



Neutral Citation: [2022] UKFTT 00131 (TC)

Case Number: TC08462

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By video

Appeal reference: TC/2019/05884

VAT – whether insurance intermediary made supplies of goods to insureds for consideration – if no consideration whether deemed supply of goods forming part of business assets

Heard on: 6 – 9 December 2021

Judgment date: 12 April 2022

Before

TRIBUNAL JUDGE GREG SINFIELD

Between

WTGIL LIMITED

Appellant

and

THE COMMISSIONERS FOR HER MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Hui Ling McCarthy QC and Benjamin Parker, counsel, instructed by RSM UK Tax and Accounting Limited

For the Respondents: Andrew Macnab, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. Until November 2020, the Appellant, WTGIL Limited, was called Ingenie Limited and, as that was its name at the time of the events to which this appeal relates and the name used by the parties at the hearing, I shall refer to it as ‘Ingenie’ in this decision. Ingenie is the representative member of the Ingenie VAT group. The only other member of the Ingenie VAT group is WTGISL Limited, formerly called Ingenie Services Limited, which I shall refer to as ‘ISL’.

2. This appeal concerns the VAT treatment of certain supplies made by ISL which are deemed to be made by Ingenie for the purposes of VAT by section 43(1) of the Value Added Tax Act 1994 (‘VATA94’). There is no issue regarding the effect of the grouping provisions. In this decision, I refer to supplies made by ISL notwithstanding the deeming effect of section 43(1).

BACKGROUND TO APPEAL

3. ISL is an insurance intermediary which developed, marketed and sold telematics car insurance (also known as black box insurance) aimed primarily at 17 to 25 year olds. Ingenie and ISL are not insurers and the policies were underwritten by insurers from a panel appointed by ISL. As a condition of the insurance, a telematics device (the ‘Device’) must be fitted to the policyholder’s car within ten days of the commencement of the policy. ISL agrees to provide the Device and fit it or arrange for it to be fitted. The Device captures and transmits information about the way the car is being driven, eg acceleration and deceleration/braking, cornering, speed, distance travelled, date and time of travel and location. ISL then collects and analyses the telematics data from the Device and provides an analysis of the policyholder’s driving proficiency to the policyholder and to the insurer. The purpose of providing such data is to enable the policyholder to improve their driving and thus obtain cheaper car insurance. The data provided by ISL to the insurer allows it to monitor the policyholder’s driving behaviour and to increase or decrease the premium accordingly.

4. On 30 August 2018, Ingenie made a claim by way of Error Correction Notice for a refund of £2,084,149 input tax incurred in relation to the provision and fitting of Devices in the VAT periods 07/14 to 07/18. The claim was based on the view that the provision and fitting of Devices were taxable supplies made by ISL to the policyholders, whether or not for consideration, and the input tax was attributable to such supplies.

5. In an undated letter sent on 25 July 2019, the Respondents (‘HMRC’) rejected the claim. HMRC decided that there was no contract under which ISL supplied the Device to the policyholders for consideration. HMRC took the view that the only consideration for ISL’s supplies of providing and fitting the Device and any subsequent data analysis was the commission paid to ISL by the insurer which was consideration for an exempt supply of insurance intermediary services. Accordingly, any input tax relating to the Device was directly linked to an exempt supply by ISL and not deductible. HMRC also considered that charges in relation to the fitting of a new Device when the policyholders changed their car were either additional premium charged by the insurer or consideration for an exempt supply by ISL.

GROUND OF APPEAL AND PARTIES’ POSITIONS IN OUTLINE

6. On 23 August 2019, Ingenie appealed to the Tribunal. In its grounds of appeal, as subsequently amended, Ingenie contended that the VAT incurred on the cost of purchasing and fitting the Devices was recoverable in full because it was directly attributable to taxable supplies made by ISL. Those taxable supplies were:

(1) the first provision and fitting of a Device on commencement of a policy in return for either:

(a) non-monetary consideration provided by the policyholder by entering into the contract of insurance with the insurer; or alternatively,

(b) monetary consideration being £150 commission payable to ISL on the first provision and fitting of the Device ('the Device Amount'); and

(2) any subsequent provision and fitting of a Device, eg when the policyholder changes their car, in return for the amount charged, according to a sliding scale, to the policyholder under the insurance contract as a contribution to the cost of providing and fitting the new Device; or

(3) if there is no consideration for the provision and fitting of the Device, a deemed supply of goods under paragraph 5(1) of Schedule 4 to the VATA 1994 when the Device is transferred or disposed of so as no longer to form part of the assets of ISL, which supply also includes ancillary fitting services.

7. At the hearing, Ms Hui Ling McCarthy QC, who appeared with Mr Benjamin Parker for Ingenie, said that Ingenie's primary case was that there was a legal relationship between ISL and the policyholder under which ISL supplied and fitted the Devices then used them to collect data which ISL provided to the policyholder and the insurer in return for non-monetary consideration provided by the policyholder, namely entering into the contract of insurance with the insurer.

8. Mr Andrew Macnab, who appeared for HMRC, submitted that ISL made a single, indivisible supply of insurance intermediary services to the insurer in return for the commission or to the policyholder or to both.

9. I was not asked to determine the amount that would be repayable if Ingenie is successful in its appeal because the parties agreed that the issue of quantum could be deferred but I was asked to determine the basis on which output tax should be calculated. If ISL made taxable supplies, Ms McCarthy submitted that if the supplies were made for non-monetary consideration provided by the policyholder entering into the contract of insurance with the insurer:

(1) no additional output tax was payable in order to prevent double taxation (applying *Thorn Plc v HMCE* (VAT Decision 15284) ('*Thorn*')); or alternatively,

(2) additional output tax is calculated on the cost to Ingenie of supplying the Device (applying Case C-33/93 *Empire Stores v CCE* [1994] STC 623 ('*Empire Stores*')); or

10. If, however, the supplies were not made for non-monetary consideration, Ms McCarthy submitted that the value of those supplies would be the Device Amount or other amounts payable under the insurance contract for the provision and fitting of a Device.

11. It follows from the above that the issues that I must determine in this appeal are as follows:

(1) Did ISL make supplies of the Device and related services to the policyholders for consideration?

(2) If ISL did not make supplies to the policyholders for consideration, did ISL make a deemed supply of the Device?

(3) If ISL made a taxable supply to the policyholder for consideration, how should the VAT chargeable on the supply be calculated?

- (4) If ISL made a deemed taxable supply of goods, how should the VAT chargeable on the deemed supply be calculated?

LEGISLATION IN SUMMARY

12. It was common ground that the Principal VAT Directive ('PVD') applied throughout the relevant period and that the relevant provisions of the PVD were transposed into domestic law by the VATA94. It was also common ground that the VATA94 must be construed conformably with the PVD. The relevant provisions of the PVD and VATA94 are set out in Annex 1 to this decision.

13. In summary, the articles of the PVD material to this appeal provide as follows.

- (1) Supplies of goods and services for consideration by taxable persons are subject to VAT (article 2(1) PVD). A transaction other than for consideration cannot be a supply for VAT purposes unless a provision deems it to be a supply.
- (2) A supply of goods means the transfer of the right to dispose of tangible property as owner (article 14(1) PVD). In addition, the handing over of goods pursuant to a contract for the hire of goods for a certain period or for the sale of goods on deferred terms which provides that, in the normal course of events, ownership will pass at the latest on payment of the final instalment is regarded as a supply of goods (article 14(2)(b) PVD).
- (3) Where a taxable person disposes of goods which are part of the assets of the business free of charge, that is treated as a supply of goods for consideration but only if the VAT incurred in relation to the goods was wholly or partly deductible (article 16 PVD).
- (4) Any transaction that is not a supply of goods is a supply of services (article 24(1) PVD).
- (5) The value of a supply of goods and services for consideration is everything obtained or to be obtained by the supplier from the customer or a third party in return for the supply (article 73 PVD).
- (6) The value of a deemed supply of goods is the purchase price of the goods (or of similar goods or, in the absence of a purchase price, the cost price) determined at the time when the deemed supply takes place (article 74 PVD).
- (7) To the extent that goods and services are attributable to taxed transactions, VAT incurred by a taxable person on the goods and services may be deducted from the VAT which the taxable person is liable to pay (article 168 PVD).
- (8) Insurance transactions, including related services performed by insurance brokers and insurance agents, are exempt from VAT (article 135(1)(a) PVD) and VAT incurred on goods and services attributable to such transactions is not deductible.

EVIDENCE

14. Ingenie bears the burden of proving, on the balance of probabilities, any factual matters relied on to support its case. The only witness in this appeal was Luke Proctor-Wilton who gave evidence for Ingenie. He was employed by Ingenie during part of the time covered by the claim and subsequently became a Trading Director at the company. His witness statement stood as his evidence in chief but he expanded on some points in his statement and gave further evidence in response to questions from Ms McCarthy in chief and Mr Macnab in cross-examination. I found Mr Proctor- Wilton to be a credible witness and I accept his evidence of fact in relation to the issues in this appeal. HMRC did not produce any witness evidence.

15. I was also provided with an electronic bundle of documents, most of which were exhibited by Mr Proctor-Wilton, for the hearing and a supplementary bundle.

16. On the basis of Mr Proctor-Wilton's testimony and the documents produced in the case, I find the material facts relevant to this appeal to be as set out below.

FINDINGS OF FACT

17. Ingenie and ISL were incorporated in 2010 to provide different elements of what Mr Proctor-Wilton called "a telematics offering". Ingenie developed the technology including the software, algorithms and analytical processes, required for the telematics offering. ISL is the customer-facing entity.

18. The telematics offering is aimed particularly at new and inexperienced drivers aged 17 to 25 years. The purpose of the telematics offering is to enable young and/or new drivers ('policyholders') to obtain more affordable car insurance. The Devices are installed in the policyholders' cars and transmit data about their driving to ISL. ISL analyses the data and reports to the insurers who are able to assess risk more accurately both during the term of the policy and for renewal. If the Device shows that the policyholders drive responsibly then their premiums may be reduced. In addition, the Device enables the car to be tracked if it is stolen.

19. ISL is authorised by the Financial Conduct Authority ('FCA') to provide insurance brokerage services. ISL entered into contracts ('Broker Agreements') with certain insurers under which ISL agreed to arrange and administer insurance policies which required the use of the Device by the policyholder. Under the Broker Agreements, ISL provided data on the policyholders' driving collected from their Devices to the insurers. For the purposes of this appeal, it was agreed that any variations in the wording of the Broker Agreements between ISL and the different insurers did not have any impact on the VAT analysis. At the hearing, the parties referred to an agreement between Covea Insurance plc ('Covea') and ISL dated 27 November 2013 ('the Covea Business Agreement') and agreed that I did not need to look at any other contracts. The material provisions of the Covea Business Agreement are set out in Annex 2 to this Decision and discussed below.

20. I was provided with three Policy Booklets which were provided to the policyholders but HMRC did not contend that the minor differences in wording between the different versions were material to the VAT analysis. The relevant provisions of the policy booklet in use from November 2015 to November 2017 ('2015 Policy Booklet') are set out in Annex 2 to this decision.

21. ISL sub-contracted the performance of its services to Ageas Retail Limited ('ARL'). I was provided with an agreement from 2014 between UKAIS Limited and ISL ('Third Party Administrator Agreement') under which UKAIS Limited agreed to arrange and administer the insurance, including premium collection, adjustments to the premium, cancellations and policy renewals. UKAIS later changed its name to ARL. The relevant parts of the Third Party Administrator Agreement are discussed below and set out in Annex 2 to this Decision.

22. ISL sold policies to young drivers looking for car insurance through its own website, which was hosted by ARL, and also through aggregator websites such as GoCompare and MoneySuperMarket. The aggregator websites redirected potential customers to the ISL website which contained information about the Ingenie telematics insurance policy and the Device.

23. The ISL website contained lots of information about the about the benefits of having a Device and how it works. The website also stated that there was no additional cost for a Device as it was included in the amount paid for the insurance. I was shown a customer survey which

showed that almost half regarded cheaper insurance as a reason for considering a telematics insurance policy.

24. Once a driver had decided that they wanted to enter into a telematics insurance policy, they went through what Mr Procter-Wilton called the “customer journey” on the Ingenie website which was hosted by ARL. At the start of the customer journey, the driver who was looking for insurance provided personal and other information about themselves and their vehicle and how they would use it, as well as details of the insurance cover required. Once all the information had been completed, the driver pressed “get quote”. The details provided by the driver were submitted to the different insurers on the ISL panel who responded with the premium they would charge for the insurance cover for that driver. Mr Procter-Wilton said that the process took less than a second. The customer was shown the cheapest premium. The website stated that if the policyholder drove well they could earn discounts on their premium at the reviews which occurred three times a year. At this point in the customer journey, the customer could choose to add optional items such as windscreen cover and breakdown assistance. At the end of the customer journey, the driver was shown how much they had to pay in total if they paid the premium in full or by instalments.

25. The penultimate page of the customer journey contained a payment and policy summary with links to the policy wording and to a Terms of Business Agreement (‘TOBA’), both of which are discussed below, and an Insurance Product Information Document (‘IPID’) which is required by the FCA and is available before purchase of the policy. The IPID showed ISL as the company and “ingenie Comprehensive Car Insurance Policy” as the product.

26. On the final page of the customer journey, the customer was required to tick a box stating that they had read and agreed to their policy summary at which point they could continue to the page where they entered their payment details.

27. Not all policies were sold through the website. Drivers looking for insurance could also contact the call centre operated by ARL. Mr Procter-Wilton’s evidence was that the process of going through the customer journey was exactly the same by phone save in one respect. When offered a policy from a particular insurer over the phone, the customer could select another insurer whereas there was no option to choose another insurer on the website.

28. ARL collected the premium. Once the premium had been collected, ISL became entitled to the commission specified in the relevant broker agreement. The Covea Business Agreement provided that Covea would pay ISL commission for each policy calculated as 10% of the premium, excluding insurance premium tax, plus £150 for the Device fitted to the policyholder’s car. Where the policyholder already had a working Device fitted by ISL, eg on renewal of a policy, no additional amount was payable by the insurer and the commission was simply 10% of the premium net of insurance premium tax. The commission would be adjusted in line with adjustments to the premium during the term of the policy. Having collected the premium and calculated the commission, ARL paid the net amount of the premium to the insurer and paid the commission to ISL less an amount retained by ARL as payment for its services to ISL. Notwithstanding that the premium consisted of three elements, I did not understand there to be any dispute that the policyholders saw the policy as a single transaction with a single premium.

29. Once the driver had entered into the policy, ISL would send a welcome letter and other documents to the policyholder. The welcome letter was headed “Welcome to Ingenie”. The letter specified the start date of the policy and stated that the Device must be fitted to the policyholder’s car within 10 days of that date. The letter explained what the policyholder had to do to arrange the fitting of the Device. The letter also provided details about a portal on the

ISL website and a mobile phone application, which was downloaded by 98% of policyholders, to allow the policyholder to obtain information about their driving on their mobiles phones.

30. ISL obtained the Devices from a third party supplier and the fitting of the Devices was undertaken by another third party supplier. ISL subcontracted the collection and analysis of data from the Device to Ingenie. ISL sent the policyholders messages about the standard of their driving every 10 days. If a policyholder's driving did not meet the required standard then ISL could and sometimes did adjust the premium immediately following quarterly recalculations or, if the driving was unacceptable, arrange for the policy to be terminated.

31. With the welcome letter, ISL also sent the policyholder the "Ingenie Car Insurance Policy Wording", which Mr Procter-Wilton referred to as the "Policy Booklet", a copy of the Statement of Insurance between the insurer and the policyholder and the TOBA between ARL and/or ISL and the policyholder. The material parts of a TOBA from 2016 ('TOBA 2016') relating to a policy underwritten by Covea are also set out in Annex 2 to this decision.

32. I was shown different versions of the Ingenie Car Insurance Policy Wording document from 2013, 2015 and 2017. Although there were variations in wording, it was agreed that none of them were material to the issues in this appeal. In each case, the first section of the Policy Booklet is the contract between ISL and the policyholder and the second section is the contract between the insurer and the policyholder. The relevant sections of the 2015 version of the Ingenie Car Insurance Policy Wording ('2015 Policy Booklet') are set out in Annex 2 to this decision.

33. The TOBA 2016 provided that, in certain defined circumstances, ARL and/or ISL may charge fees to the policyholder in relation to the Device or a replacement Device. Some of the fees were payable only if the policyholder changed their car and required a new Device to be fitted. Mr Procter-Wilton said that the fee payable for the fitting of the Device (£166 in the TOBA 2016) in the event of cancellation during the first period (but excluding cancellation during the 14 day cooling off period) was not charged in practice. He said that the provision was intended to ensure that any policyholder who cancelled their policy during their first period of insurance would not be entitled to a refund relating to the Device. In other words, a policyholder who cancelled their policy in the first year would only be entitled to receive a refund of a proportion of the net premium paid to the insurer and ISL's commission excluding that part of the commission (£166 at the time) which related to the Device.

34. When it was put to him, Mr Procter-Wilton agreed that, having sold a telematics insurance policy to the customer, ISL was responsible for every aspect of the essential features of that insurance policy (even though it subcontracted some of its obligations to ARL). Mr Procter-Wilton's evidence was that the telematics policies were labelled with the Ingenie brand, even though neither Ingenie nor ISL were parties to the insurance contract between the insurer and the policyholder, to protect Ingenie's intellectual property and maintain consistency in the presentation of the ISL website, the customer journey and the insurance policy to the customer. He accepted that the provision of the Device, its fitting, the collection and analysis of data and the review and recalculation of premiums were all essential elements of the Ingenie insurance policy and were all matters for which ISL was responsible.

CONTRACTUAL FRAMEWORK

35. The relevant contractual documents have been identified above. I now consider the contractual provisions in more detail before considering the parties' submissions on the VAT consequences of those provisions and applying that analysis in determining the issues in this appeal. I first look at the Covea Business Agreement and the Third Party Administrator Agreement as these were entered into and are the background to the agreements to which the policyholder is a party. I then consider the 2015 Policy Booklet and the TOBA 2016.

Covea Business Agreement

36. Covea appointed ISL as its agent (intermediary) on a non-exclusive basis and ISL agreed to carry out certain functions in relation to 'Products', ie insurance policies, on behalf of Covea namely:

- (1) entering into, and effecting renewals of, Products;
- (2) carrying out mid-term adjustments to Products;
- (3) calculating and carrying out quarterly adjustments to the Premium payable for Products, such adjustments being made as a result of the driving performance of the policyholders in question;
- (4) effecting cancellations of Products in accordance with their terms (and/or as agreed in writing between the parties from time to time); and
- (5) collecting Premiums and, when due, refund Premiums to Policyholders.

37. The Covea Business Agreement defined "Premium" as "the total amount payable by an Insured for a Policy, including Insurance Premium Tax".

38. As part of its obligations to Covea under the Covea Business Agreement, ISL agreed to install or procure the installation of a Device in the vehicle of each new policyholder. ISL further agreed to activate the Device and receive data from it which ISL analysed to provide information about the policyholder's driving to Covea. Clause 4.4.3 of the Covea Business Agreement provided that ISL would meet the costs of replacing any defective Device and re-installing a Device that did not work properly due to incorrect installation. Clause 4.4.9 also stated that the costs of removing a Device from a car, whether at the request of the policyholder or Covea, would be met by the policyholder.

39. Clause 4.5 of the Covea Business Agreement stated:

"Except as otherwise stated in clause 4.4 and without prejudice to its entitlement to Commission, the Intermediary shall not be entitled to any fee, charge or other form of remuneration in return for performing any of its obligations under clause 4.4."

40. The Covea Business Agreement defines "Commission" as

"the amount payable to the Intermediary in relation to the sale of a Policy calculated in accordance with rates notified to the Intermediary from time to time or, where agreed in writing by Covea Insurance in relation to a specific Product, calculated by the Intermediary".

41. In clause 9 of the Covea Business Agreement, Covea agreed to pay ISL Commission for each insurance policy sold or renewed calculated as follows:

- (1) £150 for each insurance policy sold to a policyholder who did not have a working Device already fitted by ISL; and
- (2) 10% of the premium payable for the policy excluding Insurance Premium Tax and, if payable, the £150 element of the commission described above but including any mid-term and quarterly adjustments of the premium.

In the event of cancellation of the policy, refund of premium or failure by the policyholder to make instalment payments, ISL was obliged to refund any related Commission but, as we shall see, can retain an amount in relation to the Device.

42. Under clause 8.11 of the Covea Business Agreement, ISL was required to pay Covea all Premiums payable in respect of insurance policies sold or renewed in a calendar month less

any Commission due to ISL in respect of those policies. Commission payable under the Covea Business Agreement was inclusive of any VAT that may have been payable.

Third Party Administrator Agreement

43. ISL sub-contracted the arrangement and administration of the telematics car insurance policies, including its obligations as an intermediary under the Covid Business Agreement, to ARL in the Third Party Administrator Agreement.

44. The Third Party Administrator Agreement stated that ISL owns the “Product” which is defined as the “telematics motor insurance product, aimed at 17 to 25 year olds and underwritten by Insurers from the Panel.” In the Agreement, ISL appointed ARL to provide an advised sales service to the Customers and authorises it to commit the insurers to policies with the policyholders to the extent specified in and in accordance with their Underwriting Manuals and guidelines.

45. ISL also appointed ARL as its agent for the collection of premiums, insurance premium tax and any other amounts from the policyholders. From the amounts collected on behalf of ISL, ARL paid:

- (1) the commission to ISL (ie 10% of the premium plus the £150 for the Device, if payable less an amount retained by ARL as consideration for its services, to ISL); and
- (2) the net premium to the insurer.

46. The services to be provided by ISL are set out in Schedule 3 to the Third Party Administrator Agreement. Those services include “managing the [Device] fitting process” as well as “providing Telematics Data to [ARL]” but the Agreement makes no mention of providing Devices to the policyholders.

2015 Policy Booklet

47. The 2015 Policy Booklet is in two parts. The first section of the 2015 Policy Booklet is stated to be a contract between the policyholder and ISL. ISL is called ‘ingenie’ in the policy but I shall refer to it as ISL except where quoting directly from the Policy Booklet.

48. The Policy Booklet describes ISL as a specialist car insurance brand for younger drivers, ie those aged 17 to 25, and explains that ISL can help the policyholder to be a better driver and influence the cost of their car insurance. The Policy Booklet states that ISL will arrange for a Device to be fitted to the policyholder’s car. After describing the Device and the telematics data that it collects, the Policy Booklet sets out how ISL will use the data as follows:

“ingenie will pass the telematics data from your ingenie device to your Insurer to help them to manage your insurance, including using the data in the assessment of liability of any claims or to identify the location of the car following a theft claim. The telematics data will be used by your Insurer to evaluate whether your premium should change.

ingenie will pass the telematics data to your insurer to allow them to help prevent fraud (including sharing your information with operators of registers used by the insurance industry to check information).

ingenie may from time to time use a different insurer to quote or to provide you with insurance and will provide the telematics data to that different insurer.

ingenie may use your personal information to give you information about other products and services offered by ingenie. If you do not want ingenie to use your information for marketing purposes, please email, write or telephone

ingenie using the details shown on any of ingenie’s letters or on our website, www.ingenie.com.”

49. The Policy Booklet explains that, after it is installed in the policyholder’s car, the Device remains the property of ISL and only becomes the property of the policyholder after their insurance has lapsed or been cancelled.

50. The first section of the Policy Booklet ends with the following words:

“This is the end of the ingenie section of this policy. The following pages contain the details of the insurance cover provided by your insurer.”

51. The second section of the 2015 Policy Booklet is headed “Contract of Insurance” and the introduction states “This policy is a contract between **you** and **us**.” Mr Parker submitted that the second section of the 2015 Policy Booklet contains the contract of insurance between the insurer and the policyholder and that ISL was not a party to that contract. Having stated that the policy is a contract between the insurer and the policyholder, 2015 Policy Booklet then states:

“In return for **you** paying or agreeing to pay the premium, **we** will provide cover under the terms, exclusions, conditions and **endorsements** of this contract of insurance, during the **period of insurance** and within the **geographical limits**.”

52. The terms in bold are defined in the insurance contract although the definitions also apply to words in bold in the contract between ISL and the policyholder. In the Policy Booklet, “you” means the policyholder and “We/Us/Our/Insurer” means:

“The insurance Company as specified in the statement of insurance, the schedule and the certificate of motor insurance on whose behalf this document is issued. We/us/our can also mean ingenie where there is reference to the ingenie device, Telematics Data, Cancelling your policy, Sharing Information and Complaint Notification.”

53. After some warnings about the consequences providing false or inaccurate information, the Policy Booklet states:

“This is your insurance policy. It is a contract of insurance between you and us.”

54. That is followed by the definitions of the words and phrases printed in bold in the policy. There is then a section concerning the policyholder’s obligations under the policy to tell the insurer about any changes to the information set out in the statement of Insurance, Certificate of Insurance or on the schedule to the insurance policy.

55. The next section in the insurance policy concerns the Device. It includes the following:

“Cost of the **device** and its fitting

You will not be charged for **your** first **ingenie device** or its fitting provided **you** do not cancel **your** policy during the **period of insurance**.

If **you** cancel **your** policy within the first **12 months of this policy**, and the **ingenie device** is fitted, **you** will need to pay £165 to contribute towards the cost of the **device** and its fitting. **We** reserve the right to deduct this £165 from any premium refund due.

If **you** change **your** car **we** will not remove the **ingenie device** from **your** previous car, but **you** will need a new **ingenie device**.

If **you** change **your** car within the **period of insurance** you will be charged £75 to contribute to the cost of a new **device** and its fitting (£100 if you change **your car** a second time and £150 for any subsequent change of car).

You will not be charged for a new **ingenie device** or its fitting if **the car** is deemed a total loss after a claim or if the **device** is damaged in an incident involving a claim under **your** policy. **You** are not liable for the cost of transmitting data to and from the **ingenie device.**”

56. The contract of insurance also provides that ISL will own the device until the insurance has lapsed or been cancelled, after which point the policyholder will own the Device. If the policyholder cancels the policy within the 14 day cooling off period and the Device has been fitted or at any time within the first 12 months of insurance, the policyholder is required to pay £165 to contribute towards the cost of the Device and its fitting. The insurance policy states “We reserve the right to deduct this £165 from any premium refund due.”. Mr Proctor-Wilton said (see [33] above) that the provision was intended to ensure that any policyholder who cancelled their policy during their first period of insurance would not be entitled to a refund relating to the Device. The policy provides that if the policy is cancelled or lapses, the Device remains in the car but ISL stops collecting telematics data as soon as possible and the Device does not transmit any further telematics data thereafter.

57. The final part of this section concerns the collection and use of telematics data transmitted to and from the Device. The Policy Booklet then sets out some charges relating to the Device in certain circumstances:

“ ...

Fitting charges relating to ingenie device and document inspection		
1	Cost of fitting your ingenie device for the first time	£0
2	If you miss an arranged ingenie device fitting, repair or replacement appointment without giving us at least 24 hours’ notice	£45
3	Removal of ingenie device at your request	£80
4	First change of car (fitting new ingenie device in this replacement car)	£75
5	Second change of car (fitting new ingenie device in this second replacement car)	£100
6	Subsequent change of car (fitting new ingenie device in this subsequent replacement car)	£150
7	Fee to cover the ingenie device fitting if the policy is cancelled within the first period of insurance	£165
8	Replacing a faulty ingenie device	£0
9	If the car is modified, converted, customised or in an unfit state to install an ingenie device and we decide not to fit one	£45
10	If you damage or tamper with the ingenie device , we reserve the right to cancel your policy and/or charge you .	£150

We may debit these additional payments from the debit or credit card details **you** provided when **you** bought this policy.

If **we** do not have **your** credit or debit card details then **you** may be invoiced for any additional charges and payment should be made within 14 days. Failure to pay these additional fees when requested may result in **your** policy being cancelled.”

TOBA 2016

58. The TOBA 2016 states that, in seeking insurance through ISL, the policyholder agrees to the TOBA 2016 and to ARL and/or ISL acting as the policyholder’s agent for the purposes of arranging insurance or making changes to any policy of insurance. However, the TOBA 2016 also states that ARL and/or ISL act as agent for the insurer for the collection of premiums. Accordingly, when ARL received any payments of premiums from the policyholder, they were treated as received by the insurer.

59. The TOBA 2016 makes clear that, in certain circumstances, ARL and/or ISL may charge fees to the policyholder that are independent of any charges imposed by the insurer. These included the following fees in relation to the Device or a replacement Device:

“A fee of £45 if you miss an arranged black box fitting, repair or replacement appointment without giving us at least 24 hours notice;

A fee of £45 if we cannot or decide not to fit your box because your car is modified in any way, is in an unfit state or parked in an unsuitable location;

A fee of £80 for removal of the black box at your request;

A fee of £75 for the first change of car (fitting a new black box in this replacement car);

A fee of £100 for the second change of car (fitting a new black box in this second replacement car);

A fee of £150 for subsequent change of car (fitting a new black box in this subsequent replacement car);

A fee of £166 to cover the black box fitting if the policy is cancelled within the first period of insurance;

A fee of £150 if you damage or tamper with the black box, we reserve the right to cancel your policy and/or charge you.”

60. The fees were referred to in the section of the TOBA 2016 dealing with cancellation fees as follows:

“Certain fees (as shown in the Remuneration and Fees section) may apply to cover, or contribute to, costs incurred by ingenie in respect of the ingenie telematics devices. These include missed appointment fees, early cancellation of the insurance by you during the first period of insurance, a request by you to remove an ingenie device or the need to fit additional or replacement ingenie devices following a change of car or damage by you to the ingenie device, please see the ingenie website for details www.ingenie.com/fees-and-charges or check the Policy Wording.”

61. All the fees above were collected by ARL and paid to ISL.

62. The 2018 version of TOBA stated under the heading “What Is Received From Your Insurers”:

“When you arrange or renew your policy and any additional optional products, Ingenie receive or retain commission from your insurer(s) which is a percentage of the premium.”

DID ISL MAKE A SUPPLY OF THE DEVICE TO THE POLICYHOLDERS?

Introduction

63. It has been settled law for many years that a supply of services is effected for consideration for VAT purposes and thus is taxable (if not an exempt supply) only if there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance (see Case C-16/93 *Tolsma v Inspecteur der Omzetbelasting Leeuwarden* [1994] STC 509 (*Tolsma*) at [14]). The remuneration received by the provider of the service constitutes the value actually given in return for the service supplied to the recipient (*Tolsma* [14]).

64. Relevant to the first issue in this appeal, the consideration for a supply of goods may be the provision of services provided there is a direct link between the supply of goods and the provision of services and if the value of those services can be expressed in monetary terms (see Case C-33/93 *Empire Stores Ltd v CCE* [1994] STC 623 at [19]).

65. The legal relationship required for there to be a supply need not be a legally enforceable contract where the parties have agreed that the agreement shall be binding in honour only (see Case C-498/99 *Town and County Factors v CCE* [2002] STC 1263 (*Town and County Factors*) at [21]-[24]).

66. As the Supreme Court has made clear on a number of occasions, determining who makes and receives a supply is a two-stage process which starts with consideration of the contractual position and then looks at whether that is consistent with the economic and commercial reality (see *WHA Ltd v HMRC* [2013] UKSC 24, [2013] STC 943 (*WHA*) at [27], *Secret Hotels2 Ltd v HMRC* [2014] UKSC 16, [2014] STC 937 (*SH2*) at [35], *HMRC v Airtours Holidays Transport Ltd* [2016] UKSC 21, [2016] STC 1509 (*Airtours*) at [47]). The contractual position normally reflects the economic reality of the transactions but will not do so where, in particular, the contractual terms constitute a purely artificial arrangement or sham, which is not suggested in this case.

67. Where, as here, there are a number of contracts, it is necessary to look at the arrangements as a whole to determine the economic and commercial reality of the transactions and who supplies what to whom (see *SH2* at [30]). In *SH2*, Lord Neuberger went on to say at [31] – [32]:

“31. Where parties have entered into a written agreement which appears on its face to be intended to govern the relationship between them, then, in order to determine the legal and commercial nature of that relationship, it is necessary to interpret the agreement in order to identify the parties’ respective rights and obligations, unless it is established that it constitutes a sham.

32. When interpreting an agreement, the court must have regard to the words used, to the provisions of the agreement as whole, to the surrounding circumstances in so far as they were known to both parties, and to commercial common sense.”

68. In relation to the first issue, I will start by considering the contractual arrangements in relation to the provision, fitting and use of the Device and then consider whether the contractual position reflects the economic and commercial reality of the transactions in the context of the provision of telematics car insurance to the policyholders. If find that there was a supply, I must consider how it should be valued.

69. If I decide that ISL did not make a taxable supply to the policyholders of the provision and fitting of a Device then I must consider whether ISL made a deemed supply of the Device and, if so, how that supply should be valued.

70. The first issue turns on whether there was a legal relationship between the ISL and the policyholders pursuant to which ISL made a supply of goods, namely the Device, to the policyholders in return for consideration. There was no dispute that ISL's activities also involved the provision of services such as the fitting of the Device to the policyholders' cars and the provision of reports to the insurer and policyholders based on data about their driving collected from the Device. ISL's position was that it made a single supply of goods to the policyholders because the supply of the Device predominated and the installation of the Device was merely ancillary (see *Honourable Society of Middle Temple v HMRC* [2013] UKUT 250 (TCC) at [60]). HMRC's position was also that ISL made a single supply but they contended that it was a supply of exempt insurance intermediary services. HMRC's case, as set out in its amended statement of case, was that ISL supplied intermediary services to the insurers. Approximately one month before the hearing, HMRC applied to re-amend their statement of case to contend in the alternative that ISL supplied intermediary services to the policyholders or to both the insurers and the policyholders. ISL opposed HMRC's application.

71. On the first day of the hearing, Mr Macnab did not formally make any application to re-amend HMRC's amended statement of case but said he would wait to see how ISL's case was put and renew HMRC's application if necessary. In his skeleton, Mr Macnab had pointed out that, in its second amended grounds of appeal, ISL had appeared to accept that it provided intermediary services to both the insurers and the policyholders. In paragraphs 7, 8 and 10 of the second amended grounds of appeal, ISL stated that it arranged insurance on behalf of the drivers, ie the policyholders, and that it provided "brokerage services" to the insurers of arranging insurance policies between them and the policyholders. At the hearing, Ms McCarthy submitted that HMRC's view of paragraphs 7, 8 and 10 of the second amended grounds of appeal was a misreading or a mischaracterisation of the words or, if anything, it was a slip. I stated that, as the application had been withdrawn, it was not appropriate to indicate whether I would allow HMRC to advance alternative new argument until I had heard how ISL's case was put and what submissions HMRC sought to make in light of that. On day three of the hearing, Mr Macnab stated that, having heard the evidence and submissions for ISL, HMRC's case was that ISL made exempt supplies of insurance intermediary services to the insurers under the Broker Agreements and to the policyholders under the TOBA. Ms McCarthy maintained her objection to the amendment.

72. In view of the conclusion that I have reached below, it is not necessary for me to decide whether to permit HMRC to amend their Statement of Case. Had it been necessary to do so, I would have allowed HMRC's application as the new point was an obvious one which was likely to arise in the proceedings. It turned on an analysis of the contracts in the case and, in my opinion, did not require any new evidence. Further, ISL and its representatives had had plenty of time to consider and were well able to respond to the point so, in my view, it would not be unfair to permit the amendment in the circumstances.

Contractual analysis

73. The first stage in determining whether there is a supply by ISL to the policyholders and the nature of that supply is to look at the contractual position.

74. It is clear from clause 3 of the Covea Business Agreement that ISL acted as an intermediary of the insurer in relation to the sale of insurance policies to the policyholders save that ISL was solely responsible for any advice given by ISL (or ARL) to policyholders. Mr

Parker asked me to reject the submission made by Mr Macnab that everything ISL did, it did as an intermediary.

75. Mr Parker contended that ISL supplied and fitted the Devices under contractual obligations owed by ISL to the policyholders. He said that ISL did not provide or fit the Devices as intermediary of the insurer. Although having a Device was a condition of the insurance policy, the insurer never undertook to provide or fit the Device. Mr Parker submitted that ISL undertook to arrange for the provision and fitting of the Device in return for the policyholder actually entering into the policy. He also submitted that ISL agreed to collect and analyse the data transmitted by the Device and provide information about the policyholder's driving to the policyholder in return for the same non-monetary consideration.

76. Mr Parker submitted (and I accept) that the fact that the Device was provided, fitted and required to be used as condition of the insurance policy did not rule out the possibility of there being a separate contract between ISL and the policyholder. Mr Parker drew an analogy with a home insurance policy which required a particular type of burglar alarm. In my view, however, for there be a separate supply of the burglar alarm for consideration requires consideration of the same issues as arise in this case. Mr Parker contended that the existence of a condition was a point in ISL's favour as it showed why the policyholder needed to have a direct contract with ISL for the provision and fitting of the Device. I do not accept the last point. The policyholder was required to have a Device in their car but was, in my view, likely to be completely indifferent to the contractual arrangements relating to it. I do not see why a direct contract with ISL is necessary or places the policyholder in a better position. In this case, Covea required the policyholders, as a term of the insurance contract, to have a working Device installed in their cars. ISL agreed in the Covea Business Agreement that it would provide the Devices and fit them in the policyholders' cars. I can see no reason why the policyholder needed to have a direct contract with ISL for the provision and fitting of the Device in those circumstances.

77. Under clause 4.4.1 of the Covea Business Agreement, ISL undertook to the insurer that it would install or procure the installation of a Device in each new policyholder's car "in such manner as the parties [ie Covea and ISL] may agree in writing" and process data received from it to provide reports to Covea insurer. Clause 4.4.3 stated that, unless otherwise agreed by the parties, ISL must meet the costs of replacing and re-installing defective Devices. Clause 4.4.9 also states that the costs of removing a Device from a car, whether at the request of the policyholder or Covea, would be met by the policyholder although, of course, the policyholder was not a party to the Covea Business Agreement. Clause 4.5 provided that, save as provided in clause 4.4 and without prejudice to its entitlement to Commission under the Covea Business Agreement, ISL was not entitled to any fee, charge or other form of remuneration in return for performing any of its obligations under clause 4.4.

78. I consider that clause 4.5 shows that the Commission was consideration for ISL performing its obligations, which included the providing and installing the Devices in the policyholders' car and using them to provide driving data to Covea. ISL did not thereby make a supply of goods to Covea as property in the Device never passed to Covea. As is made clear by clause 3 of the Covea Business Agreement, ISL made supplies of insurance intermediary services to Covea and the provision and installation of the Devices and their use to provide information Covea were part of those services.

79. There was no provision in the TOBA 2016 by which the policyholder agreed to do anything or allow something to be done in return for the provision and fitting of the first Device. The TOBA 2016 provided that ARL and/or ISL *may* charge fees to the policyholder which included fees for providing and fitting a new Device if the policyholder changed their car. Mr

Parker did not rely on the TOBA 2016 as showing that ISL made supplies for consideration to the policyholders. He submitted that the TOBA 2016 added nothing to the contractual framework analysis as it said nothing at all about initial provision and fitting of Device and the Data Services. Mr Macnab submitted that the change of vehicle fees were charged under the insurance contract in the 2015 Policy Booklet and were consideration for an ongoing supply of insurance. I agree with Mr Parker that, in the absence of any reference to the initial fitting of the Device, the TOBA 2016 is not of any real assistance in this case. The inclusion of the fees for installing a new Device when the policyholder changed their car seem to me to be an anomaly, and a potential source of confusion, given that the fees were also included in the 2015 Policy Booklet.

80. ISL relied on section one of the 2015 Policy Booklet as a contract between ISL and the policyholders for the supply of the Device. It seems to me that there can be no doubt that the first part of the 2015 Policy Booklet created a legal relationship between ISL and the policyholders. I also accept that, for VAT purposes, a contract does not have to be legally enforceable but can be binding in honour only. The issue, however, is not whether there was a legal relationship but whether ISL made a supply of goods or goods and services to the policyholders in return for consideration pursuant to that relationship.

81. The first part of the 2015 Policy Booklet states that a Device “will be installed in the car” and that ISL “will arrange for a device to be fitted to the car”. It then states:

“ingenie will aim to install your ingenie device in the car within 10 days of your insurance policy commencing. The ingenie device remains the property of ingenie and shall only become your property after your insurance has lapsed or been cancelled.”

82. The first section of the 2015 Policy Booklet makes no mention of the provision and installation of a subsequent Device, eg where the original one was damaged or the policyholder changed their car. The second section of the 2015 Policy Booklet, ie the insurance contract, contains a list of fitting charges relating to the Device but no provisions about who would provide and install it or when. It does say, however, that the policyholder will not be charged for the first Device or its fitting provided they do not cancel the policy during the period of insurance.

83. In my view, there is nothing in the first section of the 2015 Policy Booklet that shows that ISL made a supply of goods when the Device was installed in the policyholder’s car on the first or any subsequent occasion.

84. Article 14(1) PVD provides that a supply of goods for VAT purposes means the transfer of the right to dispose of tangible property as owner. The 2015 Policy Booklet states explicitly that the policyholder would not obtain any right to dispose of the Device at any point during the lifetime of the insurance policy. I also consider that ISL does not make any promise in the 2015 Policy Booklet to transfer the ownership of the Device to the policyholder at some time in the future. ISL merely asserts its ownership of the Device during the lifetime of the policy. The statement that the Device will become the property of the policyholder when the insurance has lapsed or been cancelled seems to me to be too vague to be a contractual term for the supply of goods because there can be no certainty that property would ever pass to the policyholder. In the event that the policyholder’s car were involved in an accident in which the Device was destroyed then the policy would continue and property in that Device would never pass to the policyholder. Even if such events are disregarded, insurance may not lapse or be cancelled for many years if the policy is renewed.

85. Article 14(2)(b) PVD provides that the provision of goods under a hire purchase contract or instalment payments contract where, in the normal course of events, ownership will pass at

the latest on payment of the final instalment is regarded as a supply of goods. That was not the situation in this case. Under the 2015 Policy Booklet, the right to dispose of the Device did not pass until after, in the normal course of events, all payments under the insurance policy have been made. If the policyholder renewed their policy, ie entered into a new contract, with the original insurer or a different insurer then the Device remained the property of ISL but all payments would have been made under the original insurance policy in relation to which the Device was installed.

86. Although, in my view, there was no supply of goods pursuant to the first section of the 2015 Policy Booklet, that does not mean that there is no supply in relation to the Device. In the first section of the 2015 Policy Booklet, ISL agreed to arrange for a Device to be installed in the policyholder's car and then to use it to collect the telematics data which ISL used to give feedback to the policyholder and to provide more detailed information to the insurer. Those activities may constitute supplies of services but only if made in return for consideration.

87. I now consider whether there was any consideration provided for the provision and fitting of the Device. It is clear that there was no monetary consideration for the supply and fitting of the first Device. The second section of the 2015 Policy Booklet, ie the contract between the insurer and the policyholder, states in a paragraph on the cost of the Device that the policyholder will not be charged for their first Device or its fitting provided they do not cancel their policy during the first period of insurance. That section is followed by a table of fitting charges relating to the Device which showed the cost of fitting the Device for the first time as "£0". The same part of the Policy Booklet also states that the policyholder is not liable for the cost of transmitting data to and from the Device.

88. I do not regard the position as any different where the policy is cancelled within the first year and the policyholder is required to pay £165 towards the cost of the Device and its fitting. The fact that, in the insurance contract section of the 2015 Policy Booklet, the insurer reserves the right to deduct the £165 from any refund of premium shows that the payment relates to the cancellation of the insurance rather than the original free supply of the Device. Further the TOBA 2016 provides for a fee of £166 "to cover the black box fitting if the policy is cancelled within the first period of insurance" and refers to a fee for "early cancellation of the insurance by you during the first period of insurance". In my view, both references indicate that the payment is made for cancelling the insurance within the first period of insurance rather than to acquire ownership of the Device or as consideration for its fitting.

89. Mr Parker submitted that the policyholder provided consideration for the initial fitting of the Device in either or both of two ways, namely:

- (1) by entering into the contract of insurance with the insurer and agreeing to perform the obligations under it, including paying the premium and observing the policy terms and conditions; and/or
- (2) agreeing to allow ISL to install the Device in the policyholder's car and collect and use the telematics data.

90. Mr Macnab said that there was no consideration for VAT purposes moving from the policyholder to ISL in return for the Device.

91. I accept that entering into a contract and/or allowing something to be done can be sufficient consideration for VAT purposes provided that it can be expressed in monetary terms. Subject to the question of monetary value, I accept that if the policyholder actually entered into the insurance contract and/or agreed to allow ISL to install a Device in return for the installed Device then that could be consideration. Mr Parker's case was that the policyholder entered into two agreements, a contract with ISL and the insurance contract, in the 2015 Policy Booklet

at the same time. The difficulty that Mr Parker faced in this case is that the 2015 Policy Booklet does not contain any term under which the policyholder agreed to do anything or allow anything to be done in return for the provision of the first Device. The only reference to something being provided to the policyholder in return for consideration is in the contract with the insurer which states:

“In return for you paying or agreeing to pay the premium, we will provide cover under the terms, exclusions, conditions and endorsements of this contract of insurance, during the period of insurance and within the geographical limits.”

92. The fact that the policyholder enters into two contracts at same time does not necessarily mean that one is consideration for something done under the other even where the two are inextricably linked. Mr Parker suggested that it was clearly intended that the policyholder should have some remedy for defects in Device or if ISL mishandled the driving data and the policyholder could only obtain redress if they had a contract with ISL as they had no claim against the insurer. I do not accept this submission. Whether the policyholder is entitled to claim damages for a defect in the Device or its use from ISL or the insurer or neither is untested and, to my mind, unclear. The policyholder is required by the insurer to have a working Device fitted to their car and allow ISL to collect and use the driving data as a condition of the insurance policy. I do not consider that, in the absence of clear wording, entering into the insurance policy and complying with its terms and conditions is consideration for a separate supply by ISL. In my view, the policyholders simply enter into the insurance contract on particular terms which include having a working Device installed by ISL. There is no need for the policyholders to provide any further consideration than paying the premiums under the policy and they do not do so.

93. I consider that the same analysis applies where a policyholder changed their car during the lifetime of the insurance policy. The second section of the 2015 Policy Booklet, ie the insurance contract, provides that the policyholder would be charged an amount for fitting a new Device which increased with each change of vehicle up to the third after which it remained stable. Mr Parker submitted that the amount paid on the change of a vehicle was consideration for ISL providing and fitting a new Device. Mr Macnab contended that all payments for further Devices in the 2015 Policy Booklet are payments for insurance provided under the insurance contract. I agree with Mr Macnab. The insurance contract is with the insurer. Payment is collected by ARL in the same way as premiums. The contract provides that a failure to pay the additional fees when requested may result in the policy being cancelled. It seems to me that the payments for new Devices are additional consideration for the insurance cover.

94. For reasons discussed above, it seems to me that, subject to consideration of the economic and commercial reality, there is no supply of the Devices or any services relating to the Devices by ISL to the policyholder for VAT purposes.

Economic and commercial reality

95. It was common ground that the contractual terms in the 2015 Policy Booklet were not artificial or drafted to achieve a particular VAT result. Accordingly, there is no reason to believe that the contractual position did not reflect the economic and commercial reality of the transactions. Ms McCarthy observed at the hearing that, if I did not accept ISL’s analysis of the contracts then there was no need for me to consider economic reality in this case.

Calculation of VAT chargeable

96. As I have concluded that ISL did not make any supply of goods for consideration when it provided and installed the Device in a policyholder’s car, I do not need to address the submissions made by counsel on the value of any non-monetary consideration and whether it

could be expressed in money terms. My conclusion does not dispose of the appeal and I now turn to consider whether ISL made a deemed supply of goods when it provided the Device to a policyholder.

DID ISL MAKE A DEEMED SUPPLY OF THE DEVICE?

97. Article 16 PVD provides that the disposal of goods which are part of the assets of the business free of charge by a taxable person is treated as a supply of goods for consideration but only if the VAT incurred in relation to the goods was wholly or partly deductible. Article 16 PVD is implemented in the UK, so far as relevant to this case, by paragraph 5(1) and (5) of Schedule 4 to the VATA 1994.

98. As the deemed supply provisions relate only to goods, Ms McCarthy submitted that the provision and fitting of the Device was a single supply with the Device being the principal element to which the fitting services were merely ancillary. Accordingly, there was a single supply of goods which was taxable so that the input VAT incurred in making the deemed supply was fully recoverable.

99. Mr Macnab submitted that there was no deemed supply in this case because ISL had treated the Devices as cost components of an exempt supply of insurance intermediary services and the input VAT incurred on them was wholly non-deductible. He contended that ISL could not use the deemed supply rules to create a right to deduct input VAT where none had existed. Mr Macnab further submitted that any deemed supply could not take place when the Device was first supplied but only when title to it passed to the policyholder after the insurance has lapsed or been cancelled.

100. Ms McCarthy submitted that paragraph 5(1) can be relied upon to deem a supply where otherwise none would exist in order to recover input tax on the costs incurred in making the deemed supply. She stated that HMRC's argument on this point had been rejected by Blackburne J in *Church of England Children's Society v HMRC* [2005] STC 1644 ('*C of E Children's Society*') at [59]:

"I see nothing odd in treating as a supply, to its fullest extent, a disposal of goods, made otherwise than for a consideration, even where the original input tax has been restricted. It will only have been restricted because it has not been possible to attribute the input costs to an output transaction. But once an output transaction is identified, as paragraph 5(1) of Schedule 4 requires in the circumstances set out in that provision, it is merely a question of identifying the input costs relating to the deemed supply and all else follows."

101. Ms McCarthy said that I was bound by the High Court in *C of E Children's Society*. Mr Macnab submitted that *C of E Children's Society* had been superseded by later CJEU cases including Case C-229/15 *Minister Finansów v Jan Mateusiak* [2016] EUECJ ('*Mateusiak*') and Case C-528/19 *Mitteldeutsche Hartstein-Industrie v Finanzamt Y* [2020] STC 2272 ('*Mitteldeutsche Hartstein*'). I agree with Mr Macnab on this point.

102. *Mateusiak* did not concern Article 16 PVD but Article 18(c) under which there is a deemed supply for consideration of any goods retained by a taxable person when they cease to carry out an economic activity. Like Article 16, the deemed supply only occurs where VAT on the goods was wholly or partly deductible on their acquisition. Mr Mateusiak had constructed a building and recovered only the input VAT that related to the part of the building used for making taxable supplies. Some 13 years later, Mr Mateusiak decided to cease his economic activity and the Polish tax authority sought to charge VAT on the full value of the building which Mr Mateusiak retained. The issue in *Mateusiak* was whether there should be a deemed taxable supply where the period for making an adjustment to the input VAT claimed on acquisition of the property under Article 187 had expired. Mr Mateusiak argued that there

should not be any charge to VAT on the deemed supply of the whole building when input tax had been restricted and the period for adjusting the input VAT had expired. The implication of Mr Mateusiak's position was that if the adjustment period had not expired then it would be possible to adjust the input VAT to reflect the deemed taxable supply of the property. The CJEU rejected this in [37]:

“However, the taxation provided for in Article 18(c) of the VAT Directive is not based on the premiss that, where the taxable economic activity has ceased, the VAT that becomes wholly or partly deductible upon the acquisition of goods that are retained is higher or lower than that to which the taxable person was entitled, but rather on the occurrence of a new taxable transaction at the time the economic activity ceases.”

103. In *Mitteldeutsche Hartstein*, the CJEU explained in [64] how Article 5(6) of the Sixth VAT Directive, which was the predecessor and in identical terms to Article 16 PVD, applied as follows:

“According to the case-law of the Court, it is clear from the very wording of the first sentence of art 5(6) of the Sixth Directive that that provision treats as a supply made for consideration, and therefore as subject to VAT, a taxable person's disposal, free of charge, of goods forming part of his business assets, where input VAT was deductible on those goods, it being in principle immaterial whether or not their disposal was for business purposes.”

104. I consider that the CJEU cases show that the deemed supply under Article 16 PVD and, therefore, paragraph 5(1) of Schedule 4 to the VATA 1994 only arises where the taxable person has recovered some or all of the input VAT incurred on the assets concerned and the deemed supply is necessary to ensure that the goods are not retained or consumed without bearing VAT. If a taxable person were able to deduct input VAT on goods, originally treated as non-deductible, on the basis that it is attributable to a deemed taxable supply of the goods then all disposals of business assets free of charge would be subject to VAT and the condition in Article 16 and paragraph 5(5) of Schedule 4 to the VATA 1994 would be meaningless.

105. In my view, the decision in *C of E Children's Society*, which pre-dated the CJEU's decisions in the cases above, was per incuriam and I am not bound to follow it. As ISL did not recover any input VAT in relation to the Devices, it follows that there is no deemed supply of goods when title to a Device passes to the policyholder after the insurance has lapsed or been cancelled.

106. I also consider that no deemed supply arises in this case for another reason. The facts of *Mitteldeutsche Hartstein* were that the taxpayer company constructed an extension to a public road belonging to a municipality as a condition of being allowed to operate a quarry in the municipality's area. One issue in the case was whether the works on the new road carried out, free of charge had to be treated as a supply of goods made for consideration, within what is now Article 16. The CJEU considered that there was no deemed supply where the works were carried out for the purposes of and were attributable to the company's taxable business as there was no untaxed consumption of the works by the company or the municipality. The CJEU held, in [67] - [68] that there was no deemed supply in that case because:

“67. ... first, the works for the extension of that road benefit the applicant in the main proceedings and have a direct and immediate link with its overall economic activity which gives rise to taxable transactions and, second, the costs of the input services received and linked to the works for the extension of that road form part of the factors in the cost of the output transactions carried out by the [taxpayer company].

68. In the light of all of the foregoing considerations, the answer to the third question is that art 5(6) of the Sixth Directive must be interpreted as meaning that works carried out, for the benefit of a municipality, for the extension of a municipal road open to the public but used, in connection with its economic activity, by the taxable person which carried out those works free of charge and by the public, do not constitute a transaction which must be treated as a supply of goods made for consideration within the meaning of that provision.”

107. Applying the same approach, it seems to me that there is no deemed supply of the Devices because they were acquired and provided to the policyholders by ISL for the purposes of its own business, ie to meet its obligations to Covea under the Covea Business Agreement and to the policyholders under the first part of the 2015 Policy Booklet. the fact that ISL that the does not recover the Device from the policyholder’s car after the insurance has lapsed or been cancelled does not mean that the Device has been disposed of for purposes other than those of ISL’s business (see by analogy Case C-438/13 *BCR Leasing IFN SA v Agentia Nationala de Administrare Fiscala* [2015] STC 390 at [26]). The fact that ISL charges the policyholder £80 in the 2015 Policy Booklet to remove a Device indicates that there is a cost to doing so and there was no evidence to suggest that a used Device had any value to justify the expense of removing it. It seems to me that rather than disposing of the Device when the insurance ends, ISL merely abandons any claim to it because it no longer has any value or serves any purpose for ISL.

108. As I have concluded that that there is no deemed supply of the Devices to the policyholders when their insurance lapses or is cancelled, I do not need to consider how the VAT chargeable on the deemed supply should be calculated.

CONCLUSION

109. For the reasons set out above, ISL did not make any supplies of Devices or related services in the VAT periods 07/14 to 07/18 and, accordingly, its appeal is dismissed.

COSTS

110. This case was allocated to the Complex case category under rule 23 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (‘FTT Rules’) and the Appellant has never requested that the proceedings be excluded from potential liability for costs under rule 10(1)(c) of the FTT Rules. Accordingly, the Tribunal has power to award costs on an application or of its own motion. Any application for costs in relation to this appeal must be made in writing within 28 days after the date of release of this decision. As any order in respect of costs will, if not agreed, be for a detailed assessment, the party making an application for such an order need not provide a detailed schedule of costs claimed with the application as required by rule 10(3)(b) of the FTT Rules.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

111. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**JUDGE GREG SINFIELD
CHAMBER PRESIDENT
RELEASE DATE: 12th April 2022**

**ANNEX 1
LEGISLATION**

COUNCIL DIRECTIVE 2006/112/EC ON THE COMMON SYSTEM OF VALUE ADDED TAX (THE PRINCIPAL VAT DIRECTIVE)

Article 1

1. This Directive establishes the common system of value added tax (VAT).
2. The principle of the common system of VAT entails the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, however many transactions take place in the production and distribution process before the stage at which the tax is charged.

On each transaction, VAT, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of VAT borne directly by the various cost components.

The common system of VAT shall be applied up to and including the retail trade stage.

Article 2

1. The following transactions shall be subject to VAT:
 - (a) the supply of goods for consideration within the territory of a Member State by a taxable person acting as such;
 - ...
 - (c) the supply of services for consideration within the territory of a Member State by a taxable person acting as such;

Article 14

1. 'Supply of goods' shall mean the transfer of the right to dispose of tangible property as owner.
2. In addition to the transaction referred to in paragraph 1, each of the following shall be regarded as a supply of goods:
 - ...
 - (b) the actual handing over of goods pursuant to a contract for the hire of goods for a certain period, or for the sale of goods on deferred terms, which provides that in the normal course of events ownership is to pass at the latest upon payment of the final instalment;
 - ...

Article 16

The application by a taxable person of goods forming part of his business assets for his private use or for that of his staff, or their disposal free of charge or, more generally, their application for purposes other than those of his business, shall be treated as a supply of goods for consideration, where the VAT on those goods or the component parts thereof was wholly or partly deductible.

However, the application of goods for business use as samples or as gifts of small value shall not be treated as a supply of goods for consideration.

Article 18

Member States may treat each of the following transactions as a supply of goods for consideration:

(a) the application by a taxable person for the purposes of his business of goods produced, constructed, extracted, processed, purchased or imported in the course of such business, where the VAT on such goods, had they been acquired from another taxable person, would not be wholly deductible;

(b) the application of goods by a taxable person for the purposes of a non-taxable area of activity, where the VAT on such goods became wholly or partly deductible upon their acquisition or upon their application in accordance with point (a);

(c) with the exception of the cases referred to in Article 19, the retention of goods by a taxable person, or by his successors, when he ceases to carry out a taxable economic activity, where the VAT on such goods became wholly or partly deductible upon their acquisition or upon their application in accordance with point (a)

...

Article 24

1. 'Supply of services' shall mean any transaction which does not constitute a supply of goods

...

Article 73

In respect of the supply of goods or services, other than as referred to in Articles 74 to 77, the taxable amount shall include everything which constitutes consideration obtained or to be obtained by the supplier, in return for the supply, from the customer or a third party, including subsidies directly linked to the price of the supply.

Article 135

1. Member States shall exempt the following transactions:

(a) insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents;

...

Article 168

In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:

(a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person;

...

VALUE ADDED TAX ACT 1994 (VATA 1994)

Section 1 — Value added tax

(1) Value added tax shall be charged, in accordance with the provisions of this Act—

(a) on the supply of goods or services in the United Kingdom (including anything treated as such a supply)

...

and references in this Act to VAT are references to value added tax.

Section 4 — Scope of VAT on taxable supplies

(1) VAT shall be charged on any supply of goods or services made in the United Kingdom, where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him.

(2) A taxable supply is a supply of goods or services made in the United Kingdom other than an exempt supply.

Section 5 — Meaning of supply: alteration by Treasury order

(1) Schedule 4 shall apply for determining what is, or is to be treated as, a supply of goods or a supply of services.

(2) Subject to any provision made by that Schedule and to Treasury orders under subsections (3) to (6) below—

(a) “supply” in this Act includes all forms of supply, but not anything done otherwise than for a consideration;

(b) anything which is not a supply of goods but is done for a consideration (including, if so done, the granting, assignment or surrender of any right) is a supply of services.

Section 19 — Value off supply of goods or services

...

(4) Where a supply of any goods or services is not the only matter to which a consideration in money relates, the supply shall be deemed to be for such part of the consideration as is properly attributable to it.

Section 24 — Input tax and output tax

(1) Subject to the following provisions of this section, “input tax”, in relation to a taxable person, means the following tax, that is to say—

(a) VAT on the supply to him of any goods or services;

...

being (in each case) goods or services used or to be used for the purpose of any business carried on or to be carried on by him.

(2) Subject to the following provisions of this section, “output tax”, in relation to a taxable person, means VAT on supplies which he makes ...

Section 25 — Payment by reference to accounting periods and credit for input tax against output tax.

(1) A taxable person shall—

(a) in respect of supplies made by him,

...

account for and pay VAT by reference to such periods (in this Act referred to as “prescribed accounting periods”) at such time and in such manner as may be determined by or under regulations and regulations may make different provision for different circumstances.

(2) Subject to the provisions of this section, he is entitled at the end of each prescribed accounting period to credit for so much of his input tax as is allowable under section 26, and then to deduct that amount from any output tax that is due from him.

(3) If either no output tax is due at the end of the period, or the amount of the credit exceeds that of the output tax then, subject to subsections (4) and (5) below, the amount of the credit or, as the case may be, the amount of the excess shall be paid to the taxable person by the Commissioners; and an amount which is due under this subsection is referred to in this Act as a “VAT credit”.

Section 26 — Input tax allowable under section 25

(1) The amount of input tax for which a taxable person is entitled to credit at the end of any period shall be so much of the input tax for the period (that is input tax on supplies, acquisitions and importations in the period) as is allowable by or under regulations as being attributable to supplies within subsection (2) below.

(2) The supplies within this subsection are the following supplies made or to be made by the taxable person in the course or furtherance of his business—

(a) taxable supplies;

...

Section 31 — Exempt supplies and acquisitions

(1) A supply of goods or services is an exempt supply if it is of a description for the time being specified in Schedule 9 and an acquisition of goods from another member State is an exempt acquisition if the goods are acquired in pursuance of an exempt supply ...

Schedule 4 Matters to be treated as supply of goods or services

Paragraph 5

(1) Subject to sub-paragraph (2) below, where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, that is a supply by him of goods.

...

(5) Neither sub-paragraph (1) nor sub-paragraph (4) above shall require anything which a person carrying on a business does otherwise than for a consideration in relation to any goods to be treated as a supply except in a case where that person or any paragraph) has or will become entitled—

(a) under sections 25 and 26, to credit for the whole or any part of the VAT on the supply, acquisition or importation of those goods or of anything comprised in them;

...

Schedule 6 Valuation: special cases

Paragraph 6

(1) Where there is a supply of goods by virtue of –

...

(b) paragraph 5(1) or 6 of Schedule 4 but otherwise than for a consideration) ...

then except where the person making the supply opts under paragraph A1(3) above for valuation on the flat-rate basis or paragraph 10 below applies, the value of the supply shall be determined as follows.

(2) The value of the supply shall be taken to be –

(a) such consideration in money as would be payable by the person making the supply if he were, at the time of the supply, to purchase goods identical in every respect (including age and condition) to the goods concerned; or

(b) where the value cannot be ascertained in accordance with paragraph (a) above, such consideration in money as would be payable by that person if he were, at that time, to purchase goods similar to, and of the same age and condition as the goods concerned; or

(c) where the value can be ascertained in accordance with neither paragraph (a) nor paragraph (b) above, the cost of producing the goods concerned if they were produced at that time.

(3) For the purposes of sub-paragraph (2) above the amount of consideration in money that would be payable by any person if he were to purchase any goods shall be taken to be the amount that would be so after the deduction of any amount included in the purchase price in respect of VAT on the supply of the goods to that person.

Schedule 9 Exemptions

Group 2 Insurance

Item No.

1. Insurance transactions and reinsurance transactions.

4. The provision by an insurance broker or insurance agent of any of the services of an insurance intermediary in a case in which those services—

(a) are related (whether or not a contract of insurance or reinsurance is finally concluded) to an insurance transaction or a reinsurance transaction; and

(b) are provided by that broker or agent in the course of his acting in an intermediary capacity.

**ANNEX 2
CONTRACTUAL DOCUMENTS**

**COVEA BUSINESS AGREEMENT BETWEEN COVEA INSURANCE PLC ('COVEA INSURANCE') AND
INGENIE SERVICES LIMITED ('THE INTERMEDIARY')**

BACKGROUND:

- (1) Covea Insurance is authorised pursuant to FSMA to effect and carry out General Insurance Contracts in the United Kingdom.
- (2) The Intermediary is authorised pursuant to FSMA to undertake general insurance mediation activities.
- (3) The Intermediary has developed, markets and sells a retail motor insurance policy and operates a panel of insurers who underwrite the policy. The Intermediary wishes to appoint Covea Insurance to the panel, and Covea Insurance, wishes to accept such appointment, subject to, and in accordance with, the terms and conditions set out in this Agreement.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement, unless inconsistent with the context or otherwise specified the following expressions shall have the following meanings:

"Approved Collection Agent"	UKAIS Ltd ... to whom the Intermediary has, in accordance with Clause 10, sub-delegated the authority granted to it under Clause 3.1;
"Business"	the general insurance business of the Intermediary consisting of the marketing and sale of General Insurance Contracts pursuant to this Agreement in the Territory; ...
"Commission"	the amount payable to the Intermediary in relation to the sale of a Policy calculated in accordance with rates notified to the Intermediary from time to time or, where agreed in writing by Covea Insurance in relation to a specific Product, calculated by the Intermediary; ...
"Insured"	a person who is the insured party to a Policy sold following an introduction by the Intermediary pursuant to this Agreement; ...
"Policy"	where the Product is underwritten by Covea Insurance, a contract of insurance evidencing the rights and obligations of Covea Insurance and the Insured in respect of that Product, or in relation to Supplementary Products, a contract of insurance evidencing the rights and obligations of the third party and the Insured which is sold by the Intermediary; ...
"Premium"	the total amount payable by an Insured for a Policy, including Insurance Premium Tax;
"Products"	insurance policies as notified to the Intermediary by Covea Insurance (or any variations of them as notified by Covea Insurance) including the Supplementary Products and any additional policies as notified by Covea Insurance from time to time; ...

"Supplementary Product"	the breakdown assistance, legal expenses and/or replacement car hire cover offered and sold as an optional part of the Policies and underwritten by a third party insurer (and/or such other cover as the parties may agree from time to time is a "Supplementary Product" for the purposes of this Agreement); ...
-------------------------	---

...

3. AUTHORITY

3.1 Covea Insurance authorises the Intermediary on a non exclusive basis, and the Intermediary agrees to:-

- 3.1.1 enter into, and effect renewals of, Products;
- 3.1.2 carry out mid term adjustments to Products;
- 3.1.3 calculate and carry out quarterly adjustments to the Premium payable for Products, such adjustments being made as a result of the driving performance of the policyholders in question;
- 3.1.4 effect cancellations of Products in accordance with their terms (and/or as agreed in writing between the parties from time to time); and
- 3.1.5 collect Premiums and, when due, refund Premiums to Policyholders,

on Covea Insurance's behalf, subject to, and in accordance with this Agreement, the policy terms applicable to the Products and such restrictions Covea Insurance may notify to the Intermediary from time to time. For the purposes of this Agreement, the Intermediary has no authority to act as the agent of Covea Insurance unless stated otherwise in this Agreement. In particular the Intermediary is solely responsible for any advice the Intermediary gives to customers.

...

4. THE INTERMEDIARY'S OBLIGATIONS AND RIGHTS

4.1 The Intermediary shall:

- 4.1.1 market and sell the Policies in accordance with ICOBS and all other Applicable Laws;
- 4.1.2 ensure that all Promotional Materials it produces comply with Applicable Laws;
- 4.1.3 provide Covea Insurance with full details of every proposed:
 - 4.1.3.1 Policy;
 - 4.1.3.2 mid term adjustment to a Policy;
 - 4.1.3.3 quarterly Premium adjustment;
 - 4.1.3.4 cancellation of a Policy; and
 - 4.1.3.5 renewal of a Policy,

in a format specified in writing by Covea Insurance on the same day that the Intermediary processes such. Covea Insurance shall only be bound by communication actually received by it;

...

4.1.5 at all times comply with guidance which Covea Insurance issues to the Intermediary from time to time in relation to the activities of the Intermediary under this Agreement. Such guidance will include arrangements enabling Covea Insurance to comply with Applicable Laws such as providing details to Covea Insurance within the time periods Covea Insurance requires to enable Covea Insurance to pass such details to industry databases including the Motor Insurance Database and Employers Liability Tracing Office and regarding issuing, surrendering and returning insurance certificates and temporary cover notes;

...

4.1.7 in no way alter any Documentation or any Premium Quotation unless any such alteration is agreed in advance in writing by Covea Insurance;

4.1.8 supply the necessary Documentation to each Insured in accordance with Applicable Laws;

4.1.9 on withdrawal of a Product in accordance with clause 6.5 cease marketing and concluding sales of the Product underwritten, or to be underwritten, by Covea Insurance.

...

4.3 The Intermediary shall notify Covea Insurance immediately:

...

4.3.13 of all material information in relation to a Policy notified to it by an Insured. The Intermediary shall be deemed to be the agent of the Insured for the purposes of receiving information from an Insured; and

4.3.14 if the Intermediary becomes aware that an Insured has failed to disclose any material information or is guilty of a material misrepresentation or fraud or is in breach of any terms of a Policy.

4.4 The Intermediary shall:-

4.4.1 install, or procure that a Sub-Agent installs, a telematic device into the vehicle of each new Insured in such manner as the parties may agree in writing;

4.4.2 activate each telematic device installed by it or the Sub-Agent, and while it is active, monitor its performance and, to the extent it is reasonably able to do so, rectify any software errors remotely, in all cases, in such manner as the parties may agree in writing;

4.4.3 replace, or procure a Sub-Agent replaces, any telematic device which is defective and shall re-install, or procure that a Sub-Agent re-installs, any telematic device which fails to operate properly owing to incorrect installation, the costs of such replacement and re-installation to be met by the Intermediary (unless otherwise agreed between the parties);

4.4.4 receive data from activated telematic devices and analyse such data in such manner as the parties may agree in writing;

4.4.5 not change the manner in which such data is analysed by it to create driving performance scores to be supplied to Covea Insurance unless it has first given Covea Insurance at least 28 days notice of such change;

4.4.6 ensure that the manner in which such data is analysed by it to supply driving performance scores to Covea Insurance shall not cause Covea Insurance to be in breach of Applicable Laws when using such scores to set Premiums;

4.4.7 provide reports to Covea Insurance containing the results of the analysis referred to in clause 4.4.4 for each Insured, such reports to be in such form, and provided at such frequency, as the parties may agree in writing. In any event, the Intermediary shall ensure that the data provided to Covea Insurance in respect of the operation of the telematic devices shall be no less than that provided by it to any other insurer who, from time to time, underwrites 'ingenie' branded retail motor policies;

4.4.8 on cancellation of a Product, promptly (and, in any event, within 7 days of such cancellation) de-activate the telematic device to which it relates so that no further data is received by the Intermediary from it; and

4.4.9 on request from an Insured or from Covea Insurance, remove a telematic device from the vehicle in which it is fitted, the costs of such removal to be met by the Insured and to be as agreed between the parties from time to time.

4.5 Except as otherwise stated in clause 4.4 and without prejudice to its entitlement to Commission, the Intermediary shall not be entitled to any fee, charge or other form of remuneration in return for performing any of its obligations under clause 4.4.

4.6 The Intermediary warrants to Covea Insurance that:-

4.6.1 the telematic devices supplied by it under, or in connection with, this Agreement shall be of satisfactory quality, fit for the purpose for which they are supplied and comply with Applicable Law;

4.6.2 the use of the telematic devices (including, without limitation, any software used in the operation of the devices), and the data analysis to be performed by it, for the purposes of this Agreement shall not infringe the Intellectual Property Rights of any other person; and

4.6.3 it has obtained, and shall maintain, any and all permissions, consents, licences and authorisations necessary in order for it to use, and to permit Covea Insurance to use, such telematic devices (including, without limitation any software used in the operation of the devices) and such data analysis for the purposes of this Agreement.

4.7 Nothing in this Agreement overrides the Intermediary's duty to have regard to the interests of its customers and the Intermediary shall treat them fairly at all times.

...

6. COVEA INSURANCE'S OBLIGATIONS AND RIGHTS

6.1 The Intermediary shall be responsible for the production of all Documentation and, as between the Intermediary and Covea Insurance, shall be responsible for ensuring that it complies with Applicable Laws.

...

8. PREMIUM

...

8.5 Any payment of Premium made by an Insured to the Intermediary (or the Approved Collection Agent) shall be deemed to have been paid to Covea Insurance when received by the Intermediary (or the Approved Collection Agent) in cash or cleared funds. Any repayment of Premium, claims money or any other sums due under the terms of the Policies made by the Intermediary (or the Approved Collection Agent) on behalf of Covea

Insurance, shall not be treated as having been made until it is received by the Insured.

...

8.10 The Intermediary is entitled to income or interest earned on money it holds on Covea Insurance's behalf up to the earlier of the dates that the Intermediary either pays it to Covea Insurance or is due to pay it to Covea Insurance under the provisions of this Agreement. Covea Insurance is entitled to any income or interest earned outside this period.

...

8.14 The Intermediary shall pay to Covea Insurance the aggregate Premiums payable in respect of Products sold, or renewed, in each calendar month, after deduction of any Commission due to the Intermediary in respect of such Products and adjusted to take into account any refunds of Premium made in that calendar month, such payment to be made by the last Working Day of the immediately following calendar month.

...

9. COMMISSION

9.1 Covea Insurance shall pay the Intermediary Commission for each Product underwritten by Covea Insurance and sold, or renewed, by the Intermediary calculated as follows:-

9.1.1 £150 for each Product sold to an Insured who does not have a working telematic device already fitted by the Intermediary; and

9.1.2 10% of the Premium applicable to the Product excluding Insurance Premium Tax and, if payable, the element of the Commission described in clause 9.1.1 but including any adjustment of Premium (net of Insurance Premium Tax) for mid term adjustments and quarterly Premium adjustments (net of Insurance Premium Tax)

9.2 Commission is due to the Intermediary once the Intermediary has collected the Premium from the Insured or from a party funding the Premium for the Insured.

9.3 The Intermediary shall refund the element of the Commission described in Clause 9.1.2 received (or shall not be entitled to any Commission as applicable) in relation to any Policy where:

9.3.1 the Policy is cancelled;

9.3.2 Covea Insurance refunds all or any part of the Premium paid for the Policy; or

9.3.3 the Insured defaults on the Direct Debit instruction to pay the Premium to Covea Insurance by instalments.

9.4 All Commission shall be inclusive of any VAT that may be payable.

...

10. SUB AGENT

10.1 The Intermediary shall not appoint a Sub Agent without the prior written consent of Covea Insurance.

10.2 Covea Insurance hereby consents to the Intermediary sub-delegating to the Approved Collection Agent the authority granted to it by Covea Insurance under Clause 3.1.

...

THIRD PARTY ADMINISTRATOR AGREEMENT 2014

BETWEEN:

(1) UKAIS LIMITED ... ("AIS");

AND

(2) INGENIE SERVICES LIMITED ... (the "Client").

BACKGROUND

(A) AIS is a member of the Ageas group of companies providing insurance and other related services and products to consumers. AIS is an Authorised Intermediary and arranges home and car insurance for the general public within the United Kingdom.

(B) The Client owns the Product, the Customers ... and the Customer Data and would like AIS to administer the Product on the Client's behalf as the Client's sub-contractor.

(C) AIS shall arrange and administer the Product in accordance with the terms of this Agreement.

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (which includes the Schedules), the following words shall have the meanings set out opposite them:

...

"Aggregator Website"	the website operated by an aggregator in cases where the aggregator has an arrangement with the Client to promote and sell the Product;
...	
"Client's Services"	the services to be performed by the Client pursuant to Clause 6 and Schedule 3;
...	
"Gross Premium(s)"	the premium due from a Policyholder in relation to a Policy (including any adjustments and fees thereon relating to Mid Term Adjustments, Quarterly Premium Adjustments (QPAs) and cancellations) but excluding the premium due on any Add On Product, fee for the Telematics Box and IPT. ...
...	
"Insurer"	an underwriter from the Panel who underwrites the Policies from time to time and "Insurers" shall be construed accordingly;

...	
"Net Premium"	the amount payable by AI S (on behalf of the Client) to the relevant Insurer in connection with the sale of a Product after the deduction of fees, Commission and any other such amounts as may be agreed between the parties. ...
...	
"Policy"	a contract of private motor insurance between the Insurer and a Policyholder for the Product;
"Policyholder"	a Customer who is for the time being insured under a Policy;
...	
"Product"	the Client's telematics motor insurance product, aimed at 17 to 25 year olds and underwritten by Insurers from the Panel.
...	
"Quote and Buy Platform"	the Client branded website to be found at "quote.ingenie.com" which was created, developed, maintained and hosted by AIS to sell the Product and which, through the use of the Client Trademarks, is the same in appearance as the Client Website;
...	
"Scheme"	ingenie's UK fixed telematics box business for drivers aged 17 -25;
...	
"Telematics"	the technology of sending, receiving and storing information via telecommunication devices including in particular, but without limitation, the sending and receiving of information via telecommunication devices fitted in Policyholder vehicles;
"Telematics Box"	the Client's Telematics device required to be fitted to the vehicles;
"Telematics Data"	collectively, all data collected, or derived from, a Telematics Box;

...

2 COMMENCEMENT

2.1 This Agreement will commence on the Effective Date and will continue in full force and effect for a fixed term until 30 September 2015 ("Term") and shall continue thereafter until terminated by either party by 6 months' written notice or otherwise pursuant to clause 26.

...

5 AIS SERVICES

5.1 AIS shall provide the AIS Services to the Client for the duration of this Agreement:

5.1.1 in accordance with the AIS Service Levels or better;

...

5.2 The AIS Services are set out in Schedule 1.

...

6 THE CLIENT'S SERVICES

6.1 The Client shall promote and market the Product for the duration of the Term:

6.1.1 in a proper and reasonable manner and in such a manner as it thinks best to promote the interests of both Parties;

...

6.2 The Client's Services are set out in Schedule 3.

...

9 QUOTE: AND BUY PLATFORM

9.1 AIS shall design, develop and maintain the Quote and Buy Platform for the sale and servicing of the Product which shall allow Customers to obtain and retrieve a quote for a Policy and apply for a Policy online.

...

10 AGGREGATORS

10.1 Subject to prior approval of AIS, the Client may engage aggregators to promote and offer the Product on their respective Aggregator Websites.

10.2 The Client shall procure that such Aggregator Websites redirect the Customer to the Client's Website, thereafter the Customer shall follow the standard Customer journey in order to conclude the sale via the Quote and Buy Platform.

...

Schedule 1

AIS Services

PART I GENERAL

...

2.4 ... the Client hereby appoints AIS to provide an advised sales service to the Customers and, as an accommodation to the Client, AIS hereby accepts such appointment (the "Advised Sales Service").

...

PART III- POINT OF SALE

1. Sale

1.1 The Client authorises AIS to commit the Insurers to Policies with Policyholders to the extent specified in and in accordance with their Underwriting Manuals and guidelines ... as provided to AIS from time to time.

...

2. Premium Payments

...

2.3 The Client appoints AIS as its agent for the purpose of:

2.3.1 receiving Gross Premium, IPT and any other sums from Policyholders; and

2.3.2 receiving and holding premium refunds prior to their transmission to the Policyholder.

...

PART VII- PAYMENTS

1. Payments

1.1 AIS shall pay the Insurers:

1.1.1 The Net Premium and IPT (on both the Net Premium and the Telematics Box) less the box fitting costs for all new business sales of their Policies; and

1.1.2 The Net Premium and IPT thereon for all renewal business sales of their Policies.

1.2 AIS shall pay to the Client its Revenue Share plus the Telematics Box fitting costs.

1.3 AIS shall retain its Revenue Share.

All payments set out in this paragraph 1 shall be made within 25 days of the end of each calendar month.

PART VIII GENERAL

1. It is acknowledged and agreed by the Client that from time to time AIS shall provide the Services direct to the Insurer rather than via the Client.

2. AIS will keep and update as necessary the suite of letters and other documents required to be sent to customers.

...

Schedule 3

The Client's Services

1. The Client's Services

1.1 The Client's Services shall comprise:

1.1.1 marketing the product;

1.1.2 lead generation;

1.1.3 Panel management;

1.1.4 call and IVR (interactive voice response) script preparation;

- 1.1.5 managing the Telematics Box fitting process;
- 1.1.6 providing advice to AIS on Telematics (as a subject matter expert);
- 1.1.7 providing Telematics Data to AIS; and
- 1.1.8 assisting AIS with the provision of the AIS Services.
- 1.1.9 providing other services as the Client sees fit to introduce from time to time

2. Marketing the Product and lead generation

2.1 The Client shall introduce Customers to the Insurers in accordance with its sales plan from time to time.

...

2015 POLICY BOOKLET – INGENIE CAR INSURANCE POLICY WORDING

Introduction to ingenie

For this section only, this contract is between **you** and **Ingenie** Services Limited.

All through this section there are certain words printed in bold. These words have special meanings that are shown in the definitions section on pages 7 and 8.

About **ingenie**

Car insurance for young drivers aged 17 to 25.

ingenie is a specialist car insurance brand for younger drivers.

The latest in-car telematics technology is used to assess **your** driving style. ingenie gives feedback on how **you** drive at www.ingenie.com or via a free mobile phone application.

An **ingenie device** will be installed in **the car**. This captures **telematics data** on a range of driving characteristics including speed, braking, acceleration and cornering.

ingenie can help **you** to be a better driver and influence the cost of **your** car insurance.

ingenie device

ingenie will arrange for a device to be fitted to **the car**. This is about the size of a mobile phone and uses the latest telematics technology, including high-speed accelerometers, to capture data on how **the car** is driven.

You then receive feedback on how **you** are driving, with useful tips available on the free **ingenie** app and at www.ingenie.com. These tips are designed to help **you** improve **your** driving style and become a better driver.

The **telematics data**

The **telematics data** that **ingenie** collects from **your ingenie device** includes:

- Speed throughout **your** journey
- Braking frequency and force
- Acceleration
- Cornering and sudden manoeuvres

- Miles travelled
- The type of routes **you** take (e.g. A-roads, motorways, country lanes)
- Time and date of travel
- The car's GPS location

How **ingenie** uses **your** data

ingenie will use **your** personal data as follows:

- **ingenie** will pass the **telematics data** from **your ingenie device** to **your Insurer** to help them to manage **your** insurance, including using the data in the assessment of liability of any claims or to identify the location of **the car** following a theft claim. The **telematics data** will be used by **your Insurer** to evaluate whether **your** premium should change.
- **ingenie** will pass the **telematics data** to **your insurer** to allow them to help prevent fraud (including sharing **your** information with operators of registers used by the insurance industry to check information).
- **ingenie** may from time to time use a different **insurer** to quote or to provide **you** with insurance and will provide the **telematics data** to that different **insurer**.
- **ingenie** may use **your** personal information to give **you** information about other products and services offered by **ingenie**. If **you** do not want **ingenie** to use **your** information for marketing purposes, please email, write or telephone **ingenie** using the details shown on any of **ingenie's** letters or on **our** website, www.ingenie.com.

Looking after **your ingenie device**

ingenie will aim to install your **ingenie device** in **the car** within 10 days of **your** insurance policy commencing. The **ingenie device** remains the property of **ingenie** and shall only become **your** property after **your** insurance has lapsed or been cancelled.

ingenie will not be responsible for any faults or damage or the cost of replacing the **ingenie device** if the fault or damage is caused by **you** or anyone appointed by **you** (such as a mechanic) or anyone other than **ingenie** or **ingenie's** representatives.

This is the end of the **ingenie** section of this policy. The following pages contain the details of the insurance cover provided by **your insurer**.

Contract of insurance

Introduction

The information **you** provided, and the declaration **you** or anyone representing **you** agreed to, along with this policy booklet, **your schedule** and **your certificate of motor insurance** are all part of **your** policy. Please read them all together.

If **you** or anyone representing you:

- Provides **us** with inaccurate or incorrect information when applying for, changing or renewing this insurance
- Deliberately misleads **us** to obtain cover, gain a cheaper premium or more favourable terms

- Makes a fraudulent payment by bank account and/or card
- Provides **us** with false documents

For example, this could include:

- not telling **us** about motor or criminal convictions
- not telling **us** about previous accidents or losses, even if a claim was not made
- not telling **us** about modifications to **your** car
- giving **us** false information about who is the registered keeper or owner of **your** car
- giving **us** false information about where **your** vehicle is kept overnight
- using a credit card without the credit card holder's permission

This is not a full list and if **you** are in any doubt about the information **you** have provided to **us** then please contact **us** immediately.

We may:

- Agree to amend **your** policy and apply any relevant policy terms and conditions and collect any additional premium due including any premium adjustment charge to cover **our** administration costs
- Reject a claim or reduce the amount of payment **we** make
- Cancel or avoid **your** policy (treat it as if it never existed), and apply a cancellation fee.

Where fraud is identified **we** will:

- Not return any premium paid by **you**
- Recover from **you** any costs **we've** incurred
- Pass details to fraud prevention and law enforcement agencies who may access and use this information. Other insurers may also access this information

This policy is a contract between **you** and **us**. It is not **our** intention that the Contracts (Rights of Third Parties) Act 1999 gives anyone else either any rights under this policy or the right to enforce any part of it.

In return for **you** paying or agreeing to pay the premium, **we** will provide cover under the terms, exclusions, conditions and **endorsements** of this contract of insurance, during the **period of insurance** and within the **geographical limits**.

Under the Road Traffic Act it is an offence to make a false statement or withhold information for the purposes of obtaining a **certificate of motor insurance**.

You are required by the provisions of the Consumer Insurance (Disclosure and Representations) Act to take care to answer all questions honestly and to the best of **your** knowledge. Failure to supply accurate and complete answers may result in **your** policy being cancelled or treated as if it never existed, or **your** claim rejected or not fully paid. If **you** are in any doubt whether a piece of information is relevant to **your** answer, **we** will be happy to give **you** advice.

You must read this policy, the **certificate of motor insurance** and the **schedule** together.

Please check all documents carefully to make sure that they give **you** the cover **you** want.

The law and language applicable to this policy

English law will apply to this contract unless **we** agree with **you** in writing otherwise. The contractual terms and conditions and other information relating to this contract will be in English Language.

This is your insurance policy. It is a contract of insurance between you and us.

Throughout this policy certain words and phrases are printed in **bold**. These have the meanings set out below.

Black messages

Black messages are created as a result of monitored **driver behaviour** and will be issued if **the car** is being driven dangerously, such as driving 30 mph over the speed limit, or if **you** have received multiple red messages.

Certificate of Motor Insurance

The proof of the motor insurance **you** need by law. The **certificate of motor insurance** shows:

1. what car is covered;
2. who is allowed to drive **the car**; and
3. what **the car** can be used for.

Driver behaviour

Your ingenie device will measure and transmit various aspects of how **the car** is driven. These measurements will include (but are not limited to) the speed throughout the journey, braking frequency and force, acceleration, cornering and sudden manoeuvres, miles travelled, the types of routes taken (e.g. A-roads, motorways, country lanes), time and date of travel and **the car's** location.

This **telematics data** will be used by **us** to determine **driver behaviour**.

For more information about the **telematics data** that will be collected and how it will be used please go to www.ingenie.com

...

ingenie

Ingenie Services Limited.

ingenie device / device

A telematics box fitted to **the car** which transmits **telematics data** to **ingenie**.

...

Period of insurance

The length of time that the contract of insurance applies for. This is shown in the **schedule**.

Schedule

The latest **schedule we** have issued to **you**. This forms part of the contract of insurance. It gives details of the **period of insurance, the car** which is insured and details of any **excesses or endorsements**.

Selected installer

Any **telematics device** fitting company that has been authorised by **ingenie** to install or remove the **ingenie device** from **the car**.

Statement of insurance

The form that shows the information that **you** give **us**, including information given on **your** behalf and verbal information **you** give prior to commencement of the policy.

Telematics data

Information collected and transmitted by **your ingenie device** that enables analysis of **driver behaviour**.

The car

Any motor car that **you** have given **us** details of and for which **we** have issued a **certificate of motor insurance**. **The car's** registration number will be shown on **your latest certificate of motor insurance**.

Accessories and spare parts are included in the definition of **the car** when they are with **the car** or locked in **your** own garage.

We/Us/Our/Insurer

The insurance Company as specified in the **statement of insurance**, the **schedule** and the **certificate of motor insurance** on whose behalf this document is issued. **We/us/our** can also mean **ingenie** where there is reference to the **ingenie device, Telematics Data, Cancelling your policy, Sharing Information and Complaint Notification**.

You/your

The person shown under 'Policyholder details' on the **schedule**.

...

Before the **ingenie device** can be installed

You have the responsibility to ensure that **you** have the agreement of anybody with a legal interest in **the car** to the fitting of an **ingenie device**.

Cost of the **device** and its fitting

You will not be charged for **your** first **ingenie device** or its fitting provided **you** do not cancel **your** policy during the **period of insurance**.

If **you** cancel **your** policy within the first **12 months of this policy**, and the **ingenie device** is fitted, **you** will need to pay £165 to contribute towards the cost of the **device** and its fitting. **We** reserve the right to deduct this £165 from any premium refund due.

If **you** change **your** car **we** will not remove the **ingenie device** from **your** previous car, but **you** will need a new **ingenie device**.

If **you** change **your** car within the **period of insurance** **you** will be charged £75 to contribute to the cost of a new **device** and its fitting (£100 if you change **your car** a second time and £150 for any subsequent change of car).

You will not be charged for a new **ingenie device** or its fitting if **the car** is deemed a total loss after a claim or if the **device** is damaged in an incident

involving a claim under **your** policy. **You** are not liable for the cost of transmitting data to and from the **ingenie device**.

Timescale of fitting

The **ingenie device** must be fitted within 10 days of **your** policy commencing, or 10 days from when **you** notify **us** of a change of car. If the **device** is not fitted within these timescales **we** reserve **our** right to cancel **your** policy as per section 8 on page 42 and 43.

The **selected installer** will fit the **ingenie device** at a mutually convenient time at (or near) **your** home or place of work or study within mainland Great Britain and Northern Ireland, provided it is safe to fit the **device** at the proposed place.

Documents required for fitting

On the day of **your ingenie device** fitting **you** must present the following documents to the fitter acting for the **selected installer**:

- Vehicle registration document (V5C)
- **Your** driving licence photocard
- Proof of No Claim Discount (if appropriate).

If **you** need a new **ingenie device** because **you** have changed **your car** then **you** only need to supply the **selected installer** with **your** driving licence and Vehicle Registration Document (V5C).

No Claim Discount must be in **your** name, be less than 24 months old, contain the previous policy number and expiry date of the previous policy, indicate the number of years claim free, and detail any accidents.

Damage caused through fitting

If any damage is directly caused to **your car** because of the **ingenie device** fitting then it will be repaired at no cost to **you**.

We will not be responsible for any depreciation in the value of **the car** caused by the fitting of the **ingenie device**.

The device

ingenie will own the **device** until the insurance has lapsed or been cancelled, after which point **you** will own the **device**.

If the **device** is damaged due to **you**, or anyone acting on **your** instruction or on **your** behalf, maliciously tampering or interfering with the **device**, or **you** deliberately prevent it from working, **we** reserve **our** right to cancel **your** policy under section 8 on page 42 and 43. If the **device** is maliciously damaged, or deliberately prevented from working, and **you** do not cover the cost of fitting a new **device** then **we** reserve **our** right to cancel **your** policy under section 8 on page 42 and 43.

You will be liable for any costs incurred through repairing, removing or replacing the **device**. **You** will not be liable for manufacturer faults (see ‘**device** faults’ below).

Device faults

Should the **device** develop a fault **ingenie** will notify **you** and arrange a mutually suitable time to replace the **device**. **You** must allow **ingenie**, or their **selected installer**, access to **your** car within 14 days of **ingenie** notifying **you** of the fault. If **you** do not allow **ingenie**, or their **selected installer**, access to

your car within this timescale then **we** reserve **our** right to cancel **your** policy under section 8 on page 42 and 43.

Telematics data collection

ingenie will collect **telematics data** from **the car** throughout the **period of insurance** and will pass it to **us**. All **telematics data** transmitted to and from the **ingenie Device** is secure.

The **ingenie device** will measure and transmit various aspects of how **the car** is driven. These measurements will include (but are not limited to) speed throughout journeys, braking frequency and force, acceleration, cornering, and sudden manoeuvres, miles travelled, the type of routes taken (e.g. A-roads, motorways, country lanes), time and date of travel and **the car's** location.

We will use the **telematics data** to determine **driver behaviour**. **We** may also use the **telematics data** collected from **your ingenie Device** in the assessment of liability in the event of a claim, in calculating **your** premium, and in **our** statistical analysis.

ingenie will attempt to capture **telematics data** at all times during the **period of insurance**. If **telematics data** is not collected for any period of the insurance (for example for the following reasons):

- **You** drive another car without an **ingenie device**
- **The car** is driven into a geographic area not covered by the **ingenie device** or where the **device** cannot operate
- The **ingenie device** develops a fault or is damaged by an insurable event; then **driver behaviour** for this period may not be recorded. This will not affect **your** cover.

If **telematics data** is captured for less than 75% of the **period of insurance** then this may impact **our** ability to use telematics **data** including: not being able to use the **telematics data** to assist in any claim **you** may have or to help calculate **your** premium.

If **you** allow other drivers to use **the car** during the **period of insurance**, please note their driving will have an impact on the **telematics data** collected by **ingenie** and could impact **your** premium.

How telematics can affect **your** premium

We will assess the **telematics data** from **your ingenie device** against **our** guidelines three times a year and at renewal to determine **driver behaviour**.

The FAQ section of the **ingenie** web site contains information about how **your** premium may increase or decrease based on **driver behaviour** during the **period of insurance** as a result of the **driver behaviour**.

If after **our** assessment **we** consider the **driver behaviour** to be safe then **you** may receive a discount on **your** premium, alternatively if the **driver behaviour** is considered to be unsafe then **your** premium may increase but only up to the maximum price **you** were quoted at inception, renewal or following a change to **your** policy.

If as a result of **driver behaviour** **you** receive a **black message** **we** will monitor the driving performance and if **we** don't see an improvement or if **driver behaviour** is consistently poor then **we** reserve the right to cancel **your** policy under section 8 on page 42 and 43. **We** may cancel **your** policy under section 8 on page 42 and 43 if **you** drive at unacceptably high speeds.

We will not wait until renewal to increase or decrease **your** premium; if applicable to **you** this will be done approximately 3 times during the year (approximately every 90 days). **We** will give **you** 7 days' notice before applying any changes to **your** premium.

If **you** have already paid **your** annual premium and **your** premium decreases because of **driver behaviour**, **you** may receive a premium rebate. If **you** have already paid **your** annual premium and **your** premium increases because of **driver behaviour** then **you** may be asked to pay the additional premium immediately.

This will be collected from **your** card details if **you** have provided them.

If **you** pay **your** premium by monthly instalments then **your** payment plan will be automatically amended to reflect **your** increased or decreased premium.

If as a result of **your driver behaviour** **you** receive a **black message** in the 6 weeks before **your** renewal date, which has not been considered in **your** renewal calculation, **we** may amend **your** renewal premium and/or change the compulsory **excess** with effect from the renewal date or withdraw the invitation to renew **your** policy. **We** will confirm these changes to **you** in writing. **We** may cancel **your** policy, under section 8 on page 42 and 43, if **you** drive at unacceptably high speeds.

Cooling off period

You have the right to cancel **your** policy under section 8 on page 42 and 43.

If **you** cancel **your** policy within 14 days from either the start date of the policy or the date **you** receive the policy documents, whichever is the later date, within the first 12 months of this policy, and the ingenie device has been fitted, you will need to pay £165 to contribute towards the cost of the box and its fitting. We reserve the right to deduct £165 from any premium refund due.

If the policy is cancelled

If the policy is cancelled after the cooling off period but within the first 12 months of this policy, you will need to pay £165 to contribute towards the cost of the device and its fitting. We reserve the right to deduct this £165 from any premium refund due.

If the policy is cancelled, or lapses, the device will remain in the car. ingenie will cease collecting telematics data within 7 days of cancellation, or as soon as possible thereafter, meaning the device will not transmit any further telematics data to ingenie. Any telematics data collected remains the property of ingenie, subject to the requirements of the Data Protection Act (1998) and ingenie's Data Protection Notice on page 3, and our Data Protection Notice on pages 46 – 49.

Fitting charges relating to ingenie device and document inspection		
1	Cost of fitting your ingenie device for the first time	£0
2	If you miss an arranged ingenie device fitting, repair or replacement appointment without giving us at least 24 hours' notice	£45
3	Removal of ingenie device at your request	£80

4	First change of car (fitting new ingenie device in this replacement car)	£75
5	Second change of car (fitting new ingenie device in this second replacement car)	£100
6	Subsequent change of car (fitting new ingenie device in this subsequent replacement car)	£150
7	Fee to cover the ingenie device fitting if the policy is cancelled within the first period of insurance	£165
8	Replacing a faulty ingenie device	£0
9	If the car is modified, converted, customised or in an unfit state to install an ingenie device and we decide not to fit one	£45
10	If you damage or tamper with the ingenie device , we reserve the right to cancel your policy and/or charge you .	£150

We may debit these additional payments from the debit or credit card details **you** provided when **you** bought this policy.

If **we** do not have **your** credit or debit card details then **you** may be invoiced for any additional charges and payment should be made within 14 days. Failure to pay these additional fees when requested may result in **your** policy being cancelled.

...

Cancelling **your** policy

a. Cooling off period - **you** have 14 days from when **you** receive the policy documents or the purchase date of the policy, whichever is later, to cancel the cover. This is known as a cooling off period. **You** can cancel by phoning **us**.

...

If **you** cancel **your** policy within 14 days from either the start date of the policy or the date **you** receive the policy documents, whichever is the later date, within the first 12 months of this policy, and the **ingenie device** has been fitted, **you** will need to pay £165 to contribute towards the cost of the box and its fitting. **We** reserve the right to deduct £165 from any premium refund due.

...

b. After the 14-day cooling off period **you** can cancel this policy at any time by phoning **us**. If no claims have been made during the current period of insurance **we** will charge **you** for the period of cover that has been provided and refund **you** for any cover **you** have paid for but haven't used.

If **you** cancel **your** policy within the first 12 months of this policy and the **ingenie device** has been fitted, **you** will need to pay £165 to contribute towards the cost of the box and its fitting. **We** reserve the right to deduct this £165 from any premium refund due.

TOBA 2016

Terms Of Business Agreement

Definitions: In this Terms of Business Agreement “**we**”, “**us**” and “**our**” means Ageas Retail Limited and/or Ingenie Services Limited. We are an intermediary acting on your behalf offering products and services from insurers to meet your requirements. Ingenie Services Limited ... introduces you to Ageas Retail Limited who will arrange and administer your policy of insurance.

...

Your Agreement To These Terms Of Business: In seeking insurance through us you agree to the Terms of Business Agreement and to **us** acting as your agent. This does not affect your normal statutory rights.

About Our Service: ... **Our** service includes: arranging your insurance and processing any required changes that you may wish to make to your policy.

If you speak to one of **our** advisors about the taking out of, amendment to, renewal or cancellation of your policy then you will do so on an advised basis. This will include the provision of advice and recommendations where appropriate in order to ensure insurance discussed is suitable for your needs.

If you choose to take out, amend, renew or cancel your policy without speaking to one of **our** operators (for example through **our** website) then you will do so on a non-advised basis. This means information will be provided in order for you to make an informed decision about any insurance transactions undertaken by you.

You agree to receive your policy documents including the certificate of insurance electronically, where appropriate to do so.

About The Products We Offer:

We offer products from Ageas Insurance Limited, Covea Insurance plc, Highway Insurance Company Limited and Royal and Sun Alliance for motor insurance contracts.

We offer a number of optional extra products from a limited number of specialist insurers. You can request a list of the insurers from us.

Important Information: Please take care to answer all questions honestly and to the best of your knowledge. If you don't your policy may be cancelled, treated as if it never existed, or your claim rejected or not fully paid.

You should read and retain all the documents **we** have sent or may send in the future. You should make sure the documents are accurate and contact **us** if the documents contain any errors. If you have any queries about your policy or do not understand it, please inform **us** immediately and we shall be pleased to assist you.

Remuneration And Fees:

We may make a charge and our charges are detailed below. These charges are independent of any charges imposed by the insurer.

These fees are non refundable with the exception of the cooling off period set out below:

A fee of £10 to issue you with a duplicate insurance document;

A fee of £25 when you ask us to make a change to your insurance policy;

A fee of £12 for Direct Debit defaults and returned cheques;

A fee of £45 if you miss an arranged black box fitting, repair or replacement appointment without giving us at least 24 hours notice;

A fee of £45 if we cannot or decide not to fit your box because your car is modified in any way, is in an unfit state or parked in an unsuitable location;

A fee of £80 for removal of the black box at your request;

A fee of £75 for the first change of car (fitting a new black box in this replacement car);

A fee of £100 for the second change of car (fitting a new black box in this second replacement car);

A fee of £150 for subsequent change of car (fitting a new black box in this subsequent replacement car);

A fee of £166 to cover the black box fitting if the policy is cancelled within the first period of insurance;

A fee of £150 if you damage or tamper with the black box, we reserve the right to cancel your policy and/or charge you.

...

Cancellation fees are as follows:

1. Within 14 days from the later of either the start date of the policy or the date you receive your policy documents - the cooling off period:

We will retain an administration fee of £10 for the setup of your policy.

Your insurers may make a pro rata on risk charge plus an administration charge, please refer to the Policy Summary or Policy Wording for further details.

2. After the 14 day period:

We will retain a cancellation fee of £35 in the event of the policy being cancelled outside of the cooling period.

Any fees **we** apply to your policy will be independent of any charges imposed by the insurer. Any add on products that you may have purchased will be charged at the full price in the event of cancellation.

Please note that your insurance premium may have included a discount. If this is the case (the letter accompanying your insurance documents will tell you) in the event you cancel your policy before its expiry date, **we** will still include this discount.

If you wish to cancel your insurance contract you should advise **us** of this by writing (and return all insurance documents) ...

If your policy is cancelled and there are unpaid monies, **we** may withhold any relevant documents, such as proof of no claims discount, until full payment has been received. **We** also reserve the right to refer the matter to a debt recovery agency to collect any unpaid monies owed to **us**. This may result in you incurring further costs, which you will be notified of in advance.

Certain fees (as shown in the Remuneration and Fees section) may apply to cover, or contribute to, costs incurred by ingenie in respect of the ingenie telematics devices. These include missed appointment fees, early cancellation of the insurance by you during the first period of insurance, a request by you to remove an ingenie device or the need to fit additional or replacement ingenie devices following a change of car or damage by you to the ingenie

device, please see the ingenie website for details www.ingenie.com/fees-and-charges or check the Policy Wording.

Validity Period: Where **we** have provided a quotation we operate in a real time live environment where rates change on a daily basis. Therefore rates are only guaranteed at the time the quote is obtained.

Claims: **We** do not process claims for your insurer. When you tell **us** about a claim **we** will need to take your name, address, policy number and enough detail about the claim so that your insurer can best decide how to proceed. In these circumstances, **we** are acting as your agent. Full details of how to make a claim are included in your policy booklet. Please note that your insurer shall have no responsibility in handling any claim if the incident date is after the date of a cancellation or the lapse or end date of your policy.

Client Money: **We** act as agent for the insurer for the collection of premiums and payment of premiums. This means that premiums are treated as being received by the insurer when received in **our** bank account and any premium refund is treated as received by you when it is actually paid over to you.

Confidentiality: We will treat information received from you relating to this Terms of Business Agreement and to the insurance business as confidential and will not disclose it to any other person not entitled to receive such information except as may be necessary to fulfil our obligations in the conduct of insurance business and except as may be required by law or by the FCA. For the avoidance of doubt we shall be entitled to disclose such information where necessary to insurers or reinsurers, actuaries, auditors, professional agents and advisers and other Group companies. This paragraph will not apply to information which was rightfully in the possession of us prior to this Terms of Business Agreement, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this paragraph) or which is trivial or obvious.

Use Of Your Personal information: Please read this notice carefully as it contains important information about **our** use of your personal information in this notice, **we**, **us** and **our** means Ageas Retail Limited and Ingenie Services Limited which includes any holding companies, subsidiaries and other linked companies. Your personal information means any information **we** hold about you or anyone else in connection with any product or service **we** are providing for you.

By taking out this insurance policy, you confirm that **we** may use your personal information for the purposes explained below.

You should also show this notice to anyone else whose name you give to **us** in connection with your insurance policy as it will also apply to them.

How We Use Your Personal Information: **We** will pass your personal information to your insurer or potential insurer ahead of renewal to enable them and **us** to manage your insurance policy including handling underwriting and claims and issuing renewal documents.

We and your insurer may also release your personal information to others if **we** need to prevent fraud or **we** are required or permitted to do this by law (for example, if we receive a legitimate request by the police or other authority); or there are any other circumstances where you have given your permission.

...

Marketing Purposes: **We** also may use, analyse and assess your personal information to give you information about other products and services offered by **us**. **We** use e-mail, telephone, post or SMS to do this.

If you do not want **us** to use your information for marketing purposes please telephone, email or write to **us** using the details shown on any of **our** letters.

...

Change Of Insurer: As your agent acting on your behalf, **we** may from time to time use a different insurer(s) to provide you with insurance. A change of insurer(s) may take place on the renewal date of your policy or at any other time. **We** will notify you prior to any change of insurer(s) and advise you of any change in the policy terms. Accordingly, you authorise **us** as your agent to place your insurance with insurers other than those named in your schedule or certificate. You will have the opportunity to terminate that policy both before and after such a change becomes effective.

Outstanding Monies Owed: You shall pay **us** on demand all outstanding monies arising from any contract you place with **us**. You agree that **we** can obtain these monies from the original debt or credit card using the details you supplied to pay the deposit to set up the insurance contract. However, **we** will write to you in good time to inform you of our intention to do so.

In the event of a valid claim made on your insurance contract, and subject to the relevant authority of your insurer, **we** shall offset any outstanding monies owed to **us** by you, from any financial settlement provided by your insurer under the terms of your insurance contract.

...