

**IPT0014**

*INSURANCE PREMIUM TAX – Premium – Assistance insurance – Cover provided by insurance company – Insured charged amount by Appellant for arranging and administering cover – Whether that amount is to be regarded as a payment received under taxable insurance contract by the insurer – Whether amount is charged under a separate contract and consequently excluded from tax – Appeal dismissed – FA 1994 s.72(1A)*

**LONDON TRIBUNAL CENTRE**

**HOMESERVE GB LIMITED**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS Respondents**

**Tribunal: SIR STEPHEN OLIVER QC (Chairman)**

**Sitting in public in London on 20, 21 and 22 May 2008**

**Dominic Kendrick QC and James Henderson, counsel, instructed by Slaughter & May, solicitors, for the Appellant**

**Andrew MacNab, counsel, instructed by the general counsel and solicitor for HM Revenue and Customs, for the Respondents**

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## DECISION

1. Homeserve GB Ltd (“Homeserve”) appeals against a decision (confirmed following a review) of HMRC that an “arrangement and administration fee” paid by a homeowner, on that homeowner entering into a taxable insurance contract with Inter Partner Assistance SA (“IPA”), an insurance company, was to be regarded as a payment received under that taxable insurance contract and formed part of the premium by reference to which Insurance Premium Tax (“IPT”) was chargeable.

### Background summary

2. Homeserve has at all material times carried on business in the UK in the field of insurance as an insurance intermediary. It has been involved with particular types of insurance schemes, in particular schemes for homeowners, such as insurance policies providing cover for plumbing and drainage, or for electrical systems or for heating systems. Homeserve has for over fifteen years designed, invented and improved insurance products relating to plumbing, electrical and heating and other services. As a licensed broker, it has offered one product relating to each class of cover.

3. IPA is a Belgian company with offices in the UK that provides insurance, including “assistance insurance”, in the UK.

4. The cover provided by an assistance insurance contract involves the “homeowner” buying, for example, plumbing and drainage cover for a year and paying, say, £59.99. The cover gives the homeowner access in an emergency via a hotline to a local Homeserve-approved plumbing or drainage engineer who will attend to the emergency within two hours. Payment for the engineer’s service is, within certain limits, met by the providers of the cover. The homeowner has the right to claim up to four times in the year of cover and permanent repairs are guaranteed for the lifetime of the cover.

5. Throughout the period to which this appeal relates Homeserve and IPA have operated together under the terms of an agreement of 21 July 2000, known as the Assistance Insurance Agreement (“the AI Agreement”). (The AI Agreement has been amended on occasions; only the amendment of 15 December 2004 has a bearing on the present issue and is referred to in paragraph 22 below.) Under the AI Agreement Homeserve and IPA have agreed to use the services of Home Hotline Ltd (which became Homeserve Claims Management Ltd in April 2005 and to which I refer as “the Hotline Company”). Since September 2002 the Hotline Company has been a subsidiary in the same group of companies as Homeserve.

6. The Hotline Company has been the exclusive service provider of the claims management in respect of all forms of assistance insurance cover purchased by the homeowners. The functions of the Hotline Company include the selection and approval of service engineers.

7. During the period to which this appeal relates the marketing material sent to the homeowner as a prospective customer for the product tells him that he “will have a contract to arrange and administer your policy with Homeserve and a separate contract for insurance with IPA”. When his offer is accepted the same words appear. The terms and conditions state that “the cost of cover is the total amount you pay as detailed in the policy documentation, which consist of the arrangement and administration fee of £14 and the premium”.

8. The fee of £14 appears in a plumbing and drainage contract put in evidence. For other products the amount may be different.

9. This appeal relates to the £14. It is common ground that it falls within the words of section 72(1A) of Finance Act 1994 as amended by Finance Act 1997; it is an amount “charged to the insured by any person in connection with a taxable insurance contract”. The central issue is whether the £14 is, as Homeserve contend, and HMRC dispute, taken out of charge to IPT by the words of exclusion in section 72(1A)(b) as being an amount “charged under a separate contract” which is “identified in writing to the insured as a separate amount so charged”. HMRC say there was no contract between Homeserve and the insured homeowner; and even if there was, it was not a separate contract in the relevant sense.

**The period and the amounts of tax involved in this appeal**

10. The assessments appealed against were made on IPA. It is not in dispute that Homeserve can act as the Appellant in this appeal. The amounts assessed are £170,544 plus interest and £932,189 plus interest. These cover the periods from 1 July 2003 to 31 December 2003 and from 12 January 2004 to 31 June 2005 respectively. In both cases the assessments are on the aggregate of the arrangement and administration fees paid by homeowners during the relevant periods.

**“The new arrangement”**

11. Prior to the start of periods covered by the assessments the total amount paid by the homeowner was treated for IPT purposes as premium and was taxed as such. Homeserve’s share was, I understand, treated as commission payable by IPA in respect of the services provided by Homeserve to IPA.

12. Assistance given by professional advisers resulted in a change in the arrangements between Homeserve and the homeowner. New paperwork was created. This included new terms and conditions. The marketing material sent to the homeowner informed him (as just noted) that he would have a contract with Homeserve to arrange and administer the policy on behalf of IPA “to which the cost to you is £14 and a separate contract with IPA. The total price you pay is unaffected by these arrangements”. Mr Shepherd, the Commercial Director of Homeserve who gave evidence, explained that the £14 had been determined initially as covering

approximately half the appropriate proportion of Homeserve's operating costs; the amount so determined was then adjusted by reference to what the market would stand.

13. The explanation given by KPMG, accountants, writing to HMRC on behalf of Homeserve on 5 August 2005 was that the new arrangement "simply alters the way in which the intermediary is remunerated". It appears that HMRC has adopted that description and has assessed IPA on the basis that Homeserve's remuneration falls within the statutory definition of "premium". This brings me to a short summary of the circumstances to be followed by an explanation of the contractual framework.

### **The opposing positions**

14. Homeserve contends that the £14 is outside the scope of section 72(1A). The £14 is not a payment received by or on behalf of the insurer, IPA. It has been identified in writing as a separate contract: and, they say, it has been charged under a separate contract from the contract of insurance.

15. HMRC's case is that the £14 was not charged under a separate contract. There was, they say, no contract between Homeserve and the homeowner. Moreover, if there was such a contract, it was a single tripartite contract between Homeserve, IPA and the homeowner; or if there were two contracts, those contracts were not "separate". Accordingly, say HMRC, section 72(1A)(b) does not operate to prevent the £14 from being regarded as a payment received by IPA under a taxable insurance contract.

### **Business relationship between Homeserve and IPA**

16. The AI Agreement records the wish of Homeserve and IPA to develop insurance products and to provide assistance insurance to domestic households. It operates as a rolling agreement terminable on any 31 March on three months prior notice (Clause 3.2). The obligations of Homeserve under the AI Agreement are set out in Clause 5. Homeserve is to use all reasonable endeavours to facilitate the marketing and promotion of the products and to carry out promotional mailings. Homeserve is to agree in advance with IPA any new benefits, changes in the wording or new schemes to be underwritten by IPA and the net premium to be paid to IPA. Homeserve provides underwriting information to allow IPA to provide the requisite insurance. Homeserve agrees to process all applications for insurance and to accept applicants as policyholders and to complete the documentation. Homeserve is to issue any renewals of policies as and when due. Homeserve is to handle all calls relating to request for information and to refer to IPA all requests for "Assistance Services" (defined to mean emergency services and claims handling services provided by IPA and the management of claims arising under assistance insurance policies). Homeserve is to provide to IPA details of new policyholders, renewals and cancellations. Each week Homeserve is to pay any insurance premiums including IPT and VAT. Homeserve is to receive complaints about service quality and provide copies and reports to IPA. It is Homeserve's responsibility to provide IPA with customer satisfaction checks through "call-backs".

17. IPA's obligations are in Clauses 6 to 8 of the AI Agreement. These make IPA responsible for providing assistance insurance, contracting with the Hotline Company for the latter to provide specified assistance services, settling claims and subcontracting claims handling to the Hotline Company and procuring that subcontractors (the Hotline Company included) comply with complaints handling procedures and claims handling and standards of service procedures. Homeserve bears the marketing, publicity and stationery expenses.

18. The intellectual property in the products belongs to Homeserve: see Clause 12 of the AI Agreement.

19. Clause 16 provides for the termination of the AI Agreement in certain specified events, e.g. material breach or insolvency.

20. Clause 17.1 provides for the consequences of termination of the AI Agreement "for any reason whatsoever". Subclause 1.2 provides:

"[IPA] will only remain liable to provide the Assistance Services and the Assistance Insurance and process claims in relation thereto which have been notified to it prior to the date of termination of this Agreement but shall otherwise cease to provide Assistance Services and the Assistance Insurance on the date of termination of this Agreement."

21. Subclause 1.4 provides that:

"[IPA] shall novate all of its rights and obligations under such Policies to such third party insurance providers as [Homeserve] shall nominate to be responsible for performing or procuring the performance of all of [IPA's] obligations under such Policies from that date. In addition, [IPA] shall refund to [Homeserve] within 30 days of the date of such novation or the termination of this Agreement that proportion of the Net Premium in respect of the relevant Policies ...".

22. Clause 18 of the AI Agreement states that it does not create the relationship of principal/agent between the parties. However an amending agreement of 15 December 2004 added a new Schedule 4 to the AI Agreement. By paragraph 1 of that, IPA appoints Homeserve as its non-exclusive agent "for the purposes of marketing, selling and administering the policies". IPA authorises Homeserve to act as its agent for the purposes of marketing and receiving quotations, processing applications for policies, underwriting of IPA and drawing up and despatching policy documents, all on behalf of IPA. It goes on to authorise Homeserve to alter, cancel, and renew policies and to hold and refund premiums. Paragraph 1.2 states that Homeserve does not have authority to settle claims for and on behalf of IPA.

## Agreements between Homeserve, IPA and the insured homeowners

23. The number and range of marketing materials and products marketed by Homeserve in the period to which this appeal relates has been extensive. For present purposes I shall use as the example the material described in a “Homeserve Plumbing and Drainage documentation pack” The material is stated to comprise “marketing mailing, policy summary and terms and conditions”. I understand that these are sufficiently representative to enable me to provide a decision in principle that covers all the products.

### The initial marketing : by mailshot

24. The initial marketing mailing sent to a potential insured was in the name of the utility company referred to as an “affinity partner”. The specimen material was despatched in the name of Cambridge Water Plc. Cambridge Water sent out an unsolicited letter in which it recommended that its customer take out insurance, in this case “Homeserve Plumbing and Drainage Cover”. The letter included the following passages:

“Re: Your plumbing and drainage responsibilities as a homeowner.

While we would prefer that our customers never experience an emergency, we know all these things can happen. That’s why we’re recommending that homeowners take out Homeserve Plumbing and Drainage Cover. *[There then follows a reference to a footnote which provides – You will have a contract to arrange and administer your policy with Homeserve and a separate contract for insurance with IPA ... . References to “Plumbing and Drainage Cover” or “Cover” in all documents include services within both contracts.]* In an emergency you will avoid all the hassle of finding a plumber, and the bill will be taken care of for you, within the generous cover limits. You can claim up to four times a year – up to two for internal claims and two for external claims, and permanent repairs are guaranteed for the life time of your cover.”

The letter goes on to explain how to use the service. It then contains the statement:

“All for just an annual price of £59.99”.

25. The letter contains a “summary of Cover” this deals with the start date for the cover. It states that if a plumber or drainage engineer fails to attend within two hours, in the event of an emergency, the premium will be refunded in full. It provides for cancellation within 28 days. It explains how to make a complaint.

26. The letter ends with this statement:

5 “Plumbing and Drainage Cover is arranged and administered for you by  
Homeserve. The insurance policy is underwritten by IPA. You will therefore  
have a contract with Homeserve to arrange and administer the policy on behalf  
of the insurer, for which the cost to you is £14 and a separate contract with  
IPA. The total price of £59.99 you pay is unaffected by these arrangements.  
References to “Plumbing Drainage Cover” or “Cover” in all documents  
include services in both contracts”.

10 27. The letter and the summary of cover constitute (as I read them and I did not  
understand this to be in dispute) an invitation to treat. The recipient’s response in the  
prescribed form amounts to an offer.

### 15 **Confirmation of cover/policy statement/terms and conditions**

15 28. Where the addressee of the initial letter, the homeowner, has responded and  
the offer has been accepted, the homeowner will receive a letter (again in the name of  
the utility company) giving notification that the cover is in place together with a  
policy summary and the Plumbing and Drainage Terms and Conditions. These  
20 materials produce what I will refer to as the “Customer Contract”.

25 29. The homeowner receives a letter, on Cambridge Water letterhead and signed  
by a Cambridge Water official. This letter thanks the homeowner for choosing  
Homeserve Plumbing and Drainage Cover. A footnote states that – “You will have a  
contract to arrange and administer the policy with Homeserve and a separate contract  
for insurance with IPA”. The letter goes on to explain the cover in general terms.

30 30. The standard form “Plumbing and Drainage Cover Terms and Conditions”  
remind the homeowner in terms that he has entered into a contract of insurance with  
IPA and a separate contract with Homeserve to arrange and administer the policy.  
The form stresses that the cost of cover “is the total amount you pay ... which consists  
of the arrangement and administration fee of £14 and the premium.”

35 31. The Plumbing and Drainage Cover Customer Contract in the year from 2003-  
2005 contains seven “Administration Terms and Conditions”. These state:

“1. Homeserve will arrange and administer your insurance cover and agree  
service standards for the delivery of the cover provided by the insurance. ...

40 2. The minimum period for which you may hold this policy is one year.  
Homeserve will arrange for collection of policy premiums in accordance with  
your instructions. If you fail to make a payment on the due date, your policy  
will be suspended immediately ... .

45 3. Homeserve reserves the right to cancel this policy by giving you at  
least seven days notice at your last known address.

4. Homeserve will contact you in writing before your policy expires to arrange renewal ... .

5. You are responsible for informing Homeserve of the change of your address ... .

6. Homeserve reserve the right to change the underwriter (insurer) of this policy at any time, without prior notice. Homeserve will however continue to provide the cover in this policy to you for the period shown on your certificate.....Homeserve will bear the cost of any such change of underwriter.

7. If you have a complaint relating to an administration matter, please write to ... Homeserve ... .”

32. There then follow the “Insurance Terms and Conditions”. These explain what is covered. Condition 12 provides:

“In the event of an uncontrollable emergency within your home, Homeserve guarantee the arrival of a plumbing or drainage engineer within two hours. If IPA fail to achieve this, Homeserve will refund your policy premium in full. ...”

### **The initial marketing : telephone sales**

33. In a telephone sale, the script, applicable in this case to the Electrical Emergency and Breakdown cover concludes as follows:

“Before I go ahead and arrange the policy, I just need to inform you ... that you will be entering into a contract of insurance with our insurers [IPA] and a contract with [Homeserve]. The annual price of £42.95 includes a cost of £10 for [Homeserve] arranging and administering your policy. Is that all O.K. ...?”

The customer is then told that Homeserve is a licensed broker, told of his right to cancel the policy, told to phone Homeserve if he has any further queries and thanked. He is told the contractual documents will arrive shortly and asked to read those carefully “as it will contain important information about your policy and the service provided by Homeserve”.

### **Relevant legislative provisions**

34. Finance Act 1994 as amended provides as follows, so far as material:

48. Insurance premium tax

(1) A tax, to be known as insurance premium tax shall be charged in accordance with this Part.

...

49. Charge to tax

Tax shall be charged on the receipt of a premium by an insurer if the premium is received -

(a) under a taxable insurance contract ...

50. Chargeable amount

(1) Tax shall be charged by reference to the chargeable amount.

(2) For the purposes of this Part, the chargeable amount is such amount as, with the addition of the tax chargeable, is equal to the amount of the premium.

...

52. Liability to pay tax

(1) Tax shall be payable by the person who is the insurer in relation to the contract under which the premium is received.

...

### *Supplementary*

70. Interpretation: taxable insurance contracts

(1) ... any contract of insurance is a taxable insurance contract.

...

72. Interpretation: premium

(1) In relation to a taxable insurance contract, a premium is any payment received under the contract by the insurer, and in particular includes any payment wholly or partly referable to –

- 5 (a) any risk,
- (b) cost of administration,
- (c) commission,
- (d) any facility for paying in instalments or making deferred payment (whether or not payment for the facilities is called interest), or
- 10 (e) tax.

(1A) Where an amount is charged to the insured by any person in connection with a taxable insurance contract, any payment in respect of that amount is to be regarded as a payment received under that contract by the insurer unless –

- ...
- (b) the amount is charged under a separate contract and is identified in writing to the insured as a separate amount so charged.
- 20 ...

- (7) Where anything is received by any person on behalf of the insurer –
- (a) it shall be treated as received by the insurer when it is received by any other person, and
  - (b) the later receipt of the whole or any part of it by the insurer shall be disregarded.
  - ...

30 **The legal issues**

35 35. Until September 2003 the full amount of the premium paid by the homeowner to IPA for, e.g, the plumbing and drainage cover, was chargeable to IPT. My understanding is that the £14 referable to Homeserve’s commission came within the charging words of section 72(1) on the basis that (i) the plumbing and drainage cover contract was a taxable insurance contract and (ii) the £14, as a commission within section 72(1)(c), came within the words “any payment received under the contract by the insurer” and was therefore part of the “premium”.

40 36. The new wording used from then on provided that “the cost of cover” being the total amount paid by the homeowner was to consist of the arrangement and administration fee of £14 and the premium. The documentation informs the homeowner that “these arrangements do not affect the amount you pay for your cover

45 or the service you receive”.

37. Section 72(1A) was inserted by Finance Act 1997 section 28. It extends the definition of “premium” by treating as “a payment received under the contract by the insurer”, “any payment in respect of an amount” being an amount that “is charged to the insured in connection with” the taxable insurance contract in question. Paragraph (b) contains words of exclusion for any amount “charged under a separate contract”. It is not in dispute that the £14 is charged to the insured “in connection with” a taxable insurance contract.

#### **Whether any contract is concluded between the homeowner and Homeserve**

38. The first issue is whether, as HMRC contend, there was no contract between Homeserve and the homeowner.

39. HMRC based this argument on the Administrative Terms and Conditions of the plumbing and drainage contract which is sent by Homeserve to the homeowner after his offer has been accepted (ie the Customer Contract) To the extent that Homeserve carried those out, say HMRC, they were carried out on behalf of IPA pursuant to the AI Agreement. No benefit and no value was provided by Homeserve to the insured by any of the activities referred to in Clauses 1-7 of the Administration Terms and Condition (see paragraph 31) ; the performance of those activities was not therefore consideration for any payment by the homeowner to Homeserve. Consequently the £14 administration and arrangement fee was consideration for the obligations entered into by IPA under the taxable insurance contract and therefore to be regarded as payment received by IPA under that contract.

40. In this connection HMRC emphasised the rules relating to contracts of insurance. These demonstrate that an intermediary such as Homeserve may either act for the insurer or for the insured policyholder. Where the intermediary is a broker, it cannot act for both. Reference was made to cases such as *Anglo-African Merchant Ltd v Bayley* (1969) ILLR 268 in the Commercial Court per Megaw J at page 279. Having regard to Homeserve’s expressed commitment as agent for IPA, it cannot therefore be acting for the policyholder and there will therefore be no relevant contract between it and the homeowner.

41. HMRC argue as an alternative that any consideration provided by Homeserve to the homeowner was restricted to the benefit of Homeserve’s promise to IPA to perform pre-existing contractual obligations to IPA.

42. Then, focussing on the “arrangement” side of Homeserve’s alleged activity, HMRC say that Homeserve did the arrangements as agent for IPA: and in any event it assumed the obligation to arrange after the homeowner’s cover had been arranged, i.e. only when the homeowner’s offer had been accepted.

43. In my view the £14 cannot properly be regarded as consideration for Homeserve’s service to the homeowner of “arranging” the plumbing and drainage cover contract. The contract is advertised as a pre-designed product for sale to homeowners. The work of arrangement in relation to the products will have been

done well before the contract is struck, which is when the letter confirming cover and containing the terms and conditions is sent to the, by then insured, homeowner. This is so whether the contract originates from a mailshot or a telephone call. Insofar as the benefit of any arrangement was provided by Homeserve to the homeowner, it was past consideration.

44. This leaves the “administration” part of the customer contract which, according to the plumbing and drainage cover publicity, informs the homeowner that he will “have a contract with Homeserve to ... administer the policy on behalf of the Insurer [IPA] for which the cost ... is £14 ...”. Read literally, those words are saying that the £14 is paid for the agency service that Homeserve owes to IPA. The telephone sales script does not define Homeserve’s role. It simply says –

“Before I go ahead and arrange the policy, I just need to inform you ... that I will be entering into a contract of insurance with ... IPA and a contract with Homeserve ... Is that all OK?”

45. The Terms and Conditions annexed to the confirmation of cover letter state that the “cost of cover is the total amount you pay”. That statement, it will be noted, refers to a single price and confirms that cover includes services within both contracts.

46. The terms and conditions start with Homeserve’s undertaking to “arrange and administer your insurance cover and agree service standards for the delivery of the product provided by the insurer”. The word “administer” is not explained. But if the word’s flavour is to be drawn from Homeserve’s remaining five undertakings, it connotes something of a back-office function, e.g. to do with payments of premiums, renewals and complaints. As I read Homeserve’s obligations to the homeowner in the Administration Terms and Conditions in the Customer Contract, they are well within the scope of Homeserve’s obligations to IPA as set out in Clause 5 of the AI Agreement.

47. The 15 December 2004 amendment to the AI Agreement serves to endorse Homeserve’s status as IPA’s agent in relation to certain defined “back-office” functions. The settlement of claims is expressly excluded and no mention is made at the handling of enquiries in the event of homeowner’s plumbing or drainage emergency.

48. So far therefore the points made tend to show that Homeserve is operating as IPA’s agent. The £14 charge by Homeserve could be seen as a cost of administration within section 72(1) (but arguably not received “by or on behalf of the insurer”, see section 72(7)). And, as agent, Homeserve has from that viewpoint no contract in the sense contemplated by section 72(1A)(b) with the homeowner.

49. Features of the Customer contract, when compared with the AI Agreement, show Homeserve assuming obligations as principal to the homeowner. Take item 6 of the Administration Terms and Conditions of the Customer Contract relating to

plumbing and drainage cover. This enables Homeserve at its own initiative to change insurer; it requires Homeserve, nonetheless, to provide the homeowner with cover for the duration of his Customer Contract. The AI Agreement provides for termination (and the release of IPA from its assistance insurance obligation) on three months  
5 notice prior to any review date (31 March) or on the happening of one of the events referred to in Clause 16. Either way IPA is obliged under the AI Agreement to novate its obligations with any new insurer introduced by Homeserve; and if novation takes place, the new insurer will take on IPA'S agreement for claims handling with the Hotline Company. Either way IPA remains liable (under Clause 17.1.2) to provide  
10 assistance insurance in relation to claims that have already been notified to it prior to termination.

50. But what is the position of the homeowner who encounters an emergency after Homeserve (or IPA) have terminated the AI Agreement or where it has terminated for some other reason? He still has the benefit of his rights against Homeserve, under the  
15 Customer Contract. Homeserve's obligation to "administer" requires it (as I read it) to see that the homeowner continues to get the full Customer Contract service (which includes access to the Hotline Company) comprised in the plumbing and drainage cover. To an extent Homeserve can protect itself by cancelling the policy (see item 3 of the Terms and Conditions). Nonetheless this situation provides a significant  
20 example of Homeserve, as principal, having a direct contractual relationship with the homeowner.

51. Then there is Clause 12 of the Customer Contract for plumbing and drainage cover. If IPA (through the Hotline Company) fails to secure the attention of a  
25 plumber to an emergency within two hours, Homeserve is obliged to refund the policy premium to the homeowner in full. That is a direct obligation assumed by Homeserve, to the exclusion of IPA, in favour of the home owner. It too supports Homeserve's contention that its undertaking to administer the plumbing and drainage cover is a contractual obligation under its contract with the homeowner. Also tending to support  
30 this conclusion is the fact that, under the terms of its Customer Contracts generally Homeserve, and not IPA, undertakes to provide customer services by supplying a Freepost service through which customers can write to Homeserve free of charge regarding certain administrative enquiries.

52. Finally on the practicalities, I refer to the wording of the various documents relating to the Customer Contract. These repeatedly stress the existence of what is  
35 described as the "separate contract" between the homeowner and Homeserve. It is hard to resist the inference that that is what the parties wanted, even though the precise significance may have escaped the homeowner.

53. For all those reasons I am satisfied that Homeserve does not merely act as agent for IPA in these transactions. It is not simply an insurance agent, of the sort  
40 considered in the *Anglo-African Merchants* case referred to above. Nor is it a "cover holder" – in the sense of being the agent of insurers who "holds the underwriting pen". Homeserve gives a contractual promise to administer the homeowner's insurance cover. This is consistent with the wider scenario in which Homeserve has been instrumental in devising and improving the product and in which the intellectual

property rights belong to it. Homeserve controls the exploitation of the product by retaining the right to dispense with the services of any particular insurer. But, even so, Homeserve respects its own continuing obligations to homeowners whose cover is still extant. Whether the obligations assumed by Homeserve to the particular plumbing and drainage contract homeowner are really worth £14 is beside the point. The fact remains that Homeserve gives an identifiable consideration in return for the payment.

**Does 72(1A)(b) exclude the £14 from IPT?**

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54. Section 72(1A) was inserted in the IPT code in 1997 after three years of experience of section 72(1) standing alone. Section 72(1) limited the tax base, in relation to a taxable insurance contract (i.e. any contract of insurance), to “any premium received under the contract [of insurance] by the insurer”. Included within the tax base were payments “wholly or partly referable to”, e.g., any risk, cost of administration and commission.

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55. Section 72(1A), as I have already noted, added to the tax base by widening the definition of “a payment received under” a particular taxable insurance contract. It thereby brought into tax “any payment in respect of “ ... “an amount .... charged to the insured by any person in connection with” the taxable insurance contract in question. Excluded from the charge so defined are the payments and amounts specified in paragraphs (a) and (b).

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56. The issue between the parties turns on the meaning and scope of paragraph (b). Paragraph (b) excludes from charge any “amount ... charged under a separate contract” where “that amount is identified in writing to the insured as a separate amount so charged”. There is no dispute that the £14 was identified as a separate amount.

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57. The case for Homeserve is that the £14 is, in the ordinary meaning of the expression, charged under a “separate contract” with the homeowner. The fact that the relevant contract is tripartite (i.e. creating separate rights and obligations between each of IPA, Homeserve and the homeowner) does not make the relationship between Homeserve and the homeowner any the less a separate contract.

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58. HMRC say that the £14 is charged under the bi-partite contract between IPA and the homeowner and failing that by a single tripartite contract created by the single offer by the homeowner. (I have already decided against HMRC on the first limb of that argument.) Alternatively, say HMRC, the contract under which the £14 was charged to the homeowner by Homeserve under the Customer Contract in connection with the terms and conditions existing between IPA and the homeowner under which the balance of the £59.99 was charged: the £14 was not in the circumstances charged under a separate contract.

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59. The choice of the adjective “separate” to qualify the word “contract” in paragraph (b) leads to the question – Separate from what? A contract in its own right

will in a general sense be a contract that is a separate contract from all others. To achieve that meaning, however, the draftsman might simply have used the word “another” contract. But, as I construe section 72(1A), the word “separate” was chosen as a term of emphasis to denote a contract that is separate from the taxable insurance contract referred to in the opening clause of subsection (1A). To determine whether there is separation in that respect requires an examination of the circumstances, legal and factual, in which the two contracts taken for comparison are found. That approach is, I think, in line with the evident purpose behind section 72(1A) which is, subject to the limits placed by paragraphs (a) and (b), to bring into tax amounts charged to the insured “by any person” where the charge is “in connection with the taxable insurance contract”, being amounts that were found to be outside the scope of charge under section 72(1) taken alone.

60. The taxable insurance contract is, as noted, the contract to provide the plumbing and drainage cover to the homeowner. Its terms are to be found in the A1 Agreement between IPA and Homeserve and in the Insurance Terms and Conditions of the Customer Contract. The contract under which “the amount is charged” (ie the £14) is contained in the Administration Terms and Conditions of the Customer Contract. It is not, and could not be, in dispute that there is a connection between the two. They both relate to the same cover; they are offered as a package and one cannot be created without the other.

61. Given therefore that the £14 is charged “in connection with” the taxable insurance contract (see the opening words of section 72 (1A)), is that amount also charged under a “separate” contract, namely the Customer Contract? I think not for the reasons that follow.

62. In the first place there is an overlap between the consideration given by Homeserve to IPA and the consideration given by Homeserve to the homeowner. The same consideration supports both the Customer Contract dealing with arrangement and administration and the taxable insurance contract. Homeserve’s obligations under clause 5 of the AI Agreement are, as regards the arrangement and administration of the plumbing and drainage cover contracts (the Customer Contract), much the same as, and in some respects identical to, Homeserve’s obligations to the homeowner under the Customer Contract. All the elements of consideration given by Homeserve under both agreements relate to the single insurance product of plumbing and drainage cover.

63. Secondly, the price quoted to the homeowner is a single price. This is unaffected by the “two contracts” arrangement. The material relating to the Customer Contract specifically makes it clear that the two contracts arrangement does not affect the description of the cover. The homeowner’s right to cancel within 28 days and obtain a full refund results in repayment of both the £14 arrangement and administration fee and the balance of the £59.99 premium; and the same applies to the full refund offered in the event of non-attendance within two hours. The offer gives the homeowner no choice of insurer and no choice in regard to the terms of the cover.

64. Essentially therefore the Customer Contract, even accepting that it is a contract in its own right between Homeserve and the homeowner relating to the arrangement and administration, is at the time of its creation dependent on and inseparable from the insurance element. Without the insurance there is nothing; and  
5 even if Homeserve were to terminate the AI Agreement with IPA, financial cover would still be required under Homeserve's obligations in the Customer Contract to "administer your insurance cover".

65. All those features satisfy me that the £14 is not an amount charged under a  
10 separate contract for the purposes of the words of exclusion in section 72(1A)(b).

66. In reaching this conclusion I have taken account of the approach of the Courts to multi-party contracts such as those involved here. That approach involves making a bi-partite analysis of the contractual obligations involved. It was emphasised for  
15 Homeserve that the fact that one document may, as in the case of the Customer Contract, contain obligations between three parties does not alter the legal analysis that there is a bundle of separate two party contracts between the individual parties and separate obligations created under each contract. The support for that proposition was based on the decision of Evans J in *Wurttembergische v Home Insurance* [1993]  
20 2 Re LR 253, 257. Then in *Touche Ross & Co v Colin Baker* [1992] 2 LLR 207 an insurance policy that had been expressed to be between the assured and a syndicate of underwriters at Lloyds was held nevertheless to constitute a number of "separate contracts" between the assured and each of the participating syndicates: see the summary of that decision in *Chitty on Contracts*, 29<sup>th</sup> edition, paragraph 18-110.  
25 Reference was made to *Arab Bank v Zurich* [1999] 1 WLR 262 to illustrate how a professional indemnity contract may in one policy contain insurances protecting the firm and each individual partner. Such contracts are composite insurances where each insured has its own separate right to claim for loss.

67. I have no reason to depart from Homeserve's propositions based on those cases. They do not, however, alter my conclusion on the meaning of the expression "the amount charged under a separate contract" in section 72(1A)(b). The Customer Contract dealing with arrangement and administration may for contractual purposes be regarded as "separate" from the taxable insurance contract (the AI Agreement).  
30 But in its context as an IPT charging provision, the expression "separate contract" in section 72(1A)(b) has the special meaning that I have adopted.  
35

68. Finally in this connection I should mention the explanation given by Homeserve for the concluding words of section 72(1A)(b), i.e. "and is identified in  
40 writing to the insured as a separate amount so charged". An intermediary such as Homeserve, it was pointed out by Mr Kendrick for Homeserve, is required under current industry practice to reveal its remuneration. As an example, the current code promulgated by the Financial Services Authority provides that – "An insurance intermediary must on a commercial customer's request, promptly disclose the commission that it and any associate receives in connection with a policy." Although  
45 this requirement depends upon a request from the customer, there has, so I was informed, been pressure for some years on intermediaries both in the UK and abroad

to move towards greater openness in disclosing to the policyholders, their principals, the actual charges which they are receiving as remuneration under their broking contracts with the policyholders. The conclusion to be drawn from that, it was suggested by Mr Kendrick, was that the Finance Act 1997 in conferring exemption from IPT in return for revealing charges made under a contract, that is separate from the contract of insurance. It rewards the intermediary who follows this practice by making those charges free from IPT. I accept that that may explain the use of the concluding words of section 72(1A)(b). I am not however persuaded that that was the reason why the use of the adjective “separate” was used in relation to “contract” in the opening words of paragraph (b).

69. For all those reasons I think that the £14 falls within the scope of section 72(1A) and is not excluded from charge by the operation of paragraph (b).

15 **The section 72(7) argument**

70. Section 72(7), say Homeserve, is aimed at the situation where the intermediary receives money “on behalf of the insurer” before it is passed on to the insurer. Here, the £14 is not received on behalf of IPA and is never passed on to the IPA. It is, so the argument runs, outside the ambit of the Act.

71. I cannot accept that. The function of section 72(7) is to identify the time of receipt for the purposes of the charge to IPT. It is dealing with the situation where an amount is received by one person on behalf of the insurer. In that respect it identifies the time of charge for purposes of section 72(1). Section 72(1A) is dealing with the different situation where the amount may have been charged to the insured by some other person; and in that situation any payment in respect of that amount is to be regarded as a payment received under the contract by the insurer irrespective of the fact that that other person may not have received it on behalf of the insurer.

30 **Conclusion**

72. The appeal is dismissed.

35 **SIR STEPHEN OLIVER QC  
CHAIRMAN**

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