certain – to have their claim upheld.

#### *Complaints*

- 4.49. Although Liberty received management information relating to complaints raised from October 2010 (once the Third Party's business had been underway for several months), and the Board received and considered this periodically from February 2014, Liberty did not identify potential problems with the way that complaints were being handled until the work that led to the June 2014 IA Report. At that stage, as discussed above, Liberty's concern was that there may have been a "two-stage" claims process.
- 4.50. In the second half of 2015, the Skilled Person reviewed eight MPI complaints files to assess whether a fair customer outcome had been delivered and, irrespective of the outcome, whether the complaints handling process had complied with applicable complaints handling rules. This review found that, of the eight complaints files reviewed, six had resulted in an unfair customer outcome and in all of the eight files the proper complaints handling process had not been followed. In particular, for the majority of the complaints files reviewed, there was "no evidence on file of the customer's actual complaint."

## **Redress scheme**

- 4.51. In January 2016, the Third Party commenced a redress exercise intended to ensure any customers who may have suffered detriment received monies swiftly. The exercise was conducted in two phases. In the first phase, the Third Party paid redress to the customers whose claims were denied for demonstrably unfair reasons, including all customers that had claims denied for fraud other than where the customer's claim was demonstrably fraudulent or otherwise illegitimate. These customers were paid redress to the value of the mobile phone (minus the excess fee payable at the time) with 8% annual interest applied. Phase one was completed in June 2016.
- 4.52. Phase 2 of the redress exercised commenced in September 2016. This phase of the process involved the Third Party assessing claims made where the claim may have been declined unfairly. The Third Party opted to compensate those customers where the claim made by the customer may have been declined unfairly. These customers were also compensated to the value of the mobile phone device plus 8% interest regardless of whether in fact their claim had been denied unfairly.
- 4.53. Liberty's customers were not required to contact the Third Party to provide details of their claim as part of the redress exercise. Redress was paid to approximately 14,000 customers. The Third Party offered £3,963,540 in redress to customers, of which £3,087,655.28 has been accepted. The Third Party paid for the redress scheme and all the costs involved with its administration.

## **5. FAILINGS**

- 5.1. The regulatory provisions relevant to this Notice are referred to in Annex A.
- 5.2. Based on the facts and matters above, the Authority hereby finds that Liberty breached Principle 3 and Principle 6 and associated SYSC, ICOBS and DISP rules.

### **Breach of Principle 3**

- 5.3. Liberty breached Principle 3 and SYSC Rule 3.1.1 by failing to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- 5.4. During the Relevant Period, Liberty failed to effectively supervise and monitor the Third Party's activities, specifically in respect of claims and complaints handling, in relation to the provision of MPI. Liberty had limited experience in effecting

contracts of insurance of a retail nature, and no prior experience of underwriting MPI in the UK prior to 2010. The venture with the Third Party therefore posed risks to Liberty's MPI consumers. Liberty was required to put in place systems to enable it to undertake regular monitoring, to establish appropriate controls, with sufficient oversight from senior management, from the outset of the arrangement to ensure that claims and complaints made by MPI consumers were handled appropriately. The systems and controls in place at Liberty were inadequate to achieve this, and had they been adequate from the outset Liberty may have identified adverse consumer outcomes sooner.

5.5. In particular:

- (1) Prior to the arrangement being entered into, the Board recognised Liberty's lack of experience with MPI and some of the corresponding risks, yet failed to adequately risk assess the venture, to understand the Third Party's business and to ensure that measures were put in place from the outset that were adequate to ensure that the Third Party was handling claims and complaints fairly. The Board should have appreciated that it was delegating the task of overseeing its compliance to a function that lacked the resources and expertise to understand the nature of the risks and what would be needed to mitigate them.
- (2) Prompted by the publication of the Thematic Review, Liberty did start to take proactive steps to better understand the business model and the claims and complaints handling procedures in place at the Third Party, as described in paragraphs 4.19 – 4.27 above. Liberty did not, however, act sufficiently quickly to ensure that it received adequate information in a timely or comprehensive manner so that it was able to put in place effective controls to manage the risks associated with underwriting MPI.
- (3) Once Liberty had identified some claims and complaints handling concerns at the Third Party it did not take timely and adequate steps to ensure that its controls over the Third Party's activities were sufficiently robust to address these shortcomings, identify others, and prevent further risk of adverse customer outcomes.

**Breach of Principle 6**

- 5.6. Liberty breached Principle 6 by failing to pay due regard to the interests of its customers and treat them fairly. As explained at paragraph 2.9, in outsourcing its

MPI claims and complaints handling, Liberty retained responsibility for ensuring that the outsourced processes complied with the relevant regulatory obligations, including Principle 6.

5.7. As a result of Liberty's failure to ensure that its claims and complaints handling processes paid due regard to the interests of its customers and treated them fairly, certain of Liberty's customers:

- (1) were required to comply with an onerous condition to install an app which was unrelated to the circumstances of their claim (see paragraphs 4.32 to 4.34);
- (2) had their claims unfairly denied due to suspicion of fraud despite there being insufficient evidence (see paragraphs 4.35 to 4.38), and did not have their claims investigated adequately due to the overreliance on certain software (see paragraphs 4.41 and 4.42) in breach of ICOBS Rule 8.1.1; and received unclear communications that failed to explain adequately that the reason for refusing their claim was because of suspicion of fraud, in breach of ICOBS Rule 2.2.2 (see paragraph 4.38);
- (3) were subject to unfair barriers to make a claim, through the inappropriate use of a policy exclusion, in breach of ICOBS Rule 8.1.1 (see paragraph 4.39);
- (4) were much less likely to have a claim accepted and paid out where they failed to submit a complaint in response to the original claim determination, in breach of ICOBS Rule 8.1.1 (paragraphs 4.43 to 4.48); and
- (5) had complaints dismissed without a proper investigation having been undertaken (in breach of DISP Rule 1.4.1), and were otherwise put at risk of their complaints not being handled fairly due to inadequate processes being in place for ensuring that complaints were dealt with fairly, impartially and consistently, in breach of DISP Rule 1.3.1 (see paragraphs 4.49 to 4.50).

5.8. As a result of these shortcomings, Liberty failed to pay due regard to the interests of its MPI customers and failed to treat them fairly.

5.9. Having regard to the issues above, the Authority considers it is appropriate and proportionate in all the circumstances to take disciplinary action against Liberty for its breaches of the Principles during the Relevant Period.

## **6. SANCTION**

- 6.1. The Authority has considered the disciplinary and other options available to it and has concluded that a financial penalty is the appropriate sanction in the circumstances of this particular case.
- 6.2. The Authority's policy on the imposition of financial penalties is set out in Chapter 6 of DEPP. In determining the proposed financial penalty, the Authority has had regard to this guidance.
- 6.3. The Authority's policy came into force on 6 March 2010. Liberty's failings occurred after 6 March 2010 and, therefore, the Authority has determined the appropriate financial penalty under its current penalty policy.
- 6.4. DEPP 6.5A sets out a five step framework to determine the appropriate level of financial penalty. The Authority describe the application of this framework to these circumstances below.

### Step 1: disgorgement

- 6.5. 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.
- 6.6. It is not apparent that Liberty received any financial benefit directly from claims being denied to customers or for complaints being unfairly dismissed, and it is not practicable to quantify financial benefit received by Liberty directly from not having in place adequate controls and monitoring in respect of the Third Party. The Authority does not therefore consider that there is any sum to be disgorged from Liberty.

### Step 2: the seriousness of the breach

- 6.7. Pursuant to DEPP 6.5A.2G, at Step 2 the Authority will determine a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of the firm's revenue from the particular product or business line.
- 6.8. The Authority considers that in this case the UK MPI GWP, being the relevant revenue generated by the MPI business area, is indicative of the harm or potential

harm caused by the failings. The Authority therefore considers the relevant revenue for the Relevant Period to be £83,822,525.

- 6.9. In deciding the percentage of the relevant revenue that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage of that revenue between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the failings: the more serious the breach, the higher the level. For penalties imposed on firms there are the following five levels:

Level 1 – 0%

Level 2 – 5%

Level 3 – 10%

Level 4 – 15%

Level 5 – 20%

- 6.10. In assessing the seriousness level, the Authority takes into account various factors that reflect the impact and nature of the breach and considers whether the firm committed the breach deliberately or recklessly. DEPP 6.5A.2G(11) lists factors likely to be considered 'level 4 or 5 factors'. Of these, the investigation team consider that the following factors are particularly relevant to this case:

- (1) Liberty's breach caused a significant risk of loss to individual consumers. Although the loss to each consumer may not have been 'significant' in each case, the aggregate sums repaid to approximately 14,000 customers by way of redress was significant; and
- (2) The breaches revealed systemic weaknesses in Liberty's procedures or in the management systems or internal controls relating to its MPI business and arose from significant failings on the part of Liberty's senior management and those entrusted with overseeing the compliance of the MPI business who identified that there were risks associated with undertaking the MPI business but delegated compliance oversight to a function that lacked the resources and expertise to understand the nature of the risks and what would be needed to mitigate them. The Authority notes, however, that Liberty did take some steps to oversee the Third Party

throughout the Relevant Period, and in particular did take steps to improve its oversight following The Thematic Review.

6.11. DEPP 6.5A.2G(12) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the investigation team considers the following factors to be relevant:

- (1) Little or no profits were made or losses avoided as a result of the breach;
- (2) There is no evidence of any attempt by Liberty's senior management to conceal the misconduct;
- (3) The impact of the breach, resulting in consumers suffering losses, has been addressed promptly and thoroughly through the redress exercise undertaken;
- (4) The breach was committed inadvertently; and
- (5) There was no, or limited, actual or potential effect on the orderliness or confidence in markets as a result of the breach.

6.12. Taking all of these factors into account, the Authority considers the seriousness of the breaches to be level 3. Had Liberty not taken steps, including by seeking to improve its oversight following the Thematic Review, and had redress not been provided promptly to customers, the Authority would have considered the seriousness of the breaches to be greater. Taking UK MPI GWP of £83,822,525 as an appropriate figure of harm and applying 10% to this figure, the Step 2 figure is therefore £8,382,252.

#### Step 3: mitigating and aggravating factors

6.13. Pursuant to DEPP 6.5A.3G, at Step 3 the Authority may increase or decrease the amount of financial penalty arrived at after Step 2 but not including any amount to be disgorged as set out in Step 1 to take into account factors which aggravate or mitigate the breach.

6.14. The Authority has taken account of the various factors, including the previously published messages to the insurance industry in respect of MPI and the steps taken by Liberty since the commencement of the investigation to revise and strengthen controls in respect of conduct risk. The Authority has also taken account of the prompt and thorough redress exercise undertaken to compensate customers that may have suffered loss arising from the breach and, as a result, considers that the Step 2 figure should be reduced by 10%. Whilst the fact of the

redress exercise having been undertaken is to Liberty's credit, it would not be appropriate to allow a greater reduction to the financial penalty. A greater reduction would result in an inadequate incentive to prevent similar failings to those set out in this Notice.

- 6.15. The Step 3 figure is therefore £7,544,027.

Step 4: adjustment for deterrence

- 6.16. Pursuant to DEPP 6.5A.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

- 6.17. The Authority considers that the Step 3 figure of £7,544,027 does not require an adjustment for deterrence.

Step 5: settlement discount

- 6.18. Pursuant to DEPP 6.5A.5G, if the Authority and the firm on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the firm reached agreement.

- 6.19. The Authority and Liberty reached agreement at Stage 1 and so a 30% discount will be applied to the Step 4 figure.

- 6.20. The Step 5 figure will therefore be £5,280,800 (rounded down to the nearest £100).

**Penalty**

- 6.21. The Authority therefore imposes a total financial penalty of £5,280,800 (£7,544,000 before Stage 1 discount) on Liberty for breaching Principles 3 and 6.

**7. PROCEDURAL MATTERS**

- 7.1. This Notice is given under, and in accordance with, section 390 of the Act.

**Decision maker**

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

**Manner and time for payment**

- 7.3. The financial penalty must be paid in full by Liberty to the Authority no later than 12 November 2018.

**If the financial penalty is not paid**

- 7.4. If all or any of the financial penalty is outstanding on 13 November 2018, the Authority may recover the outstanding amount as a debt owed by Liberty and due to the Authority.

**Publicity**

- 7.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to Liberty or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
- 7.6. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

**Authority contacts**

- 7.7. For more information concerning this matter generally, contact Kevin Thorpe at the Authority (direct line: 020 7066 4450 /email: Kevin.Thorpe@fca.org.uk).

Anthony Monaghan  
Head of Department

## ANNEX A

### RELEVANT STATUTORY AND REGULATORY PROVISIONS

#### RELEVANT STATUTORY PROVISIONS

1.1. The Authority's operational objectives are set out in section 1B(3) of the Act and include the objectives of securing an appropriate degree of protection for consumers; protecting and enhancing the integrity of the UK financial system; and promoting effective competition in the interests of customers.

1.2. Section 206(1) of the Act provides:

*"If the [Authority] considers that an authorised person has contravened a relevant requirement imposed on the person, it may impose on him a penalty in respect of that contravention, of such amount as it considers appropriate."*

#### RELEVANT REGULATORY PROVISIONS<sup>a</sup>

##### *Principles for Businesses*

1.3. 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.

1.4. Principle 3 (management and control) provides:

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<sup>a</sup> All handbook provisions quoted are as they were in force during the Relevant Period

*"A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems."*

1.5. Principle 6 (Customers' interests) provides:

*"A firm must pay due regard to the interests of its customers and treat them fairly."*

ICOBS

1.6. ICOBS 2.2.2R states that:

*"When a firm communicates information, including a financial promotion, to a customer or other policyholder, it must take reasonable steps to communicate it in a way that is clear, fair and not misleading."*

1.7. ICOBS 8.1.1R states:

*"An insurer must:*

*(1) handle claims promptly and fairly;*

*(2) provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress;*

*(3) not unreasonably reject a claim (including by terminating or avoiding a policy); and*

*(4) settle claims promptly once settlement terms are agreed."*

1.8. ICOBS 8.1.2 R states:

*"For contracts entered into or variations agreed before 1 August 2017, a rejection of a consumer policyholder's claim is unreasonable, except where there is evidence of fraud, if it is:*

*(1) in relation to contracts entered into or variations agreed on or before 5 April 2013, for:*

*(a) non-disclosure of a fact material to the risk which the policyholder could not reasonably be expected to have disclosed; or*

*(b) non-negligent misrepresentation of a fact material to the risk; or*

*(2) in relation to contracts entered into or variations agreed on or after 6 April 2013, for misrepresentation by a customer and the misrepresentation is not a qualifying misrepresentation (see ICOBS 8.1.3R); or*

*(3) for breach of warranty or condition unless the circumstances of the claim are connected to the breach and unless (for a pure protection contract):*

*(a) under a 'life of another' contract, the warranty relates to a statement of fact concerning the life to be assured and, if the statement had been made by the life to be assured under an 'own life' contract, the insurer could have rejected the claim under this rule; or*

*(b) the warranty is material to the risk and was drawn to the customer's attention before the conclusion of the contract.*

## *DISP*

1.9. DISP 1.3.1R states:

*"Effective and transparent procedures for the reasonable and handling of complaints must be established, implemented and maintained by:*

*(1) a respondent; and*

*(2) a branch of a UK firm in another EEA State."*

1.10. DISP 1.3.2G states:

*"These procedures should:*

*(1) allow complaints to be made by any reasonable means; and*

*(2) recognise complaints as requiring resolution."*

1.11. DISP 1.3.6G states:

*"Where a firm identifies (from its complaints or otherwise) recurring or systemic problems in its provision of, or failure to provide, a financial service, it should (in accordance with Principle 6 (Customers' interests) and to the extent that it applies) consider whether it ought to act with regard to the position of customers who may have suffered detriment from, or been potentially disadvantaged by, such problems but who have not complained and, if so, take appropriate and proportionate measures to ensure that those customers are given appropriate redress or a proper opportunity to obtain it. In particular, the firm should:*

*(1) ascertain the scope and severity of the consumer detriment that might have arisen; and*

*(2) consider whether it is fair and reasonable for the firm to undertake proactively a redress or remediation exercise, which may include contacting customers who have not complained "*

1.12. DISP 1.4.1R states:

*"Once a complaint has been received by a respondent, it must:*

*(1) investigate the complaint competently, diligently and impartially, obtaining additional information as necessary;*

*(2) assess fairly, consistently and promptly:*

*(a) the subject matter of the complaint;*

*(b) whether the complaint should be upheld;*

*(c) what remedial action or redress (or both) may be appropriate;*

*(d) if appropriate, whether it has reasonable grounds to be satisfied that another respondent may be solely or jointly responsible for the matter alleged in the complaint; taking into account all relevant factors;*

*(3) offer redress or remedial action when it decides this is appropriate;*

*(4) explain to the complainant promptly and, in a way that is fair, clear and not misleading, its assessment of the complaint, its decision on it, and any offer of remedial action or redress; and*

*(5) comply promptly with any offer of remedial action or redress accepted by the complainant."*

DISP 1.4.2.G states:

*Factors that may be relevant in the assessment of a complaint under DISP 1.4.1R (2) include the following:*

*(1) all the evidence available and the particular circumstances of the complaint;*

*(2) similarities with other complaints received by the respondent;*

*(3) relevant guidance published by the FCA , other relevant regulators, the Financial Ombudsman Service or former schemes; and*

*(4) appropriate analysis of decisions by the Financial Ombudsman Service concerning similar complaints received by the respondent (procedures for which are described in DISP 1.3.2A G).*

SYSC

1.13. SYSC 3.1.1R states:

*"A firm must take reasonable care to establish and maintain such systems and controls as are appropriate to its business."*

1.14. SYSC 3.1.2G states:

*"(1) The nature and extent of the systems and controls which a firm will need to maintain under SYSC 3.1.1 R will depend upon a variety of factors including:*

*(a) the nature, scale and complexity of its business;*

*(b) the diversity of its operations, including geographical diversity;*

*(c) the volume and size of its transactions; and*

*(d) the degree of risk associated with each area of its operation.*

*(2) To enable it to comply with its obligation to maintain appropriate systems and controls, a firm should carry out a regular review of them.*

*(3) The areas typically covered by the systems and controls referred to in SYSC 3.1.1 R are those identified in SYSC 3.2. Detailed requirements regarding systems and controls relevant to particular business areas or particular types of firm are covered elsewhere in the Handbook."*

#### *DEPP*

1.15. Chapter 6 of DEPP, which forms part of the Authority's Handbook, sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.

#### *The Enforcement Guide*

1.16. The Enforcement Guide sets out the Authority's approach to exercising its main enforcement powers under the Act.

1.17. Chapter 7 of the Enforcement Guide sets out the Authority's approach to exercising its power to impose a financial a penalty.