[2013] UKFTT 087 (TC)

TC02505

Appeal number: TC/2012/04439

INCOME TAX - Appeal against assessment to income tax under section 401 ITEPA 2003 – Appellant made redundant by his employer - payment from company profit sharing scheme – was the payment instead a "relevant payment" for purposes of the charge under section 394 ITEPA (taking priority over section 401) – was payment made "after the retirement" of the Appellant and "in connection with past service" – yes – appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

GEORGE FREDERICK BALLARD **Appellant**

- and -

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

TRIBUNAL: JUDGE JUDITH POWELL
MS HELEN MYERSCOUGH ACA

Sitting in public on 16 October 2012 at 45 Bedford Square, London WC1

Mrs Harriet Brown of Counsel for the Appellant

Mr Tony O'Grady, Inspector with HMRC, for the Respondents

DECISION

1. The Appellant was represented by Ms Harriet Brown of Counsel and the Respondents were represented by Mr Tony O'Grady, Inspector with HMRC. The Appellant had provided a witness statement and the contents were agreed by the Respondents. Bundles containing copies of correspondence and documents were given to us. Skeleton arguments for both the Appellant and the Respondents were produced.

2. The appeal concerned a payment to the Appellant from a profit sharing scheme established by his employer. In fact it was never clear whether the payment took the form of a cash payment or whether there was an allocation of shares to the Appellant followed by an immediate sale of them but it was agreed that nothing turned on this.

3. The parties agreed at the outset of the hearing that the central issue for determination was whether the payment was, as the Appellant claimed, a relevant benefit falling within either section 393B(1)(c) or section 393B(1)(d) Income Tax (Earnings and Pensions) Act 2003 ("ITEPA") upon being made redundant by his employer. The parties agreed that if the payment was a relevant benefit for the purposes of section 393B then it was potentially taxable under section 394 ITEPA and the Appellant would be entitled to claim transitional relief under Schedule 36 Finance Act 2004 ("Schedule 36). If, as the Respondents claimed, it was not a relevant payment, then it was not potentially taxable under section 394 ITEPA and the Appellant would not be entitled to claim Schedule 36 relief. Miss Brown reserved the right to argue that, if the payment was not a relevant payment, then it was incorrectly assessed under section 401 and should, instead have been assessed under section 62 ITEPA.

The facts

4. We found the following facts. The Appellant had worked for Young's Brewery ("Young's") from 14 May 1979 until the end of September 2006 when he was made redundant. He was forced to accept redundancy because he was not offered alternative employment by Young's. A redundancy procedure was followed within Young's and, during the course of this, the Appellant decided he would not seek alternative employment because he felt his existing skills would not be much in demand, he did not wish to retrain for alternative employment and he had sufficient savings on which to live. He had been employed by Young's first as a cold room operator and subsequently as under foreman and then foreman for over 27 years which represented most of his adult life. He was 48 years of age in 2006. He had very specific skills which he did not believe would be useful in the job market at that time and did not consider he could easily retrain in time to acquire alternative employment. He told Young's of his decision during the redundancy process. He has not subsequently taken paid employment and has not claimed those state benefits available to someone looking for employment. He has supported himself out of his savings as planned in

2006. We accept that he decided, during the redundancy process, that he would not look for further paid employment.

5. The Appellant was a long term member of Young's profit sharing scheme. Despite its name both parties agreed it is better described for the purposes of the appeal as a funded unapproved retirement benefits scheme ("FURBS") and the scheme was consistently referred to as such by the representatives for both parties. The FURBS was established by a trust deed made in 1959 which permitted its establishment. At least during the times relevant to this hearing the trustee has been resident in the UK. The FURBS was amended over the years and we were shown a partly redacted copy of the original together with a copy of the rules governing awards made for the financial year ended 2 April 2005 (relevant to this appeal) plus further more recent amendments up to 2007. The later amendments and particularly their format have some significance to which we refer later.

6. In relation to awards made up to and including the year ending 2 April 2005 and so far as the Appellant is concerned, an award took the form of a contribution of money each year to the FURBS by Young's. The terms of the FURBS up to this time were set out in rules ("the Rules") shown to us; although the Rules explain the terms for the period up to 2 April 2005 it is clear that the copy we were shown was prepared sometime after that date since the heading referred to events after that date. Neither party referred to any earlier version and neither suggested the Rules did not reflect the position accurately for that period which was that the contributed sum was used to purchase shares and the Appellant became immediately entitled to a payment equal to the dividends he would have received if he had bought the number of shares which were notionally allocated to him but to which he had no legal entitlement and on retirement the employee would receive the market value of his shares, in the form of cash or shares, as the Company determined. Each time a sum of money was transferred to the FURBS and used in this way for his benefit the Appellant was charged to income tax on a corresponding amount; this is significant in relation to the taxation treatment of later distributions from the FURBS to the Appellant.

7. In 2006 there was a change made to the taxing regime for the FURBS. As a result of this change the terms of the FURBS were amended on two occasions and the amendments were formally recorded in the form of supplements to the main scheme. Details of these amendments, recorded in writing, were included in the bundles produced to us and had effect for awards made for the years ended 1 April 2006 and 1 April 2007 respectively. Type written details of the amendments were set out on nearly two sides of A4 paper and explained the way in which the amendments would work, how the employees might benefit and the tax implications of the changes. These details were circulated to members of the FURBS. In short a sum of money was transferred to the FURBS which used part to buy shares which were allocated to employee members of the FURBS and the balance of the sum was used to pay tax and national insurance contributions payable by reason of the allocation. The details did not explain what power was being exercised to amend the scheme. If the Appellant had an award for either of these years it was not the subject of this appeal but the way in which the FURBS was amended is relevant to our findings.

8. There were discussions during the redundancy procedure about the way in which a person's interest in the FURBS would be dealt with if he was made redundant. Upon first announcement of the redundancy process Young's announced that no one under the age of 65 would receive anything from the FURBS until they reached that age. The Appellant requested a meeting with a Young's director to ask why this was so since employees made redundant in the past had received their shares at the same time even though they were under the age of 65. Upon meeting a director to discuss this he was told that decisions whether or not to allow employees to take benefits from the FURBS was at the discretion of Young's. The Appellant took legal advice about this but, whilst his solicitor was in correspondence about the point with Young's, there were further company announcements. First it was announced that anyone over the age of 55 could take their FURBS interest on redundancy, then that employees over the age of 50 could take their interest on redundancy and finally that all employees, regardless of age, could take their interest on redundancy.

9. The way in which Young's and the FURBS decided how to deal with a redundant employee's interest in the FURBS is partly explained in several memoranda and letters of advice shown to us. It is clear that advice was sought by Young's from their accountants about the effect of transferring shares (or proceeds of sale of shares) from the FURBS to employees who were made redundant and that the accountants had approached HMRC for guidance before giving advice. We only saw a letter from the accountants; we did not see copies of any correspondence with HMRC. The accountant's advice was summarised in a letter dated 1 November 2006 to Young's. This letter ended with a recommendation that if a decision was made to give FURBS members the opportunity to take shares upon redundancy regardless of age then "you can now place the individuals made redundant ……. into three categories". Those categories were to be made up as follows. First, employees over 50 (but under 65) who confirmed they were retiring and commencing payment of pension benefits. Secondly, employees over 50 who did not confirm they were retiring or who were retiring but did not take the company pension. Thirdly those under 50. The advice was that those placed in the first category could receive their shares/proceeds tax free but shares/proceeds transferred to employees in the other two categories would be subject to tax and national insurance unless they agreed to wait until they reached the age of 65 when the transfer would (at least based on law current when the advice was given) be tax free. The significance of an employee over 50 taking or not taking his pension was not explained and Mr O'Grady was not able to explain it to us. The letter did not contain any advice about the powers of the FURBS to make payments.

10. The Appellant fell into the third category described in the accountants' letter since he was under the age of 50 when he was made redundant. Young's wrote to him on 13 December 2006 to update him on his membership of the FURBS enclosing a "decision tree" and he was asked to make his decision by 28 February 2007. The decision was whether to redeem his holdings or not and if so whether he wished to retain some or all of his shares; he was told that there would be tax to pay if he redeemed his holding and if he did not wish to sell any of his shares he would have to discuss how the tax and national insurance would be paid. This offer was expressed as a "one off" offer open only until 30 March 2007. The Appellant elected to redeem

his entire holding and to sell 6610 "A" shares through Young's broker. Payments for tax and national insurance were withheld from the payment made by the FURBS and a direct assessment was also made upon the Appellant for higher rate tax because the tax withheld by the FURBS was only calculated at the basic rate which was appropriate (assuming income tax was due at all) since the Appellant's employment had ceased by the time the payment was made and in these circumstances there is no mechanism for withholding any higher rate amount.

11. The Appellant appealed against the assessment on the basis that the redemption of shares was a "relevant benefit" potentially taxable under section 393B(1)(c) or (d) ITEPA and this qualified for relief under Schedule 36.

12. As far as we could tell the terms of the original trust deed entered into in 1959 (it was apparent there had been some deletions and that the copy was partly redacted) contemplated two accounts being established – a Pension Account and a General Account. Provisions about the Pension Account were deleted from the version we were shown which was the only version the parties had managed to obtain. It was agreed that the FURBS had been established out of the General Account and the deed itself contemplated the establishment of a "Staff Profit Sharing Scheme for the benefit of employees" (clause 5(f)). The Rules set out details of the FURBS for the period relevant to this appeal. The history of the Rules is not clear – the version shown to us referred to later amendments which suggested that, at the least, they were retyped sometime after the end of March 2007 but no point was taken about this and neither party contended they applied in any other format for the relevant period. Rule 3 concludes "By reference to the dividends on these shares and the value of the shares at retirement benefits are provided to employees". Rule 5 contains the provision "Second, on retirement, employees will receive the market value of the shares, in the form of cash or shares as the Company determines". Rule 10 (in the section entitled "Technical Details") contains provisions about retirement. 10.1 provides that "an employee's retirement date is the date on which he or she would ordinarily retire". 10.5 provides that "In wholly exceptional circumstances, typically involving early retirement due to ill health, the Company may in its absolute discretion agree to treat the employee as having reached his normal retirement date". 10.7 provides that "The Company may, in its absolute discretion, satisfy benefits due on retirement either in cash or by transferring an equivalent value of investments to a retiring employee." Rule 11 allows the directors to "suspend, abandon or alter the annual allocation of profits and make any amendment to the Scheme which they may consider necessary or desirable".

13. We were not shown any amendments to the Rules other than for periods beginning after 2 April 2005 which are not relevant to the way in which payments were made to the Appellant. In particular we were not shown any amendment dealing with the decisions reached in 2006 about payments to redundant employees and so we concluded that the payments were made in accordance with the Rules. If there had been an amendment we would have expected to see it shown in the Rules which had obviously been typed up sometime after the end of 2006 since the heading referred to events in 2007. This is relevant to the submission made by the respondents that the payment to the Appellant was made because the Rules were amended to allow

payments being made to redundant employees rather than because, as was submitted on his behalf, the circumstances surrounding his redundancy were treated as "wholly exceptional" so as to treat him as having reached his normal retirement date and receive the payment by combined operation of Rule 10.5 and Rule 5. We find that there is no evidence of an amendment to the Rules for the period in question and prefer the submission made on behalf of the Appellant about the manner of the payment to him.

The submissions

14. Miss Brown submitted that the payment to the Appellant was a relevant benefit within section 393B(1)(c) ITEPA as a payment made "after the retirement …..of an employee or former employee in connection with past service" or, in the alternative was within section 393B(1)(d) ITEPA as a payment "on or in anticipation of, or in connection with, any change in the nature of service of an employee". If the payment was a relevant benefit, the Appellant was taxable under section 394 ITEPA and could claim relief under Schedule 36.

15. In her submissions about section 393B(1)(c) Miss Brown said the word "retirement" had to bear its ordinary meaning and looking at the several meanings given to it in the Oxford English Dictionary the most appropriate was "The action or an act of leaving office, employment or service permanently, now esp. on leaving pensionable age. Also: the action of withdrawing from one's usual sphere of activity".

16. The Appellant had, she argued, left his employment permanently and did so when he was made redundant having made and communicated his decision to Young's about this during the redundancy consultations. Although he was made redundant this was not inconsistent with him also retiring for the purposes of section 393B(1)(c). About the meaning of retirement she referred to what Laurence Collins J held in Venables v. Hornby [2001] STC 1221 at page 1230(a):

"the word retire is not a term of art and …. It is to be given its ordinary and natural meaning. It is a matter of fact whether, in any particular circumstances, someone can be said to have 'retired', and the answer will depend upon the context……..every case has to be considered on its merits. "

She considered the point that the Appellant was made redundant and submitted this did not exclude that he had retired as well and that the payment was relevantly connected with both redundancy and retirement. She referred us to the case of Harris v Shuttleworth [1993] EWCA Civ 29 as support for this (although she acknowledged that this case involved the question whether someone suffering an incapacity had retired) and in particular to what Gibson LJ said " …. *If an employee before reaching normal pension age is incapacitated from following her employment by a physical or mental disability or ill health which renders it improbable that she will be able to follow her present or similar employment during any part of the period until she reaches normal pension age and if as a result her employment with the Society comes to an end it matters not how the employment is terminated. In my judgement whether she gives notice of her intention to leave or the Society gives notice dismissing her the termination can still properly be described as "retirement from the Service by reason of incapacity" ……..if Mrs Harris was dismissed from the Society's service by reason of her incapacity this would constitute 'retirement by reason of incapacity as I have defined the phrase'*

17. On what is necessary for there to be a relevant connection between the retirement and the payment Miss Brown directed us to what Arden LJ said in Barclays Bank plc v RCC [STC] 476 at paragraph 19 about a scheme falling within Income and Corporation Taxes Act 1988 ("ICTA") section 621(1) (which provided a definition of "relevant benefits" similar to the definition in ITEPA, section 393B)

"it is possible that the making of a payment will have a relevant connection with more than one thing. In that situation, it is in my judgement necessary to see whether the connections can co-exist or whether one will actually exclude the other. If, on proper analysis the further connection displaces a prior connection the prior connection ceases to be a relevant connection for the purposes of section 612(1)."

There must, she says, be a relevant connection with retirement despite the co-existence of the redundancy since otherwise the payments to redundant employees over the age of 50 who confirmed they were retiring would not have the necessary connection and it was plain that payments to these employees were relevant benefits and there was no evidence that the payment to this group was made for a different reason.

18. Miss Brown acknowledged that whilst the Venables decision was the subject of further appeals, the principle stated above in that case about the meaning of retirement was applied on both occasions and that although section 393B was not the subject of the decision in Venables the principle should apply equally to section 393B. She also dealt with there was a link between the payment and the Appellant's retirement and said that the only restriction on what could and what could not be a relevant benefit was that it should be linked with service which she submits was the case. In this context she referred us to what was said by Arden LJ in Barclays Bank plc about linkage

"[19] .... the other parts of the definition of 'relevant benefits' and the surrounding provisions of the legislative scheme, will inform the court as to the extent of the link required by any particular provision……At the very least, Parliament is unlikely to have intended to limit connections to direct connections….

[23] The definition of 'relevant benefits' is not, however, unbounded. There must be a link with service…."

Again, she said, this link must exist since, otherwise, payments to retiring employees over the age of 50 would also lack the necessary link.

19. Finally she submitted that the age of the Appellant was not critical; he was under the age of 50 when he left the employment and this meant he could not take a pension under the Young's pension scheme but that is not relevant to whether he retired for the purposes of ITEPA section 393B and nothing suggests that it is important for those purposes.

20. Mr O'Grady submitted that, as at the date of his redundancy, Mr Ballard did not qualify for early retirement under the prevailing Young's redundancy policy and procedure. A copy of this (dated 25 August 2005) was produced to us and it states that "employees over the age of 50 may, with the company's consent, retire when

leaving the company due to redundancy and a reduced pension calculated by reference to the rules of the company's pension schemes would then be payable". The same document also dealt with profit sharing and the relevant part states "it is the Directors' intention to exercise their discretion in these exceptional circumstances as provided in rule 10.5 of the company's profit sharing scheme to redeem the profit share holdings of employees over the age of 55 who are redundant and retiring from the company and commencing early payment of their pension under the company's pension schemes and who have confirmed in writing their intention to retire from employment. Redemption of profit sharing will be in accordance with the redemption provisions as contained in the rules of the profit sharing scheme". Thus, says Mr O'Grady, because Mr Ballard was not over the age of 55 at the date of his redundancy, the directors were not in a position to exercise their discretion in the exceptional circumstances provided for by rule 10.5 of the Rules. He went on to say that Young's did subsequently alter their position concerning payments to redundant employees under the age of 55 and acknowledged that there was reference to correspondence between Young's and HMRC but despite a thorough search he had been unable to trace copies. However he went on to say that even if correspondence had been found he doubted it would have been made available to us since it involved the FURBS which is not a party to the appeal. Despite the absence of formal correspondence Mr O'Grady did tell us some details of specialist advice he said was given to Mr Mather, the compliance inspector dealing with the Appellant's case. This advice, given by the HMRC Pension Scheme Services, suggests that Young's had asked whether (in the context of Rule 10.5 which deals with wholly exceptional circumstances) redundancy was such a circumstance and if so what the taxation consequences would be. Mr O'Grady told us that the advice given was the "redundancy per se was not one of the circumstances that would lead to the payment being considered a 'relevant benefit' for the purposes of ITEPA, section 393B." Mr O'Grady submitted that in Mr Ballard's case his redundancy alone is not enough for him to benefit from the 'wholly exceptional circumstances' criteria set out in rule 10.5 because at the time of redundancy he was under the age of 55. He suggested that payment to the Appellant was made as a result of an alteration to the Rules not recorded in writing and that the payments were made as a consequence of his redundancy and consequently the gross payment falls to be taxed under section 401 ITEPA rather than under section 62 ITEPA and does not qualify for relief in the same way as a relevant benefit falling to be taxed under section 394 ITEPA. That being so, he says, the assessment was properly made under section 401 and should stand.

21. Mr O'Grady further submitted that the decision in Venables was unhelpful in connection with the meaning of 'retirement' because that case was based upon the specific rules of the company's scheme rather than the application of a general legal meaning of retirement; however it did help by illustrating that payments not authorised by the scheme in question could not be relevant benefits. Mr O'Grady did not suggest that the payment to the Appellant was not authorised by the FURBS and so we were not clear in what way the decision was helpful apart possibly from deciding that authorised payments might or might not be relevant benefits. If so, we agree with that particularly in view of the definition of employer-related retirement benefits scheme in section 393A ITEPA set out below which is clear that a scheme need not provide exclusively for the payment of relevant benefits. He must have or

whether, because he submitted it was not paid in accordance with rule 10.5 (which allows the normal retirement date to be changed), it was only made as a consequence of redundancy rather than as a consequence of retirement. Mr O'Grady argued that the Appellant could not have retired from Young's because he was under the age of 50 when he was made redundant. He agreed that the payment was made in connection with past service but said that the requirements of section 393B(1)(c) are clear in that they require the payment must be from the employer making the payment and the payment must be in connection with past service given to the employer making the payment. Further, since the payment was made after the employment had come to an end, section 62 ITEPA would not apply to impose a charge which, instead, fell to be charged under section 401.

22. Finally, Mr O'Grady submitted that the payment could not be a relevant payment within section 393B(1)(d) since the employment had come to an end; this was not a change in its nature as required by that subsection.

The law

23. The law relating to payments from FURBS is complex but the parties were agreed at the outset that in this case the only issue was whether the payment to the Appellant was or was not a "relevant benefit" for the purposes of ITEPA, section 393B(1)(c) or (d); if it was then it fell to be charged under section 394 and qualified for relief under Schedule 36.

24. Section 393B(1) commences

"In this Chapter "relevant benefits" means any lump sum, gratuity or other benefit (including a non-cash benefit) provided (or to be provided)"

and then provides five categories of which we set out the two relevant ones contained in paragraphs (c) and (d) -

"(c) after the retirement or death of an employee or former employee in connection with past service,

(d) on or in anticipation of, or in connection with, any change in the nature of service of an employee"

25. The only other statutory provision relevant to this decision is the definition of "employer-financed retirement benefits scheme" contained in section 393A(1) as "a scheme for the provision of benefits consisting of or including relevant benefits to or in respect of employees or former employees of an employer". Thus it seems it is not essential for it to be an employer-financed retirement benefits scheme that the FURBS should only be capable of making payments which are relevant benefits.

Our decision

26. As we announced at the time of the hearing we decided that the payment to the Appellant was a "relevant benefit" on the basis that it was a payment made after his

retirement in connection with past service and fell within section 393B(1)(c). That being the case it was not necessary for us to conclude whether it was made in connection with any change in the nature of his service as an employee so as to fall within section 393B(1)(d) but if it had been necessary for us to conclude on this we would have agreed with Mr O'Grady on this point that this paragraph did not naturally apply to a case where the employment had come to an end (for whatever reason).

27. Our reasons for the decision are as follows. The validity of the payment was not in dispute. It was made by the FURBS. Miss Brown said it must have been made on the basis that his retirement date had occurred. This happened, she said, due to wholly exceptional circumstances which allowed the company, under 10.5 of the Rules, to treat him as having reached his retirement date for the purposes of the Rules. Mr O'Grady said it must have been made as a result of some amendment to the Rules which was not documented. We preferred Miss Brown's argument for the reasons we gave above since the FURBS appears to have been amended specifically and in writing on a number of occasions, the Rules we were shown were obviously typed up some time after 2006 since they referred to events in 2007 and if there had been a specific amendment to allow payment to the Appellant we would have expected to see that amendment in the version shown to us. However that does not determine the matter. It certainly does not mean that the payment was made "after his retirement" since in our view 10.5 is simply a mechanism which permits the payments to employees in circumstances where they have not reached their retirement date and has nothing to do with whether they have or have not retired – it is entirely possible that an employee who has reached the age of 65 will not have retired from employment. As an alternative the Rules could have been amended to allow the payment but we think it is unlikely that this happened; even if it had happened it does not rule out that the Appellant retired.

28. We note that the word "retirement" has no special meaning. We were puzzled by Mr O'Grady's reliance on whether or not the Appellant qualified for a company pension as being the deciding factor in whether or not he had retired. We see these as two separate issues. Mr O'Grady could not explain why the one impacted on the other. Equally we could not see what relevance the age of 50 had on whether he had retired or not although we can see that the older the person is when he is made redundant or otherwise leaves a long term employment the more likely it is that he will not seek alternative employment and will effectively retire. All this means, we suggest, is that the younger the person is the more difficult it will be for him (or her) to show that he or she really has retired. A person whose employment comes to an end may make no decision at all about his future employment. He may actively look for an alternative, he may wait and see what happens or he may take a firm decision not to seek further employment and there are probably other possibilities. In this case we find as a fact that the Appellant firmly decided to retire during the redundancy process for good reasons connected with his specialist skills and the likelihood (or lack of it) that they would be attractive to other potential employers. He analysed his financial resources at the time and found them to be adequate for his future needs. Furthermore he has not departed from his decision.

29. We agree with Miss Brown that although he was forced to accept redundancy he was also entitled to retire from employment. Mr O'Grady seemed to suggest he could not reach that decision without the active agreement of his employer. We find that difficult to accept. The decision to terminate his employment may have been made by his employer and justified by his redundancy but the decision to retire is surely his alone. The employer may have been entitled to decide whether or not he qualified for a pension under its (different) scheme but that is not obviously relevant to whether he had retired in the normal sense of the word. It is plain that other employees over the age of 50 who were made redundant were also treated as retiring in connection with payments from the FURBS since at least those who confirmed they were retiring were treated as receiving relevant benefits 9since that is the only explanation for the advice from the accountants that they could be paid gross of income tax etc.). Mr O'Grady submitted that the payments were not connected with the Appellant's retirement but with his redundancy. We considered this point carefully. We can see there must be a relevant connection. Employees over the age of 50 were asked to confirm whether or not they had retired; although the Appellant, being under the age of 50 was not asked the same question he volunteered the answer during the redundancy process by telling the company he was retiring. Thus the company knew he was retiring; the advice they had from the accountants seems to have made the answer irrelevant to the tax treatment – but the question was only asked of those over the age of 50 in connection with the tax treatment and we concluded that the knowledge of the Appellant's retirement was sufficient connection with the payment.

30. Without seeing the correspondence between Young's accountants and HMRC it is difficult to piece together what questions were asked of HMRC at the time and even more difficult to speculate the answers. We conclude that the advice from the accountants to place the redundant employees into three categories was a "fail safe" method of proceeding and was designed to assist the company in its dealings with the group as a whole. We do not find that it precluded "special cases" and in particular did not preclude someone in the third category who was under 50 from arguing that he was retiring so that he should receive the payment in question after he had retired as a relevant benefit. The Appellant did not see the letter but only saw the decision tree and at the time was not in a position to argue about the nature of the payment. Mr O'Grady indicated that specialist advice was that redundancy per se was not a circumstance that would lead to a payment being a relevant payment. That is obviously so. But the advice was not that redundancy excluded a payment being a relevant benefit.

31. We conclude the payment was made after the Appellant retired and was in connection with his employment; it was also made as a consequence of his redundancy but that does not mean in our view that it is taken outside section 393B(1)(c) as a consequence. We allow the appeal.

32. 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.

JUDITH POWELL
TRIBUNAL JUDGE

RELEASE DATE: 31 January 2013