



TC01449

Appeal number: TC/2011/0841

Income tax – pensions – lifetime allowance – late notification of claim for enhanced protection – whether reasonable excuse – on the facts, no – appeal dismissed

FIRST-TIER TRIBUNAL

TAX

ADRIAN PLATT

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE AND CUSTOMS**

Respondents

**TRIBUNAL: JUDGE ROGER BERNER
MR HARVEY ADAMS FCA**

Sitting in public at Copthall House, 9 The Pavement, Grove Road, Sutton, Surrey on 23 August 2011

The Appellant appeared in person

Mrs Massey, HM Revenue and Customs, for the Respondents

DECISION

1. This is an appeal by Mr Platt against HMRC's refusal of a late claim for enhanced protection against a lifetime allowance charge made under paragraph 12 of Schedule 36 to the Finance Act 2004 ("FA 2004"). The issue for the Tribunal is whether Mr Platt had a reasonable excuse for submitting the relevant form (APSS 200) for protection against the lifetime allowance charge after the due date of 5 April 2009.

2. Significant changes to the taxation regime for pension savings came into force on 6 April 2006. Those changes introduced a threshold of a lifetime allowance for pension savings. If an individual's pension savings exceed the threshold, the individual is liable to a lifetime allowance charge on the excess savings when the pension benefits are taken. However, the legislation contains transitional provisions which give protection to individuals against the lifetime allowance charge provided they registered a claim for such protection with HMRC by 5 April 2009.

3. Mr Platt submitted his claim by application dated 29 November 2010, and it was received by HMRC on 30 November 2010. That is not in dispute. Mr Platt says, however, that until September 2010 he had absolutely no idea that the changes made by the FA 2004 had affected his personal pension. He submits that this is a reasonable excuse for his failure to make the claim by the due date.

The law

4. Section 214 FA 2004 imposes a charge to income tax, known as a "lifetime allowance charge" in respect of certain "benefit crystallisation events" occurring in relation to an individual who is a member of one or more registered pension schemes where the amount crystallised (which depends on the event in question) exceeds the individual's lifetime allowance.

5. When the new rules, including the lifetime allowance charge, were introduced by FA 2004, it was evidently recognised that transitional provisions were needed in order to give some relief to those who had made pension provision on the basis of the previous law. Section 283 FA 2004 accordingly provided for Schedule 36 to the Act to make a number of transitional provisions and savings.

6. Among those is para 12, Sch 36 which applies to an individual who has one or more relevant existing arrangements, that is to say arrangements under pension schemes made before 6 April 2006 which, by virtue of para 1, Sch 12, become registered pension schemes on that date. Where para 12 applies there is no liability to the lifetime allowance charge in respect of the individual (para 12(3)).

7. To qualify for this relief, which is termed "enhanced protection", the individual had to give notice of intention to rely upon para 12 in accordance with regulations made by the Board of Inland Revenue (para 12(1)).

8. The regulations in question are the Registered Pension Scheme (Enhanced Lifetime Allowance) Regulations 2006 (“the Enhanced Lifetime Allowance Regulations”). Regulation 4 imposed a cut-off date (the closing date) for notice of intention to rely on para 12. The closing date was 5 April 2009.

5 9. Regulation 12 makes provision for cases where an individual had a reasonable excuse for not giving the notification by the due date, and gave it without unreasonable delay after the reasonable excuse ceased. It also provides for the right of appeal which Mr Platt has exercised in bringing his case to the tribunal. It provides:

10 “12—(1) This regulation applies if an individual—
(a) gives a notification to the Revenue and Customs after the closing date,
(b) had a reasonable excuse for not giving the notification on or before the closing date, and
15 (c) gives the notification without unreasonable delay after the reasonable excuse ceased.
(2) If the Revenue and Customs are satisfied that paragraph (1) applies, they must consider the information provided in the notification.
(3) If there is a dispute as to whether paragraph (1) applies, the
20 individual may require the Revenue and Customs to give notice of their decision to refuse to consider the information provided in the notification.
(4) If the Revenue and Customs gives notice of their decision to refuse to consider the information provided in the notification, the individual
25 may appeal ...
...
(6) The notice of appeal must be given to the Revenue and Customs within 30 days after the day on which notice of their decision is given to the individual.
30 (7) On an appeal that is notified to the tribunal, the tribunal shall determine whether the individual gave the notification to the Revenue and Customs in the circumstances specified in paragraph (1).
(8) If the tribunal allows the appeal, the tribunal shall direct the Revenue and Customs to consider the information provided in the
35 notification.”

10. Mrs Massey helpfully provided to Mr Platt before the hearing, and the tribunal at the hearing, a copy of a very recently-published decision of the tribunal in the case of *Scurfield v Revenue and Customs Commissioners* [2011] UKFTT 532 (TC) (Judge Tildesley and Mr Adams). Mrs Massey explained that she was placing no reliance on
40 this case, but that she thought it right to draw it to the attention both of Mr Platt and the tribunal. We are grateful to Mrs Massey for having done so. We agree that *Scurfield* cannot be determinative of the issues before us, which depend on an analysis of the particular facts and circumstances of Mr Platt’s case.

The facts

11. We set out here our findings of the material facts. We should state at the outset that, in making these findings, we have taken into account that Mrs Massey placed no reliance on publicity given to the changes in general newspaper articles or through the HMRC and direct.gov websites. The tribunal in *Scurfield* based its decision in part on a finding that the information on the pension changes was in the public domain for at least 5 years prior to the closing date of 5 April 2009, and that there was public information in accessible form. Those arguments were not put forward by Mrs Massey, and accordingly we make no factual findings in those respects.
12. Mr Platt started his career as an insurance broker in 1957. After several mergers he progressed to become chairman of the Sedgwick Marine and Aviation Group. His role was mainly client facing and he relied upon finance directors and administrators to look after the financial side of the business. He had no involvement in the pension trust or in the employee benefits company.
13. Mr Platt's business career was a very busy one. He travelled abroad very frequently. He gave very little attention to financial planning or investment. He relied at that time on a stockbroker for stock market investments, giving him discretionary authority, and on an accountant to complete his tax returns, principally to deal with the returns needed as a member of Lloyd's.
14. Throughout his career he relied upon the Sedgwick Group to handle his significant pension contributions and those from the company in an efficient manner.
15. Mr Platt retired from the plc board in 1993, but continued working actively, and travelling extensively, for the Group as a consultant, including after the Group was sold to Marsh McLennan Companies ("MMC"), until the end of 1999.
16. After full retirement Mr Platt moved into another busy phase of his life, as a Warden, and subsequently Master, of his City Livery Company, the Vintners Company. This was alongside his trusteeship of two charities – Music on Hospitals and the Mary Rose Trust. He told us, and we accept, that in his busy life his attention to financial issues was never very concentrated.
17. Mr Platt has two pension arrangements which are now registered schemes. The first is his occupational pension from the Sedgwick Group, which now falls under the MMC umbrella. He has been receiving pension income from the MMC pension since 1993. The other arrangement is a personal pension which he originally took out in 1997 with the National Mutual, which then transferred to GE Capital and finally to Windsor Life. He took this out principally to guard against inflation, and to provide benefits at age 75, in particular the prospect of a tax-free lump sum to assist with birthday and wedding anniversary celebrations at that time. He paid little attention prior to 2010 to any information received in respect of this pension, as its maturity was some way off.

18. The lifetime allowance was set at £1.5 million for the tax year 2007/08; for tax year 2009/09 it was £1.65 million. Based on the amount of Mr Platt's pension in payment, that pension comfortably uses up all of the lifetime allowance.

19. Mr Platt received information on the pension changes on four occasions, in
5 December 2005, June 2006, November 2006 and December 2008, in each case through articles in a newsletter or magazine sent to him by the MMC pension fund trustee under the title "Spotlight on pensions". Material to our decision is the information contained in the editions of Spotlight issued in June 2006 and December 2008.

10 *The June 2006 edition*

20. We were shown only an extract from the June 2006 issue of Spotlight, but we accept that it was in the same magazine format we describe below in relation to the December 2008 edition.

21. The June 2006 issue contained a section entitled "No more limits". It set out
15 details of the lifetime allowance, explaining that it was the maximum pension entitlement that an individual could build up, including benefits from membership of all pension plans, on a tax-efficient basis. It stated that the lifetime allowance of £1.5 million was roughly equivalent to a pension of £75,000 a year.

22. In bold type the following statement was made:

20 **"Your MMC pension and the tax you pay on it will not be affected by these changes if all your pension benefits have come into payment by 6 April 2006."**

This was immediately followed, in the same paragraph (although not in bold) by:

25 "The new tax allowances may be relevant, however, if you have benefits in other pension arrangements which have not yet come into payment."

23. Mr Platt's Windsor Life personal pension was such an arrangement.

24. The "No more limits" section then continued:

30 "The Lifetime Allowance is only relevant to you if you have benefits in another pension arrangement that come into payment after 5 April 2006. The value of your pension in payment is calculated by multiplying your pension by 25. So, for example, if your pension in payment is £10,000, its value for tax purposes will be £10,000 x 25 =
35 £250,000, and you are treated as having 'used up' £250,000 of your lifetime allowance.

If you have an accrued pension in another pension arrangement which has not yet come into payment, its value will be calculated by multiplying the accrued pension by 20 and any defined contribution benefits are taken at their market value."

25. The June 2006 edition did not refer to the lifetime allowance charge, to any steps that might be taken to obtain protection from the lifetime allowance charge or to a deadline of 5 April 2009 when any particular action might need to be taken.

The December 2008 edition

5 26. The December 2008 issue had, as well as an introductory welcome section, twelve articles on diverse matters from “Pension planning and the global financial crisis” to “How to help the Trustees carry out your wishes on your death”. Included amongst these was an article, described in the contents page as “How to protect your pension. A reminder of how much you can build up in a tax-efficient way and how to
10 protect what you have already earned.”

27. That article makes reference to the lifetime allowance (as well as another allowance – the annual allowance), and makes the point that benefits can be paid above these allowances, but that they will be subject to additional tax. The lifetime allowance for 2008/09 of £1.65 million is set out.

15 28. Then, under a sub-heading of “Can benefits be protected?” the article includes the following:

20 “If the value of all your pension benefits was close to or above the Lifetime Allowance at A-day (£1.5m), you will be able to register for some measure of protection for your benefits with HMRC by 5 April 2009.”

29. The article concludes:

“What do I need to do?”

25 If you believe that you would benefit from protection because your pension benefits were close to or above the Lifetime Allowance at A-day, you need to apply to HMRC by 5 April 2009.

You should seek independent financial advice to help with the most appropriate form of protection. To find an independent financial adviser (IFA) in your area, visit the IFA Promotion Ltd website at www.unbiased.co.uk .”

30 30. Mr Platt told us, and we accept, that before September 2010 he did not know that 6 April 2009 was a significant deadline for doing something in relation to pensions depending on an individual’s situation.

35 31. In 2010 Mr Platt was in correspondence with Windsor Life regarding the taking of benefits from his personal pension, including the taking of a 25% lump sum tax-free on 28 November 2010. On 25 September 2010 Windsor Life wrote to him, thanking him for returning the open market option to take the benefits from the policy but asking him for the return of a Form D, and later a form D1. That form included questions about SLA (Single Lifetime Allowance) Enhancement. Mr Platt replied on 1 October 2010 to the effect that he would need to consult his accountant concerning
40 the SLA Enhancement questions “which I had never heard of before”.

32. Mr Platt subsequently applied for enhanced protection of his lifetime allowance by notice received by HMRC on 30 November 2010. His accompanying letter setting out the background was considered by HMRC, but the application for protection was not accepted, and Mr Platt was notified by letter dated 8 December 2010. It is from that decision that Mr Platt now appeals.

Discussion

33. Mrs Massey submitted that the reasonable excuse provisions in para 12 of the Enhanced Lifetime Allowance Regulations allowed some leeway for individuals who filed their applications late because of circumstances that were largely outside their control; they were not intended for oversights or errors of judgement. She argued that there was nothing exceptional in Mr Platt's circumstances. The situation was under his control. Mr Platt was sent advice but, for whatever reason, he either failed to read it or failed to recognise that it applied to him, despite the inclusion of relevant material and indications as to the level of his own pensions savings.

34. We do not agree that the reasonable excuse provisions fall to be construed as restrictively as Mrs Massey submits. What must be considered is whether a reasonable taxpayer, in the circumstances in question, would have been in a position to make a timely application. The circumstances in which a reasonable excuse may be shown for not doing so do not, in our judgement, have to be in any way exceptional. On the contrary, they may be mundane; there can be a reasonable excuse if an individual does not know of the need to make an application by an impending deadline, and cannot reasonably be expected to have been in a position to have become aware of the need or of such a deadline.

35. Ignorance of the need to do something by a particular date can therefore, in certain circumstances, and depending on the reason for that ignorance, be a reasonable excuse. In this case we have found that Mr Platt did not, up to September 2010, know that an application for enhanced protection had to be made by 5 April 2009. The question therefore is: was Mr Platt's ignorance reasonable in the light of the circumstances and the information reasonably available to him?

36. Mrs Massey did not seek to argue that Mr Platt's appeal should be dismissed simply on the basis that it relied on a claim of ignorance of the law. That argument was – rightly, in our view – rejected in *Scurfield*, where the tribunal held that such ignorance may be a factor in considering whether a reasonable excuse exists.

37. In our view the ignorance which Mr Platt claims here amounts to a reasonable excuse, whilst it is, at least in part, a claim of ignorance of an application for relief and a closing date provided for by law, is of a different nature to the ignorance at issue in *Neal v Customs and Excise Commissioners* [1988] STC 131, which was basic ignorance of primary VAT law, namely the requirement of a person carrying on business to a certain degree to register for VAT. Where legal requirements are – as in *Neal* – well-established in daily commerce such that anyone, however inexperienced, ought to recognise the need to become acquainted with those requirements, ignorance of them will not constitute a reasonable excuse. But where a requirement is novel,

transitional, affecting only a limited number of people, and requires a positive act within a defined time of individuals who cannot in their daily lives be expected inherently to recognise the need to act, ignorance of such legal requirements may, depending on the particular circumstances, constitute a reasonable excuse. It is to the circumstances surrounding Mr Platt's claim that we must accordingly turn.

38. Mrs Massey argued that the newsletters received by Mr Platt contained sufficient information in their own right to have put Mr Platt on notice that he might be affected. She submitted that Mr Platt ought to have been expected to read more than the sentence highlighted in bold in the June 2006 newsletter. All of the material in the "No more limits" section was relevant to him.

39. In this respect Mr Platt argued that he had concentrated on the sentence in bold in that section, and that it was reasonable for him to have concluded that the previous paragraph did not apply to him. Mrs Massey submitted, however, that Mr Platt's interpretation of the sentence in bold is misplaced, and that the reference to "all" of the pension benefits should, in circumstances when he knew that the Windsor Life pension had not come into payment at that time, have alerted him to the fact that he might be affected.

40. Mr Platt argued that he had no idea of the value of the MMC pension until he asked for its value in September 2010. Mrs Massey points, however, to the June 2006 newsletter, and argues that this went beyond merely referring to fund value limits. It clarified those points by way of the amount of pension an individual was receiving. Having regard to the information given, Mrs Massey argued that Mr Platt ought to have realised that this was relevant to him. The December 2008 newsletter then alerted the reader to the possible need to take further action, either by the making of an application to HMRC by 5 April 2009, or at least the taking of independent financial advice.

41. Mr Platt argues that his excuse, in terms of his lack of knowledge, is reasonable. He referred to a number of dictionary definitions of "reasonable", taken from the Oxford English Dictionary:

"Being in agreement with right thinking or right judgment; not conflicting with reason; not absurd; not ridiculous or being within the bounds of reason; not extreme; not excessive."

Based on this Mr Platt says that he has not been absurd, ridiculous, extreme or excessive. He admitted nevertheless that he might be described as being naïve.

42. Although we accept that, as a matter of language, reasonableness can be contrasted with absurdity and other similar extreme behaviour, contrasting meanings in a dictionary definition are not determinative of the issue we have to determine. That is, as we have described above, were the circumstances such that Mr Platt had a reasonable excuse for failing to make a timely application?

Conclusions

43. We have concluded that Mr Platt does not have a reasonable excuse. Although we accept that he did not know of the 5 April 2009 deadline, his lack of knowledge in this respect, and having regard to the information available to him, was not
5 reasonable. A reasonable individual in the position of Mr Platt would in our view have understood sufficient of the information contained in the June 2006 and December 2008 newsletters, taken together, at least to have taken advice, which it can reasonably be inferred would have directed that individual to the need to make a timely application.

10 44. We accept that Mr Platt did not make a conscious decision not to read the information contained in the newsletters. However, in our view a reasonable individual in his position would, at the least, have looked through the items in those editions, and would have read with greater care those that might have relevance to that individual's position. From the June 2006 newsletter the reasonable individual
15 would, firstly, have appreciated the value of the MMC pension, and the fact that this exceeded the lifetime allowance, and secondly that the lifetime allowance was relevant to him because of the existence of the Windsor Life pension arrangement that would have come into payment after 5 April 2006.

20 45. At the stage of the June 2006 newsletter, however, we doubt if the reasonable individual would have concluded that it was necessary to seek advice. There is no reference in the June 2006 newsletter to any possible action that might be taken, nor to the deadline of 5 April 2009. The newsletter simply records the impact of the tax changes on relevant arrangements. The reasonable individual would, at that stage in our view merely have noted the position.

25 46. Were that to have been the only information reasonably available to Mr Platt, we would have concluded that he could not reasonably have been expected to have become aware of the need to make an application for enhanced protection by 5 April 2009, and he would have had a reasonable excuse for having failed to do so. But that was not the only information available to him.

30 47. The reasonable individual would also, like Mr Platt, have had access to the December 2008 newsletter, and – after having a brief look through all the items - would have looked carefully at the article on “How to protect your pension”. Combined with that reasonable individual's understanding of the value of the MMC pension benefits at the relevant date (by reference to the information available in the
35 June 2006 newsletter), such a careful consideration of the December 2008 article would in our view have caused the reasonable individual to appreciate that he might be able to register for some protection for his benefits provided he were to do so by 5 April 2009, and at least to seek independent advice as the article suggested. It is reasonable to assume that such advice would have enabled the individual to have
40 made an informed decision whether to make such a claim, and if a claim was to have been made, then to have done so before the closing date.

48. In the circumstances we determine that Mr Platt did not have a reasonable excuse for not giving the notification of the intention to rely on enhanced protection under para 12, Sch 36, FA 2004 on or before the closing date of 5 April 2009.

Decision

5 49. Accordingly we dismiss this appeal.

Application for permission to appeal

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.

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ROGER BERNER

TRIBUNAL JUDGE

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RELEASE DATE: 15 SEPTEMBER 2011

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Corrected by amendment made on 17 November 2011 pursuant to Rule 37 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009