

## First-tier Tribunal reinstates taxpayer's appeal against HMRC (Youngman v Revenue and Customs Commissioners)

02/02/2018

**Pensions analysis: The First-tier Tribunal reinstated the taxpayer's appeal against HMRC's refusal to accept a late notification for Fixed Protection 2012. The tribunal dismissed HMRC's application to strike out the case on the grounds that the tribunal lacked jurisdiction to hear the appeal. Michael Collins, barrister and tax law specialist at Temple Tax Chambers, examines the case.**

*Youngman v Revenue and Customs Commissioners* [\[2017\] UKFTT 893 \(TC\)](#), [\[2018\] All ER \(D\) 41 \(Jan\)](#)

### What was the background of the case?

For the first time, the [Finance Act 2011 \(FA 2011\)](#) reduced the lifetime allowance in [section 218](#) of the Finance Act 2004 from £1.8m to £1.5m. This meant many taxpayers who had not needed to apply for fixed protection under the Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006, [SI 2006/131](#), found that the value of their pension pots now exceeded the lifetime allowance and they were liable to charges on a benefit crystallisation event.

[FA 2011, Sch 18, para 14](#) allowed taxpayers in this position to continue to enjoy a lifetime allowance of £1.8m if notice of their intention to rely on para 14 was given to HMRC. This is commonly referred to a 'Fixed Protection 2012'. Applications for Fixed Protection 2012 had to be made in accordance with the Registered Pension Schemes (Lifetime Allowance Transitional Protection) Regulations 2011, [SI 2011/1752](#).

Mr Youngman gave notice of his intention to rely on [FA 2011, Sch 18, para 14](#) after the time limit provided for in [SI 2011/1752](#) had expired. Mr Youngman's professional advisor has incorrectly valued his pension pot and not advised him to apply for Fixed Protection 2012. HMRC refused Mr Youngman's late notification on the grounds that its discretion under [SI 2011/1752](#) to accept a notice did not allow it to accept a late notice. Mr Youngman appealed against that refusal.

The hearing of the appeal was originally listed for November 2016. Shortly before that hearing HMRC offered to reconsider its refusal of the late notice on condition the appeal was withdrawn. This was accepted and the appeal was withdrawn but, HMRC's reconsideration having not been completed within the 28-day time limit for reinstatement of an appeal, Mr Youngman applied to the First-tier Tribunal to reinstate his appeal.

HMRC refused to continue with its reconsideration and opposed the reinstatement on the grounds that the tribunal would be bound to strike out the case because it had no jurisdiction to hear an appeal against HMRC's refusal of a late notice.

### What did the tribunal decide?

The tribunal decided to reinstate the appeal. The tribunal considered the outcome of HMRC's reconsideration was a 'foregone conclusion' and Mr Youngman had been under a misapprehension when he withdrew his appeal that HMRC might accept this late notice. Because of this misapprehension, the overriding objective required that the appeal be reinstated.

On the question of the jurisdiction of the tribunal to hear the appeal, the tribunal said it was not prepared to say it lacked jurisdiction to hear the appeal. The tribunal said the stark difference between [SI 2006/131](#) and [SI 2011/1752](#) may be persuasive in allowing a liberal interpretation of the tribunal's jurisdiction under [SI 2011/1752](#). While [SI 2006/13](#) included a reasonable excuse provision where taxpayers had three years in which to give notice to HMRC, [SI 2011/1752](#) included no reasonable excuse provision where taxpayers had only eight months in which to give notice. HMRC were asked for a policy reason for the difference, but none was offered.

### Why is the case important for practitioners?

The decision of the tribunal to reinstate the appeal means it will now decide on whether it has jurisdiction to hear an appeal against HMRC's decision to refuse a late application under [SI 2011/1752](#). The hearing is expected later this year.

*Interviewed by Diana Bentley.*

*The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.*