TC02397

Appeal number: TC/2011/00819

INCOME TAX – employment – payment made following termination of employment – whether a payment in lieu of notice under terms of employment contract or termination payment falling within Chapter 3 of Part 6 ITEPA 2003 – finding by Employment Tribunal that employer in breach of obligation to give written notice but that such notice given within 3 days – held that payment by employer was made pursuant to employment contract and so taxable as general earnings – position unaffected by continuing provision of benefits for remainder of relevant month – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

KAYNE HARRISON **Appellant**

- and -

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

TRIBUNAL: JUDGE JOHN CLARK
HELEN MYERSCOUGH

Sitting in public at 45 Bedford Square London WC1B 3DN on 1 October 2012

The Appellant in person

Colin J Brown, Officer HM Revenue and Customs, for the Respondents

DECISION

1. Mr Harrison appeals against an amendment made by the Respondents ("HMRC") to his self-assessment return for 2005-06 treating a payment made by his former employer as a payment in lieu of notice made under the contractual terms of his employment.

The background facts

2. Mr Harrison was employed by the Financial Ombudsman Service ("FOS") as an Adjudicator. His contract start date was 23 May 2005. The terms of his employment were set out in a written contract of employment. His remuneration consisted of salary, together with a "Flexible Benefits Plan" which permitted him to participate in identifying the combination of salary and benefits to be received. Under the heading "Pension", the contract stated that the FOS participated in the Financial Services Authority Pension Plan. We consider other contractual matters later in this decision.

3. Following a disciplinary hearing on 14 and 16 February 2006, FOS stated orally that Mr Harrison was dismissed. At that stage no written notice was given to him. On 17 February 2006 FOS wrote to him, referring to the recent meetings and writing to confirm that he had been dismissed from his position as Adjudicator.

4. Mr Harrison made a claim to the Employment Tribunal for unlawful deduction from wages and breach of contract. The hearing before the Employment Tribunal took place on 5 and 6 June 2006, and the judgment was sent to the parties on 11 July 2006. The Employment Tribunal found that there had been an unlawful deduction from wages and a breach of contract, and awarded Mr Harrison a payment of compensation in the sum of £167.34. As the effect of the judgment is disputed as between him and HMRC, this is considered below.

5. On or around 22 February 2006, FOS had made a payment of £4,135.85 to Mr Harrison, being the equivalent of eight weeks' salary. In FOS's view, this was a payment in lieu of notice (referred to in this decision under its common acronym "PILON") and was a contractual entitlement. On the basis of that view, FOS deducted PAYE from the payment.

6. Mr Harrison received a repayment of income tax of £1,000.06 enclosed with a tax calculation by HMRC dated 10 May 2006. The applicable year is not mentioned, and in a later annotation (made in 2011) HMRC indicate that the calculation is not with the papers held.

7. On 14 April 2008, Mr Harrison wrote to HMRC seeking a further tax rebate for 2005-06. He referred to legal advice which he had received, and requested repayment of all the tax deducted from the payment (which he referred to as having been £4,153.85) made to him by FOS. He contended that in the light of the judgment of the Employment Tribunal, he had been dismissed in breach of contract; as a result, the payment described by FOS as a PILON was not a payment made under the terms of

the contract but was a "terminal payment", and was therefore not taxable as it did not exceed £30,000.

8. On 4 July 2008, HMRC wrote to Mr Harrison, expressing the initial view "that the pay in lieu of notice may be taxable". As he would no doubt appeal against this view, they requested him to complete a return for the year ended 5 April 2006; the form was enclosed. They indicated that they were not giving a definitive opinion on the tax treatment of the payment. If a refund were to be claimed, HMRC might enquire into the return.

9. On 15 July 2008 Mr Harrison wrote to a Mr Wright, a Complaints Manager of HMRC, to give notice of complaint about the handling by a particular officer of the claim to a refund. Mr Wright responded on 22 July 2008. On 7 August 2008 HMRC acknowledged that there had been delay in dealing with the claim, but indicated that the return form was necessary so that Mr Harrison could formally self assess for 2005-06; HMRC could then consider whether they wished to make a formal enquiry into his claim. He should therefore complete the return and send it to HMRC now.

10. On 14 August 2008 Mr Harrison telephoned about his complaint. The officer informed him that a colleague, David Low, had been dealing with it and had written on 7 August. Mr Harrison indicated that he had not received it. The officer read out the letter to Mr Harrison, who was not happy with the response; he stated that he would not complete the return. While the officer was explaining possible further steps with the complaint process, Mr Harrison put down the phone.

11. On 8 September 2008 Mr Harrison called HMRC and asked to speak to David Low, who was not in the office that week. A colleague of his offered to review the file and phone back the next day; Mr Harrison agreed. On 9 September the colleague telephoned him and explained that the return was a legal form and once served on him, he was legally obliged to complete it and send it back to HMRC; this was how he would get his repayment. Mr Harrison said that he objected to filling in the return because HMRC were asking for information which he had already sent to HMRC on numerous occasions. The officer explained the need to self assess in order to process a repayment; HMRC might then take up an enquiry, depending on the entries shown on the form. Mr Harrison then explained that he had sent the form back the previous day.

12. Mr Harrison had written two letters to HMRC on 8 September, one to Lesley Alcock, Senior Complaints Manager for Customer Operations PAYE and Self Assessment, following up the correspondence in respect of his complaint, and the other enclosing the return.

13. In the Employment pages of his return, Mr Harrison entered details of his income as shown on the P60 for 2005-06, and did not show the disputed payment as a lump sum payment within the £30,000 exemption; to do so, the form indicated that it should have been completed in accordance with Help Sheet IR204.

14. On 25 September 2008 Mr Craig, a Complaints Officer of HMRC, wrote to Mr Harrison with the results of his review of Mr Harrison's complaint raised on 8

September. Mr Craig explained the need for a completed return, and indicated that from looking at the entries made, a tax refund would not arise. An enquiry into the return was the only way in which HMRC could decide if the tax treatment of Mr Harrison's leaving payment was or was not correct. If Mr Harrison did not agree with the conclusion ultimately reached by HMRC, he could appeal and then take his appeal to the Tribunal. HMRC agreed that their delay in responding to Mr Harrison's letter of 14 April 2008 without keeping him informed had not been appropriate, and that therefore a payment of £25 should be made to him. If Mr Harrison remained unhappy with the way in which HMRC had dealt with his complaint, he could ask the Adjudicator to undertake an independent review, but the Adjudicator might not consider the case until any dispute over the tax treatment of the leaving payment had been resolved.

15. On 26 September 2008 HMRC produced a tax calculation showing that, after taking account of the refund already made, tax of £102.30 was due.

16. On 4 November 2008 Mr Harrison telephoned HMRC's Manchester contact centre for an update on his position. The centre contacted Mr Craig, who telephoned Mr Harrison on 5 November. Mr Harrison explained that he had not sent in an amendment to his 2005-06 return to Mr Craig's manager as discussed on 15 October, as HMRC had told Mr Harrison what to put on his return. Mr Craig said that HMRC would not have told him to do that; HMRC had processed Mr Harrison's return on the details which he had provided, which did not produce a refund as he had not taken off the payment which he considered not to be taxable. Mr Craig told Mr Harrison that HMRC definitely needed his amendment in order to proceed. Mr Harrison indicated that he would fax this to HMRC the next day. His fax setting out the background to the need to amend his return was dated 5 November 2008.

17. On 21 November 2008 HMRC wrote to Mr Harrison to acknowledge his request to amend his return. Although HMRC agreed to make the amendment, they would not be making the resultant refund, as HMRC's view was that the PILON was fully taxable. Opening an enquiry was the only route to resolving the matter.

18. HMRC's tax calculation dated 21 November 2008 showed tax overpaid of £818.62.

19. On 18 December 2008, HMRC wrote to Mr Harrison indicating that they intended to enquire into the amendment to his return. They requested certain additional information, namely the notes of the meetings on 14 and 16 February 2006 and a copy of the letter [ie from Steve Ramsay, Senior Human Resources Officer of FOS] dated 17 February 2006. Mr Harrison responded by letter enclosing this information, and telephoned HMRC on 23 January 2009 to check whether it had been received and dealt with.

20. On 3 February 2009, HMRC wrote to Mr Harrison setting out the conclusions of their enquiry. Their conclusion was that the payment of £4,185.85 [this amount later being acknowledged to be incorrect, see below] was liable to tax, so that the amended self assessment tax calculation showed £102.30 to be due.

21. On 20 February 2009 Mr Harrison telephoned HMRC to express disappointment that he had not received the promised letter. It appeared that the 3 February letter had been sent to him at his old address; he had mentioned to HMRC that his address had changed, but had not provided them with details of his new address. He agreed to forward this by fax. As no details had been received, HMRC telephoned Mr Harrison on 10 March 2009 and left a voicemail requesting details of his new address. HMRC wrote on 19 March 2009 indicating this, and acknowledging that he had now provided his address details; they enclosed a copy of the notice issued on 3 February 2009.

22. Mr Harrison wrote to HMRC on 13 April 2009 referring to a recent conversation and setting out his new address. He indicated that he wished to make a complaint against all the HMRC officers who had been involved in the handling of his claim. He indicated that he would be appealing against the decision to reject his claim.

23. On 14 April 2009 Mr Blood of HMRC wrote to Mr Harrison acknowledging his complaint, and explaining the conclusions concerning the treatment of the PILON received in February 2006.

24. On 23 April 2009 Mr Harrison wrote to appeal against the amendment to his self assessment, raising other matters concerning the taxation of benefits. As he had not heard from HMRC, he wrote again on 3 August 2010, enclosing copies of his 23 April letter and his appeal form. His August 2010 letter was acknowledged by HMRC, who indicated that the April 2009 letter had never been received by HMRC. The HMRC view was that the termination payment was contractual and not affected by any breach of contract referred to by the Employment Tribunal; it was taxable under s 62 of the Income Tax (Earnings And Pensions) Act 2003 ("ITEPA 2003"). The BUPA benefit for nine months, ie £465, had correctly been included in the 2005-06 assessment.

25. On 27 September 2010 Mr Harrison wrote by fax to HMRC explaining that he had made several attempts on 25 September 2010 to submit an appeal letter dated 23 September 2010, but it had repeatedly failed to go through. That had been the last date for submission of his appeal, but he requested that HMRC should accept the appeal. (The arguments set out in his 23 September 2010 letter are considered below.)

26. In a telephone conversation with HMRC on 8 October 2010, Mr Harrison made clear that he had requested an independent review of his case. On 20 October 2010 Mr Simpson, the HMRC Review Officer, wrote asking for further documents mentioned in Mr Harrison's letter dated 23 September 2010, and indicated that he sought an extension to the normal review period. Various HMRC officers followed up the request for these documents, which Mr Harrison faxed in November 2010, being acknowledged by HMRC on 5 November 2010. The officer indicated that the information in these documents did not alter HMRC's decision that the payment to Mr Harrison was a PILON taxable under s 62 ITEPA 2003.

27. On 14 December 2010 Mr Simpson wrote to Mr Harrison setting out the results of the review. The conclusion was that the decision dated 3 February 2009 should be

varied so that the amount of tax due was reduced from £920.92 to £913.84. This was because the amount of the payment made on 23 March 2006 was £4,153.85 and not £4,185.85, which had been the figure used by both parties in written correspondence. Mr Simpson set out detailed reasons for HMRC's view.

28. On 13 January 2011 Mr Harrison gave Notice of Appeal to the Tribunals Service.

29. After Directions had been issued on 23 May 2011 following the service of HMRC's Statement of Case, Jennifer Hall emailed the Tribunals Service to indicate that Mr Harrison had unavoidably been detained out of the country due to a family emergency. As a result, new Directions were issued on 24 June 2011. The appeal was eventually listed for hearing on 31 October 2011. On that date, the hearing took place but Mr Harrison was not present; the Tribunal decided to hear the appeal in Mr Harrison's absence, pursuant to Rule 33 of the Tribunal Rules. The day after the hearing, and before that Tribunal had decided the appeal, the Tribunal received an email from Mr Harrison explaining that his sister had become ill on 29 October 2011 and he had had to return to Nottingham immediately to look after his niece and nephew until the evening of 31 October. He requested a further opportunity to contest the matter.

30. In a letter dated 15 November 2011, Mr Brown of HMRC indicated that if the matter had not yet been decided, he saw no objection to the decision being set aside. On 7 December 2011 the Tribunals Service wrote to Mr Harrison indicating that the duty Judge had requested medical evidence in support of the email dated 1 November 2011. On 23 January 2012 the Tribunals Service indicated to Mr Harrison that no medical evidence had yet been received, and requested that it be provided by 24 February 2012. On the latter date, Mr Harrison provided a doctor's letter dated 16 December 2011 setting out the circumstances.

31. As a result of the correspondence and the events which had occurred, the original Tribunal directed on 18 June 2012 that the appeal should be listed to be heard by a differently constituted Tribunal.

Mr Harrison's arguments

32. Mr Harrison stated that he had been dismissed from his employment with FOS on 16 February 2006. There had been a contractual provision for payment in lieu of notice, provided that certain steps were taken. He referred to the evidence give by FOS at the Employment Tribunal hearing. FOS had stated that all the benefits terminated on 16 February. The Employment Tribunal had accepted that the benefits terminated on that date, but had compensated him. FOS had continued to make payments until 28 February, while "hiding" the benefits from him. It had stated that the benefits stopped on 16 February, but because they had continued, there had been a tax liability. He had therefore been taxed on benefits that the Employment Tribunal had determined did not exist.

33. Further, if all the benefits ran to 28 February, he submitted that FOS were not entitled to engage the PILON provision on the basis set out in the contract of employment. As a result, this made the payment into one of compensation outside the terms of the contract, rendering it a payment free of tax.

34. The Employment Tribunal's decision was that he had not been dismissed with written notice. When it had been tested on the point concerning the benefits, FOS had given an entirely incorrect account of the position concerning his benefits. He argued that the Employment Tribunal's judgment at paragraphs 23-27 accepted FOS's case that the benefits had terminated. Paragraph 29 of the judgment referred to payment and provision of the benefits; Mr Harrison submitted that they had continued. He had received no benefit, but had been taxed. He was being charged a tax bill for a non-existent benefit. He referred to his coding for the following year having been altered.

35. The benefits in question were car, pension and BUPA medical insurance. He referred to *Gunton v Richmond-upon Thames London Borough Council* [1980] IRLR 321; the employment relationship was not ended if not disengaged until 28 February. He imagined that this was why FOS had told him and the Employment Tribunal that benefits ceased on 16 February, while telling HMRC that they continued to 28 February.

36. He recognised that there was a PILON provision in the contract. However, when evidence had been manipulated in a court, he was not sure how it was binding. He referred to comments by Brightman LJ in *Gunton*, and argued that his contract of employment had continued or persisted, and FOS had made payment after the time of the alleged termination.

37. The only document referring to a PILON was the letter from FOS to him dated 22 February 2006 enclosing his February payslip. An additional document which was permitted to be admitted at the hearing was a copy of a letter from FOS dated 23 March 2006; he submitted that this put on record that BUPA cover ceased on 16 February. The letter stated that he was not entitled to BUPA cover beyond the date of his dismissal. That had been the FOS position at the Employment Tribunal hearing.

38. In his letter to HMRC dated 23 September 2010, Mr Harrison summarised his arguments as follows:

> "In short, it is clear that both my *employment* and my *employment contract* ran to 28 February 2006, and that only the employment relationship was terminated on 19 February 2006, meaning that clause 16 could not be engaged. As a final point, I draw to HMRC's attention that I was taxed, as my P11D makes clear, on my private health insurance to 28 February 2006: having taxed me on an *employment* related benefit that did not end until this date, I cannot see how HMRC can say that it ended on 19 February 2006."

Arguments for HMRC

39. Mr Brown referred to it being a matter of common ground that if the payment to Mr Harrison was a contractual entitlement, it would be taxable. He referred to the judgment of Lloyd J in *Richardson v Delaney* (2001) 74 TC 167 at 184-185, in which the terms were not substantially different from those set out in the contract.

40. Taxability of an employee was triggered by an employer's payment of a benefit; this could give a mismatch between the terms of the employment contract and the tax treatment of the benefit. Under s 19 ITEPA 2003, the BUPA benefit was to be treated as earnings received at the time when the benefit was provided, not when the employee was entitled to the benefit. Mr Brown referred to s 222 ITEPA 2003; for payments treated as earnings, the payment gave rise to the tax charge.

41. After referring to the documentary evidence, Mr Brown submitted that FOS had been following the terms of its own contract, and carrying through its own procedure. HMRC's interpretation of the *Gunton* case was different, namely that there could be residual items such as benefits paid in arrears. The fact that a payment was made after an employment had ceased did not say anything in relation to the question whether the employment had ceased. The system operated by FOS was that deductions were made from salary, and payments were made afterwards to the benefit provider. The cost to the employer determined the taxability, which was by reference to the existence or availability of the benefit. Employers paid for such benefits on a monthly basis; Mr Brown could not comment on the individual process adopted by FOS.

42. In the context of taxation law, it was not unforeseen for a person to be taxable where they received no benefit; s 17 ITEPA 2003 (headed "Treatment of earnings for year in which employment not held") supported this proposition.

43. Mr Brown referred to *EMI Group Electronics Ltd v Coldicott* (1997) 71 TC 455 at 500, being the final paragraph of Chadwick LJ's judgment. In addition he cited comments of Park J in *Ibe v McNally* [2005] STC 1426 at [5] and [9], and a passage from the penultimate paragraph of Brightman LJ's judgment in *Gunton*:

> "As the relationship of master and servant is gone, the servant cannot claim the reward for services no longer rendered. But it does not follow that every right and obligation under the contract is extinguished. An obligation which is not of necessity dependent on the existence of the relationship of master and servant may well survive . . ."

44. The evidence showed that the sum of £4,153.85 paid to Mr Harrison was not an award made by the Employment Tribunal. There was no evidence of any agreement between FOS and Mr Harrison to pay the disputed amount in consideration for not taking proceedings. Even if it were to be found that there had been some deviation from the precise terms of the contract, the "package" was in essence what had been provided for by the contract. *Richardson v Delaney* suggested that this was sufficient to displace s 403 ITEPA 2003 and make the payment taxable as part of general earnings. Any parts of the contract which continued after 19 February 2006 were not sufficient to amount to an employer and employee relationship (*Gunton*).

45. Thus the payment was made in accordance with the provisions of the contract of employment and was taxable by virtue of s 6 ITEPA 2003 as general earnings (*EMI Group Electronics Ltd v Coldicott*).

46. In relation to the benefits, tax liability arose at the time when the benefit was provided; the end of the employment was not material (ss 16 and 19(4) ITEPA 2003).

Discussion and conclusions

47. Mr Harrison's argument is that the payment made to him was not made pursuant to the employment contract between him and FOS, but was instead made outside the terms of the contract.

48. By implication, Mr Harrison claims that the payment fell within Chapter 3 of Part 6 ITEPA 2003. Section 401 provides:

> "**401 Application of this Chapter**
>
> (1) This Chapter applies to payments and other benefits which are received directly or indirectly in consideration or in consequence of, or otherwise in connection with—
>
> (a) the termination of a person's employment,
>
> (b) a change in the duties of a person's employment, or
>
> (c) a change in the earnings from a person's employment,
>
> by the person . . .
>
> (2) . . .
>
> (3) This Chapter does not apply to any payment or other benefit chargeable to income tax apart from this Chapter."

49. Section 403 provides that the amount of a payment or benefit within the Chapter counts as employment income for the relevant year to the extent that it exceeds the £30,000 threshold.

50. The issue is whether, within the terms of s 401(3) ITEPA 2003, the payment is chargeable to tax otherwise than under Chapter 3 of Part 6 ITEPA 2003. If the payment was made pursuant to the contract, it will, as Mr Brown submitted, be taxable as general earnings, and therefore cannot fall within the "£30,000 exemption" under Chapter 3.

51. Mr Harrison's employment contract consisted of a document entitled "Contract of Employment", which incorporated "the contractual sections of the FOS Employee Handbook". Section 16 of the Employee Handbook covers "Notice Periods", and provides a period of notice of eight weeks for Case Workers. After making provision for a right to terminate an employment either without notice or without pay in lieu of notice if an employee breaches the terms of the employment and/or in the event of gross misconduct, Section 16 continues:

> "FOS reserves the right in its absolute discretion to terminate your employment with immediate effect without giving the notice referred to above by giving you written notice and within 7 days of this notice paying salary (less any deductions for tax National Insurance contributions or otherwise) in lieu of notice . . . in full and final settlement of all claims . . ."

52. In clause 6 (a) of the Contract of Employment, under the heading "Remuneration", provision is made for salary; clause 6(b) is as follows:

> "The FOS will, subject to Inland Revenue approval, operate a Flexible Benefits Plan which will allow you to participate in identifying the combination of salary and benefits you receive. The Flexible Benefits Plan is not incorporated in your Contract of Employment, and may be withdrawn, replaced or varied by FOS at any time."

53. Clause 7 of the Contract of Employment, headed "Pension", states:

> "The FOS, subject to Inland Revenue approval, will participate in the Financial Services Authority Pension Plan, from 1 April 2000. For further information please see the Guide to Pensions, which is not incorporated by reference into your Contract of Employment."

54. In its judgment released on 11 July 2006, the Employment Tribunal held at paragraph 16 that what had been said at the meeting on 16 February 2006 was not sufficient alone to engage the terms of the relevant part of section 16 of the employee handbook; it could not amount to written notice. At paragraph 25, however, the Employment Tribunal considered that the letter of 17 February 2006, taken in context, was sufficient to give written notice within the terms of section 16; this conclusion was re-emphasised at paragraph 26.

55. We think it appropriate to quote the following three paragraphs of the judgment in full:

> "27. It follows that in the Tribunal's judgment the letter of 17 February 2006 was sufficient to cause the relevant part of section 16 to operate. The Tribunal concludes that this notice took effect on the date that Mr Harrison received the letter and when those matters were therefore communicated to him in writing. Having heard Mr Harrison's evidence the Tribunal accepts that he received the letter on 19 February 2006. It was therefore on this date that Mr Harrison was given the relevant notice under section 16 and from that date that the eight week notice ran.
>
> 28. It follows, therefore, that the Respondents [ie FOS] were in error in calculating Mr Harrison's relevant payments on the basis that notice had been given to him on the 16 February 2006. In the Tribunal's judgment the effect of what has occurred is that the notice period began and therefore expired three days later than the Respondents have calculated and that therefore, to this very limited extent, Mr Harrison's complaint of non payment and non provision of the discretionary benefits is well founded. He should in fact have received them for a further three days.

> 29. However, beyond that period of three days, the Tribunal is satisfied that the Respondents gave sufficient notice under section 16 of the Employee Handbook as to entitle them to withhold the benefits and relevant cover and that therefore in respect of the bulk of the claim as regards to the eight week period Mr Harrison's claim in respect of the non-provision and non payment of these benefits fails."

56. It appears to us that, far from arranging the terms of the payment to Mr Harrison outside the terms of the employment contract, FOS was regarded by the Employment Tribunal as making the payment pursuant to its terms, although in breach of the contract to the limited extent of failing to give him written notice on 16 February 2006. The only compensation award made to Mr Harrison was the payment of £167.74 referred to at paragraph 30 of the Employment Tribunal's judgment. The judgment cannot be construed as awarding him the sum of £4,153.85 already paid to him in February 2006. There is no suggestion that the breach of the notice obligation (or the consequent amendment of the notice period to commence from 19 February 2006) resulted in any way in the replacement of the rights and obligations under the employment contract by some other set of rights and obligations. The payment was made pursuant to the contract (albeit subject to that limited breach by FOS of its obligation to give written notice) rather than being made outside the terms of the contract.

57. Mr Harrison submitted that the contract had not been terminated, because the employment relationship had continued as a result of the continuing provision of benefits to him beyond 16 February 2006. It is not entirely clear to us how that assists his argument. If the contract continued beyond 16 February, this could not have made any difference to the status of the payments, which would still have been made pursuant to the terms of the contract rather than pursuant to the terms of some form of agreed settlement of the dispute or to some award of the £4,153.85 by the Employment Tribunal.

58. In any event, the question of the benefits cannot affect the terms of the contract. As is apparent from the terms of clause 6(b) of the Employment Contract, the Flexible Benefits Plan is not incorporated in the Employment Contract. It follows that continuing payment of benefits cannot affect the question of whether Mr Harrison's employment was terminated on what the Employment Tribunal determined was 19 February 2006. In the same way, the position remains unaffected by any continuing rights which Mr Harrison may have in respect of pension; again, clause 7 makes clear that the Guide to Pensions does not form part of his employment contract.

59. Mr Harrison argued that the Employment Tribunal had relied on an erroneous view of the position as put to it by FOS, namely that the benefits had ceased at 16 February 2006. We do not accept this submission. All that the Employment Tribunal decided was that Mr Harrison was not "entitled" to the benefits; in other words, he could not claim to receive benefits after the termination of his employment. In our view, this did not prevent FOS from choosing, for practical reasons, to continue the benefits for the period to the end of February 2006; the basis for providing medical cover appears to have been that this was paid for on monthly terms. Mr Harrison continued to be covered by the policy for the remainder of February; he may not have

been aware that he could have used the medical cover had he needed it, but the benefit of the cover was provided by FOS, and the cost of the cover gave rise to a charge to tax on the benefit, as considered below.

60. The only sum falling within Chapter 3 of Part 6 ITEPA 2003 is the £167.74 awarded by the Employment Tribunal. There is no evidence as to how that sum has been treated in any return or correspondence submitted by Mr Harrison to HMRC.

61. On the main issue raised by the appeal, we therefore conclude that the payment of £4,153.85 was made pursuant to Mr Harrison's contract of employment, and therefore falls to be treated as general earnings under s 6 ITEPA 2003.

62. In correspondence, Mr Harrison also contended that he should not be liable to tax on the benefits provided to him between the date of termination of his employment and the end of February 2006. He argued that as he had not received the benefits, he should not be taxable on them. However, as we have already concluded, FOS paid for the benefit to be provided; as Mr Brown submitted, FOS's payment for that month's cover triggered the liability to tax on the benefit. We conclude that Mr Harrison was correctly taxed on benefits from his employment with FOS amounting to £465 for the year to 5 April 2006, irrespective of whether he actually took any benefit from the medical insurance after the termination of his employment.

63. We find that HMRC's amendment to Mr Harrison's return and self assessment, as varied by the statutory review conclusion dated 14 December 2010, is correct as it stands. The net tax due after credit for deductions at source, taking into account the repayment previously made to Mr Harrison, is £95.22.

64. In the light of our above findings, Mr Harrison's appeal is dismissed.

Right to apply for permission to appeal

65. 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 on a point of law to the Upper Tribunal 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.

JOHN CLARK
TRIBUNAL JUDGE

RELEASE DATE: 29 November 2012