TC04035

Appeal number: TC/2013/03588

Enhanced protection claim for lifetime allowance – claim made late – Appellant not aware of need or ability to make a claim until after the due date – reasonable excuse – could his ignorance be a reasonable excuse in principle –yes - was his ignorance a reasonable excuse in the circumstances – no - appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

MICHAEL HARGROVE **Appellant**

- and -

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

TRIBUNAL: JUDGE Judith Powell
MEMBER Mrs Ruth Watts Davies MHCIMA FCIPD

Sitting in public at Bedford Square, London on 20 August 2014

The Appellant appeared in person
Mr John Brinsmead-Stockam, Counsel, instructed by HMRC, for the Respondents

© CROWN COPYRIGHT 2014

DECISION

The Appeal

1. This is an appeal by the Appellant against the refusal by the Respondents to allow a late claim for enhanced protection against a lifetime allowance charge made by the Appellant in accordance with Finance Act 2004 ("FA 2004") Schedule 36 paragraph 12. It was common ground that if the claim had not been late it would have been accepted. The Appellant acknowledged that his claim was late but said that he had a reasonable excuse for why it was late.

2. The powers of this Tribunal are appellate which means that we are not limited to considering whether the decision of the Respondents was reasonable. However, if we decide he does have a reasonable excuse and allow his appeal our powers are restricted as described below in paragraph 8.

3. The Appellant's excuse was that he did not know about the relevant legislation its impact on deferred final salary benefits and the need to make a claim if he wished to protect his position and could not reasonably have been expected to know about it. The Respondents submitted that this type of excuse is not capable of being a reasonable excuse as a matter of principle but that if they were wrong about this then the Appellant failed to show that it was available to him on the facts of his case. The Appellant had initially made other submissions which he withdrew at the beginning of the hearing and so the hearing was confined to the question whether there was a reasonable excuse for his claim being late.

The legislation

4. There is no dispute about the legislation which applies but we need to set out its terms briefly in order to explain the significance of the claim which the Appellant made and which was rejected as being out of time by the Respondents. The background is as follows. On 6 April 2006 the UK tax treatment of pensions was changed as a result of provisions contained in FA 2004. This date is commonly referred to as "A Day". FA 2004 imposed a charge to income tax on a member of one or more registered pension schemes in respect of certain "benefit crystallisation events" where the amount crystallised when added to any previous such events exceeds the individual's "lifetime allowance". There are rules which apply to calculate the amount of this allowance and whether it has been exceeded in any individual case. These are detailed and complex and it is sufficient here to mention that they include rules which apply specifically to establish the value of defined benefit schemes and that the value of such a scheme will contribute to deciding whether the lifetime allowance is exceeded as far as any taxpayer is concerned.

5. The income tax charge which was introduced is known as the lifetime allowance charge. The rate of tax varies according to the type of benefit which exceeds the allowance; it is 25% where the excess benefit is a pension and 55% if the excess benefit is a lump sum.

6. FA 2004, Schedule 36 provided for transitional provisions and savings. Paragraph 12 allowed for protection from the "lifetime allowance charge" if the taxpayer gave notice to HMRC of his intention to rely on paragraph 12(3) in accordance with regulations made by the Board of the Inland Revenue. The relevant regulations which were made are the Registered Pension Scheme (Enhanced Lifetime Allowance) Regulations 2006 (SI 2006/131). Regulation 4(4) imposed a date by which eligible taxpayers were required to give notice of their intention to rely on paragraph 12 of Schedule 36 and this date was 5 April 2009. It is accepted that the Appellant did not give notice for protection from the lifetime allowance charge on or before 5 April 2009. It was not disputed that there would have been no disadvantage to the Appellant in making a claim in time; there are provisions which allow a successful claim to be withdrawn.

7. Regulation 12 is relevant to this appeal because it deals with cases where a taxpayer claims protection after 5 April 2009. Regulation 12(1) deals with the position if a taxpayer claims protection after 5 April 2009 and the relevant provision in this appeal is paragraph 12(1)(b) which is satisfied if an individual "had a reasonable excuse for not giving the notification on or before the closing date". The closing date was 5 April 2009. The Respondents accept that if the taxpayer can demonstrate he had a reasonable excuse then paragraph 12(1) is satisfied and paragraph 12(2) will apply which provides that "if the Revenue and Customs are satisfied that paragraph (1) applies they must consider the information provided in the notification". The Respondents decided they were not satisfied that paragraph 12 (1) applied. This decision gave rise to this appeal.

8. The other relevant regulations so far as this appeal is concerned are Regulation 12(7) which provides that "On an appeal which is notified to the tribunal, the tribunal shall determine whether the individual gave notification to the Revenue and Customs in the circumstances specified in paragraph (1)" and regulation 12(8) which provides that "If the tribunal allows the appeal, the tribunal shall direct the Revenue and Customs to consider the information provided in the notification." The tribunal's powers are appellate, and we can decide whether the Appellant did or did not have a reasonable excuse for his failure to make a claim by the closing date, but if we do decide to allow the appeal we can merely direct the Revenue and Customs to consider the information in the notification; we cannot require them to admit the claim.

The facts

9. The Appellant's employment history and the nature of his related pension schemes were not disputed. The Appellant was employed by Citibank from 22 August 1983 to 12 August 1993 and by NatWest Markets from 22 August 1993 to 10 March 1998. He worked in foreign exchange trading and, prior to leaving NatWest Markets, he was the global head of FOREX options. He had deferred benefits from two group pension schemes of these two former employers. Both pension schemes were registered for the purposes of FA 2004 and were known as Citibank (UK) Pension Plan (Defined Benefit Scheme) and NatWest Markets Pension Fund (now RBS Group Pension Fund). He also had additional voluntary

contributions, in managed funds, within the Citibank Group Scheme. He had built up these schemes under the standard terms of those schemes and in the normal course of his employment.

10. The Appellant made no changes to his schemes since 10 March 1998. He had deferred the benefits under the schemes until 24 October 2022 being the date of his 60th birthday. Apart from a very short period of work for CIBC in Toronto the Appellant was not employed at all after he left NatWest Markets in 1998.

11. Whilst he was employed the Appellant did not work in the area of pensions or taxation but had a good understanding of corporate affairs as a result of his employment. He continued to understand financial concepts. He never sought professional advice about his pensions. This was his choice; he accepted that in principle he could have done so. He relied on the literature he received from the pension providers for his information about the schemes.

12. He always prepared his own tax returns. He does not engage the services of an accountant or a lawyer. He manages his own investments. He told us, and we accept, that his tax affairs have always been straightforward and he is used to using the HMRC website to resolve any issues that do arise. He reads the communications he receives from companies in which he has invested and also newsletters and other communications received from the administrators of his pension schemes but may not analyse every nuance of what is written in them. It is clear from the evidence that he retained these communications carefully; he provided HMRC with a large number of documents that he had received over the years from the scheme administrators. He currently reads the Guardian newspaper if he reads a newspaper at all but does not regularly do so. It was not clear what, if any, newspaper or newspapers he read in the period 2004 - 2009. He “keeps an eye on the news”. We conclude it was likely he was aware of current events. We conclude from listening to him giving evidence that he is an intelligent person with an open and enquiring mind who is likely to be able to understand complex issues if he decides to investigate them.

13. The pension schemes are important to the Appellant. He has always drawn comfort from their existence. He sees them as giving him a base level of financial security. He told us that he was keen that the provision they offer should not be reduced unnecessarily by tax charges and that he would do what was necessary to avoid this. His main concern about the pension schemes had centred on whether the schemes would be in a position to provide the benefits.

14. The Appellant had been conscious (probably from as early as 2004) that changes were proposed, and then made, to the tax treatment of pensions, was familiar with the concept of "A" Day and of the Lifetime Allowance, and of the Lifetime Allowance Charge. However, he had thought that the Charge only applied to money purchase schemes rather than to future and previous deferred benefits. He had no idea that deferred benefits were valued in the context of the calculating the Lifetime Allowance. He did not know about the possibility of making a claim before the deadline of 5 April 2009 but knowing now about the possibility he said

(and we believe him) that he would have made a claim before that date if he had known in time of the possibility since there was no disadvantage in so doing. He would not have been influenced by any value attributed (or not) to deferred benefits. He would have made a claim on a precautionary basis and because there was no reason not to do so.

15. At the hearing the Respondents accepted, contrary to what they had previously alleged, that the Appellant was not sent a newsletter by Citibank in November 2005. This newsletter was relevant because of the information it contained about the A Day changes. The Respondents continued to allege he must have received a newsletter in October 2005 (also from Citibank) which referred to proposed changes to pensions because Citibank told them he was on the mailing list for that letter. The Appellant said he did not receive it because it was not amongst his papers although he also said he had not been conscious of other communications from Citibank going astray but mail does occasionally go astray. We accepted that he did not receive it. It was clear to us that the Appellant was meticulous with his filing and would have kept it if he had received it.

16. The Appellant had received other newsletters from Citibank. One of these was issued in 2004 and referred both to widespread media coverage and to transitional protection but did not mention the possibility (or requirement) of making a claim. We accept that he felt that these changes were unlikely to affect him because he was no longer employed and did not intend to make further contributions to any scheme. Although another newsletter from Citibank makes it quite clear there were a large number of members with deferred benefits so that the newsletters and the references to changes might have alerted him to the fact that the changes did apply to people with deferred schemes we also accept that the Appellant felt that he was in a minority as one of a small number of those people with deferred benefits who were not in employment elsewhere. We accept that the Appellant regarded himself as being in an unusual position of having retired from paid employment whilst being many years under the age of 60 at the time of A Day. We find that nothing he read had stated in terms that he could make a claim to protect his position.

17. The Respondents referred us to articles in the popular press and we accept that A Day and tax changes to pensions were advertised widely. We also accept that the changes were advertised on the HMRC website and the *Directgov* website. We do not accept that the need to make a transitional claim for enhanced protection was widely advertised in the same way. We do accept that it was possible to navigate through the HMRC website and find references to the change and the form required for making a claim; clearly it was possible since the Appellant did find the relevant claim form without professional assistance in 2012.

18. The HMRC document dated April 2008 and entitled “Pension Tax Simplification and You” describes the Lifetime Allowance Charge on the first page but does not mention the possibility of making a claim. The reference to making a claim appears on the second page under the heading "What do I need to do now" where there are a series of statements which open by saying "The majority of people do not need to do anything other than thinking about whether they would like to take

advantage of the new rules". The next paragraph contains the statement "The new rules mean that everything you have built up in your pension pot up to A-Day will automatically be transferred into the new system and you will continue to get, at the very least, the same benefits that you were promised before". The third paragraph sounds a warning note "Only those very few individuals with pension savings (or potential pension savings) of over the lifetime allowance, or promises of a lump sum of greater than a quarter of this will have to apply to HMRC to ensure they are exempt from the lifetime allowance charge". Finally the fourth paragraph states "You are able to claim protection of pre A-Day rights from the lifetime allowance charge by registering a claim with HMRC…….Claims must be registered by 5 April 2009 on the protection of rights form (APSS 200). If you think you may be affected by this you should seek financial advice.." We find that anyone who read this very carefully would conclude that they should investigate whether or not they needed to make a claim. The Appellant did not read this prior to April 6 2009.

19. At the end of 2012 the Appellant was on holiday in Herefordshire. Whilst on holiday he met up with a friend, Valerie Udale and after he listened to what she said about her own pension arrangements he became aware for the first time of the need to make claims in certain circumstances. He was surprised to find out that individuals had to "opt out" to claim protection. He was still unaware at this stage that he was able to opt out of the changes and that he could have applied for protection. The conversation prompted him to make further investigations. He undertook his own reading and research on the internet. He found the research time consuming but eventually found the necessary information by looking specifically for "Protection from the Lifetime Allowance Charge". He realised that he could have made a claim. He then submitted a claim which was correct in all respects. The date of submission was considerably later than 5 April 2009 which he accepts was the date by which claims had to be made if they were to be on time.

Submissions

20. The Appellant submitted he had a reasonable excuse for his failure to make the claim for protection from the charge by 5 April 2009. He said he was unaware of the need or possibility for making a claim for protection from the charge and was thus unaware there was a closing date. He was first alerted to the possibility he might need to opt out of the new legislation when he had his conversation with Valerie Udale in 2012 which was already after the closing date for in time claims but he made a claim as soon as possible after he first became aware of the need to make it. He said that although he had navigated his way through the HMRC website in 2012 and found the appropriate claim form by himself this could be explained on the basis it was easier to locate something known to exist than to come across the same thing by chance.

21. The Respondents submit that in principle the excuse put forward by the Appellant is not of a type that can ever amount to a reasonable excuse. They relied upon the decision in *Neal v Customs and Excise Commissioners* [2008]STC 131 that the lack of knowledge relied upon by the Appellant is incapable of constituting a reasonable excuse for the delay in making the claim. In the case of *Neal* the

Appellant had failed to notify of her liability to be registered for VAT and claimed that she had a reasonable excuse for this omission which was her ignorance of basic value added tax law. They referred us to what Simon Brown J, in dismissing her appeal said in conclusion that

" It seems to me essential to recognise a distinction between on the one hand basic ignorance of the primary law governing value added tax including the liability to register and on the other hand ignorance of aspects of law which less directly impact upon such liability. I believe that this distinction was recognised by Mr Potter and is to be reflected in the passage I have cited from his decision in *Geary*. It must be appreciated that the question of law about which the taxpayer was ignorant there was whether he was employed or self-employed perhaps equally a question of fact and degree as one of law. It was not as if the taxpayer was unaware that, were he carrying on business, he was liable to be registered whereas if he was employed he was not. On the contrary, indeed, Mr Potter appears plainly to have accepted that the relevant maxim must be regarded as ascribing to the taxpayer at least that degree of knowledge. Furthermore I have concluded that the trustee cases are similarly to be understood upon this basis. There was no question in those of the trustees being unaware of their essential duties and responsibilities of their position; rather loss had been occasioned by their justifiable ignorance of other matters of law.

In the result whilst not accepting the wider submission of either party I have decided the tribunal was right to conclude that they were bound to reject the taxpayer's argument that she could invoke her ignorance of basic value added tax law as reasonably excusing her default. That, it is plain from the context is all that the tribunal meant when they d]said "ignorance of the law cannot be an excuse". This case was simply not concerned with the taxpayer's ignorance other than of basic value added tax let alone ignorance of mixed law and fact. Had it been then in my judgement the tribunal ought certainly to take such matter into account as part of the overall facts of the case"

22. The Respondents submitted that Simon Brown J drew a distinction between basic ignorance of the primary law governing value added tax including the liability to register which was incapable of constituting a reasonable excuse and ignorance of aspects of law which less directly impact on such liability. Using this distinction the Respondents said that the lack of knowledge claimed by the Appellant falls into the first category because it amounted to a basic ignorance of the primary law relating to pensions; they pointed out that the Appellant did not dispute that if he had known of the possibility of making a claim he would have done so. He did not claim he faced any difficulty in knowing whether or not the legislation applied to him.

23. The Respondents argued that the lack of knowledge in this case is not the same as the lack of knowledge successfully relied upon in the case of *Geary v Customs and Excise Commissioners* (unreported, 13 March 1987) London VAT Tribunal and which was referred to in by Simon Brown J in *Neal*. In the case of *Geary* the Appellant had also failed to register for VAT. In that case the Tribunal under the chairmanship of Mr DC Potter QC said

"The penalty being draconian it is in my view reasonable to assume that the phrase "reasonable excuse" enables, indeed obliges, the tribunal to take into account all the facts of the case, including ignorance of the law. That is particularly so in the case like the present where the law is not some rule of law that echoes the moral law or that it is reasonably obvious but is the distinction between the carrying on a business on one's own account and being employed as the servant of another a distinction which has in innumerable cases given rise to distinctions that lawyers as well as laymen find difficulty in understanding or applying".

24. In this context the Respondents referred to the several first-tier tribunal decisions concerning whether the taxpayer had a reasonable excuse for his late notification of a claim for enhanced protection. In two of the cases, *Mr Hugh Scurfield* [2011] UKFTT 532(TC) and *Adrian Platt* [2011] UKFTT 606 (TC) the taxpayer failed to show he had a reasonable excuse whereas in the third case, *Charles Irby* [2012] UKFTT 291 (TC) the taxpayer did show he had a reasonable excuse. In each of these cases the tribunal accepted that the taxpayer's claim to be ignorant of the right to make a claim should not be summarily dismissed on the basis the Respondents are asking this Tribunal to do but should instead be considered in the context of the circumstances of the appeal in question.

25. In the case of *Platt* (which was decided after *Scurfield* to which the tribunal referred) Judge Berner, commenting on the question whether ignorance of the need to do something before a particular date could be a reasonable excuse said

> "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 provide for by law, is of a different nature to the ignorance at issue in Neal v Customs and Excise Commissioners [1998] 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 requirement, 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."

26. The Respondents said that, in *Platt,* the tribunal failed to apply the distinction that was drawn in *Neal*, and that the reference to what was said in *Neal* and quoted in *Platt* did not form part of the reasoning in *Neal* but was merely an additional comment to explain the (arguably) harsh result for the Appellant in *Neal*. The Respondents say that the actual reasoning in *Neal* was that *"basic ignorance of the primary law governing"* the charge to a particular tax was incapable as a matter of principle of constituting a reasonable excuse. They went on to say that other factors highlighted by the FTT in *Platt* do not constitute a principled basis on which to distinguish this appeal from that in *Neal*. In particular the fact the legislation was novel and that the ability to make the claim was transitional cannot prevent those provisions from constituting part of the primary law governing the lifetime allowance charge. Further the obligation to notify liability to register for VAT (as in *Neal*) can equally be said to be a provision that affects only a limited number of people.

27. The Appellant in the case of *Irby* was in a different position from the Appellant in both *Scurfield* and *Platt* (and in this case) because he knew he did not know his position and took advice to find out. His adviser failed to give him the advice in time. He did succeed in showing that he had a reasonable excuse despite not chasing up his adviser who failed to give him the correct advice in time to make a claim.

28. The Respondents said that if they were wrong to argue that ignorance of the need to make a claim for enhanced protection could never be a reasonable excuse the Appellant here could not rely upon it. They referred us to the case of *Scurfield* where Mr Scurfield (like the Appellant in this case) did not have a financial adviser but the tribunal concluded that he could reasonably have been expected to have discovered the need to apply for protection in time. Mr Scurfield was also not in employment at the time the claim should have been made. The tribunal found as fact that the changes to benefits including the lifetime allowance charge had been in the public domain since 2004, the introduction of a lifetime allowance was a key part of the changes and featured prominently in the public information on the pension changes published on the HMRC and *Directgov* websites. They also found that the information on the HMRC and *Directgov* websites included details of the financial limits for the lifetime allowance and the possibility of making claims for protecting pension benefits from the lifetime allowance charge. The Respondents in *Platt* did not place any reliance on publicity given to the changes in general newspaper articles or through government websites but instead relied on information that Mr Platt had been sent by the pension fund trustees. The tribunal in *Platt* found that he did not know about the deadline but that a reasonable individual in his position would have understood sufficient of the information in the newsletters, taken together, at least to have taken advice.

29. Relying on the conclusions in *Scurfield* and *Platt*, the Respondents referred to the various newsletters that the administrators had sent to the Appellant, to the articles about A day and the changes to pensions that appeared in the popular press and to the communications appearing on the HMRC and Directgov websites. The Respondents said this demonstrated that the changes had been widely advertised on government websites and both in the newsletters produced by the scheme administrators and in the popular press.

30. The Respondents accepted, in light of the decision in *Perrin v HMRC* [2014] UK FTT 488(TC), that whether or not a taxpayer has a reasonable excuse is an objective test to be determined in light of all the circumstances of the case and it does not necessarily require the circumstances to be exceptional and unavoidable such as serious illness etc. (i.e. completely outside of the individual's control). They say that the question to be determined if the tribunal is considering reasonable excuse is whether the reasonable taxpayer with the same attributes and in the same circumstances as the Appellant would have been aware of the relevant legislation and, in particular, the statutory deadline for making a claim for enhanced protection from the lifetime allowance charge.

31. The Appellant submitted that the only newsletter that might conceivably have alerted him to the need to make a claim (in November 2005) was not sent to him. He told us that he did not regularly read the popular press but in any case the articles were not as prolific or informative as the Respondents had suggested. He would not have regarded several of the articles (e.g. those entitled "High Earners") as being relevant to him even if he had seen them since he was no longer in employment. He referred to research done by Mr Gabbitas for the Respondents. Mr Gabbitas, an officer with HMRC, had searched for relevant articles appearing in the press on the

internet using the term "A Day" in conjunction with either "enhanced protection" or "lifetime allowance". This search led him to 84 articles. The Appellant observed if a search was done for "lifetime allowance and enhanced protection" the number of results fell to 44 or 45. Only 18 of these articles refer to final salary benefit and he submitted even these did not obviously apply to his type of scheme and only a maximum of three articles mention his type of scheme. He said that a total of 5.5million articles were written in the five year period in question and the Respondents had only found 80 articles using these search terms.

32. The Appellant called Mr Neil Sheldon as a witness to give evidence about the statistical probability of a person finding an article relevant to claims for enhanced protection for the lifetime allowance if he selected press articles to read on a random basis. Mr Sheldon is currently Vice-president of the Royal Statistical Society for Education and Statistical Literacy and is a Chief examiner in Statistics for the OCR examinations board. He explained to us that the Appellant had asked him to make several calculations about the chance that (a) none of the relevant articles is selected (b) at least one of the relevant articles is selected. Mr Sheldon said that if an hour per week is spent reading articles at random there is a 92.6% chance that none of the relevant articles is selected and a 7.4% chance that at least one of the relevant articles is selected. If, instead, an hour per day is spent reading articles selected at random there is a 58.5% chance that none of the relevant articles will be selected and a 41.5% chance that at least one will be selected. He went on to explain that 203,200 articles would have to be selected at random to have a 95% chance of selecting at least one of the relevant articles and this would have required someone to read for just over 5.5 hours per day every day for 5 years. We had no reason to doubt this evidence and it was not challenged by the Respondents. It was clear to us that the witness was a highly qualified statistician and that his conclusions about the questions he was asked to answer were likely to be correct. We noted that the questions were limited to answering what a person would find if he selected articles on a random basis.

Our decision

33. The first question for us to answer was whether, in principle, the ignorance alleged by the Appellant could amount to a reasonable excuse. The Respondents submit it cannot and that the ignorance is of primary law and cannot be distinguished from the principles stated in *Neal*. They say that the conclusions of the FTT in *Scurfield*, *Platt* and *Imry* that this ignorance of the need to make a claim could be a reasonable excuse are wrong. Having listened to what the Respondents said about this (understandably the Appellant, who was not represented, did not make detailed submissions on this point) we have concluded that this type of ignorance can be a reasonable excuse in some circumstances. We conclude this for the same reasons as the tribunal gave in *Platt*. We do not agree with the Respondents that what Simon Brown J said concerning matters "well established in basic commerce" was in the way of a throw away comment but was in fact an illustration of why the liability to register was ignorance of primary law. We do not place perhaps so much emphasis as the tribunal did on *Platt* on the legislation in question being novel, transitional and affecting only a limited number of people but

rather on the fact that existing scheme members had to opt out of the new charges rather than being given automatic protection unless they chose otherwise. This is not what we regard as part of the primary law of the scheme as it applied to existing members; it would be different if the need to opt out existed at the time the scheme was established when a member would be expected to understand exactly how it applied to him and what he needed to do at various stages. It is difficult to draw an analogy between pension taxation and value added tax but we can see that someone who contributed to a pension scheme today and then complained he or she did not know about the lifetime allowance charge would be in a very similar position to the Appellant in *Neal* who did not know about the liability to register. Such a person should familiarise himself with the rules concerning taxation of pensions of which the lifetime allowance charge is a basic part. We can see that a person who has already made contributions to a scheme and then fails to take account of changes to the way in which they are taxed (for example, when considering whether or not to add to the scheme) would also be in a similar position to the Appellant in *Neal* for the same reason. A person cannot assume that the law prevailing at a time when the scheme was established will necessarily continue to apply and should refresh his knowledge rather like a person who is in business might be expected to keep up to date with VAT changes. The ignorance claimed here is of the ability to opt out of taxation charges imposed on an existing scheme. It is easy, when presented with all the relevant material, to wonder how the Appellant missed the need to make a claim but we sympathise with what he said that it is far easier to find something when it is known to exist and we can see that even during the long period over which these changes were proposed the need to make a claim to opt out of the charge is a part of the primary law. In some ways the sheer volume of material that referred to the changes would make it more difficult to identify the changes relevant to this type of taxpayer. We are not persuaded that an Appellant who had an existing scheme when changes were made to the way in which it would be taxed and who was unaware of the nuances that might apply to him should be unable to claim that he had a reasonable excuse for his ignorance. Whether or not his circumstances are such that it is a reasonable excuse is clearly a different matter which we deal with below.

34. We accept that the Appellant did not know about the need to make a claim in time to do so by the due date. That is not enough, without more, for him to show he has a reasonable excuse. We agree that the test here is whether the reasonable taxpayer with the same attributes and in the same circumstances as the Appellant would have been aware of the relevant legislation and in particular the statutory deadline for making a claim for enhanced protection.

35. We accept that the Appellant had no particular expertise in pension scheme taxation. Importantly he knew he did not have any such expertise. This should have alerted a person in his position to make detailed enquiries – either by himself or through someone who did possess the necessary expertise. Instead he adopted a passive attitude and drew uninformed conclusions about how the new legislation might apply to him. That was not a reasonable approach to take.

36. The Appellant did not read the popular press. We do not think that the reasonable taxpayer in his position would have relied upon the popular press to provide him with detailed information about how the changes might affect him. Articles of that type cannot reasonably be relied upon by a person seeking to make an informed decision although they can alert taxpayers to changes which need to be looked at in greater detail. The Appellant accepted that he was generally aware of changes to pension taxation, to A-Day and to the lifetime allowance charge and that is all the information a taxpayer could reasonably have relied upon the popular press to provide. We do not believe that his chances of stumbling upon relevant articles over the years is relevant because he became aware over that period of all the articles might reasonably have provided by way of information. He might have read something that prompted him to look into his position in greater detail but we have concluded that the reasonable taxpayer would have sought basic advice about his position once he became aware of the changes - and he was aware of these changes from one source or another and probably as a result of the newsletters he received from the administrators. The fact that widespread changes were proposed would have alerted the reasonable taxpayer to the need to find out whether they would affect him.

37. The Appellant read the communications from the scheme administrators and we accept that nothing he read mentioned the requirement for him to make a claim. The Appellant seems to have lacked basic curiosity about these changes at the time. This is very surprising given the importance he placed on the provision these schemes were going to make for him. It seems that he made no independent enquiry at all; he did not attempt to contact the scheme trustees or administrators and ask if he should do anything in connection with these changes. He may have concluded that they were not likely to help. He certainly professed a reluctance to consult a financial adviser. Although we accept what he says that it was far easier to find details of the changes once he knew generally what he was looking for, and whilst we sympathise with the difficulty he would have encountered navigating his way through the HMRC websites to determine for himself whether or not he needed to take action, that is the task he faced if he was unwilling to seek help from those who might have helped him to narrow his search. A reasonable taxpayer in his position would have either contacted the scheme administrators or a professional or would have searched the HMRC websites extensively to satisfy himself how the changes would apply to him and whether he needed to do anything. A reasonable taxpayer in his position would not have passively assumed the changes had nothing to do with him. For these reasons we conclude the Appellant's ignorance of the need to make a claim was not a reasonable excuse for his failure to make a claim for enhanced protection from the lifetime charge and we dismiss his appeal.

38. 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: 29 SEPTEMBER 2014