



TC01474

Appeal number TC2010/1095

NATIONAL INSURANCE – Whether HMRC’s record of the Appellant’s payment of National Insurance contributions was correct – Yes – Appeal dismissed.

FIRST-TIER TRIBUNAL

TAX

MR DILIP KUMAR DASS

Appellant

- and -

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

Respondents

**TRIBUNAL: MICHAEL TILDESLEY OBE (TRIBUNAL JUDGE)
HAREVEY ADAMS FCA**

Sitting in public at 45 Bedford Square, London WC1 on 9 August 2011. A previous hearing was heard at Holborn Bars on 2 September 2010 which was adjourned with a view to the parties reaching a settlement.

The Appellant appeared in person

Mr Greenshields and Mrs Storey for HMRC

DECISION

The Appeal

1. The Appellant appealed against HMRC's decision dated 17 September 2009 that *he had paid National Insurance contributions as shown in the attached schedules.*

5 The Grounds of Appeal

2. The Appellant in its Notice of Appeal dated 1 February 2010 sets out the following grounds of Appeal:

10 (1) HMRC failed to assess correctly class 1 NI contributions for the Appellant's multiple part-time work in 1993, 1994, 1995, and 1996 and for which National Insurance (NI) contributions were paid by the Appellant.

(2) HMRC failed to determine accurately appropriate earning factors in relation to the Appellant's earnings from Mary Ward Centre in 1997-1998, Tower Hamlets College (April – May 1993), Tower Hamlets Racial Equality Council (December 1995 – January 2006).

15 (3) HMRC failed to assess any entitlement to NI contributions and appropriate adjustments in relation to the Appellant's child care between 1991-1994; maintenance payments for child between 1995 and 1998 and resumption of child care between 1998 and 2000.

20 (4) HMRC failed to assess entitlement to NI contributions in relation to employers' non-payment of pay increases in 1993, 1994, 1995 etc.

(5) No investigation report has been submitted by HMRC in spite of the Appellant's repeated requests.

(6) HMRC failed to comply with directions of the Tribunal.

(7) The Appellant's grounds are well founded in law and facts.

25 (8) HMRC was in breach of Human Rights Act 1997.

3. On 25 July 2011 the Appellant submitted additional grounds of Appeal which are summarised below:

30 (1) In spite of the judgment made by Chairman, Mr G P Sigsworth, (*Employment Tribunal*), HMRC has not supplied a revised assessment for the period of contracted out service from 20 September 1993 to 3 July 1995. The period of contracted out employment with the College of North East London from 4 January 1996 until 14 March 2003 has not yet been determined by the Employment Tribunal.

35 (2) NI contributions have been unlawfully deducted at the not contracted out rate. No estimated figures of NI contribution refunds have been provided by HMRC.

(3) HMRC failed to apply the aggregation rules while assessing multiple employments with reference to the computational procedure 1987/88 to 2008/09.

(4) HMRC excluded the record of earnings from the Commonwealth Law College without any explanation.

Chronology

4. On 13 July 2007 the Appellant appealed to the predecessor of the First Tier Tribunal (Social Entitlement Chamber) against the amount of State Retirement Pension awarded to him by the Department for Work and Pensions (The Pension Service). The amount of the award was 89 per cent of the standard rate.

5. The Pension Service in a letter 15 March 2010 explained the calculation of the 89 per cent entitlement rate:

10 “Your working life for pension purposes runs from 6 April 1958 to 5 April 2007, a period of 49 years of which 44 would need to be qualifying years to achieve a 100 per cent basic pension.

15 Although you did not arrive in this country from Ethiopia until 13 July 1968, and your record shows you entered the National Insurance scheme on 15 July 1968 for pension purposes your pension must be calculated by using the above criteria.

You paid, or were credited with 349 NICs between 6 April 1958 and 5 April 1975. The sum of 349 is divided by 50 and rounded up to give a total of 7 qualifying years.

20 A further 32 qualifying years were achieved between 6 April 1975 and 5 April 2007 which when added to the 7 qualifying years achieved prior to 6 April 1975, give a total of 39 qualifying years.

Your basic pension entitlement is 89 per cent”.

6. One of the Appellant’s grounds of appeal to the Social Entitlement Tribunal was that he had not received a breakdown of his NI contributions. On 17 July 2008 HMRC sent the Appellant a letter setting out his record of contributions from when he entered the NI scheme.

7. Following correspondence with the Appellant, on 25 February 2009 HMRC sent out a revised statement of account incorporating NI contributions from his employment with Zed X Agency during the 2005/06 tax year.

8. On 3 June 2009 Tribunal Judge Wright of First Tier Tribunal (Social Entitlement Chamber) directed that

35 “Despite my joining the HMRC as a party to this Appeal on 9 February 2009, and then for a year prior to that having failed to issue the Appellant with a decision on his contributions record, quite lamentably HMRC have failed to comply with my direction of 9 February 2009 even though nearly 3 months has passed since the deadline for complying with that direction expired.

40 In these circumstances I am left with no option but to list the appeal for a hearing at which HMRC must attend to explain themselves and their complete inaction”.

9. On 19 June 2009 HMRC sent a revised statement of account incorporating £6.05 NI contributions from the Appellant's employment with Commonwealth Law College in 2004/05 tax year.

5 10. On 14 September 2009 the Appellant supplied HMRC with details of earnings from the Mary Ward Centre. HMRC pointed out that no NI contributions were payable in respect of this employment.

11. On 17 September 2009 HMRC issued its Notice of Decision which set out the Appellant's NI contribution details from 1967/68 to 2006/07.

10 12. On 5 October 2009 the Appellant provided details of his NI contributions from his part-time employment with the College of North East London and London Guildhall University. On 14 October 2009 HMRC responded stating that the contributions had already been included in his record, which, therefore, did not require amendment. HMRC offered the Appellant a review of the decision which was accepted. HMRC failed to complete the review within 45 days. The Appellant did not
15 consent to an extension of time in which to complete a review. The Appellant instead appealed direct to the Tax Tribunal.

13. On 2 September 2010 the Tribunal heard evidence from the parties, and adjourned the hearing part heard subject to the following directions.

20 (1) The Appeal be adjourned part heard to a date to be fixed, if necessary, before the same Tribunal.

(2) By no later than 4pm on 18 October 2010 the Appellant provide HMRC with documentary evidence of employed earnings for the disputed period.

25 (3) By no later than 4pm on 10 December 2010 HMRC respond to the Appellant in respect of the additional information supplied and, if appropriate, to provide a varied decision.

(4) By no later than 4pm on 28 January 2011 the Appellant advise the Tribunal and HMRC in writing whether the Appeal is withdrawn (settled) or whether the Appeal requires re-listing.

(5) If re-listed the Tribunal will issue directions to progress the Appeal.

30 14. On 15 October 2010 the Appellant wrote to HMRC enclosing a bundle of documents from former employers, none of which showed payment of NI contributions. These included:

(1) Pay remittances and contracts from BBC.

(2) A remittance from London Examinations.

35 (3) Pay statements and a P60 from International Baccalaureate Organisation.

(4) Remittances from University of Cambridge.

15. The Appellant also asked about aggregation of earnings at the Appeal hearing on 2 September 2010 to which HMRC provided an explanation on 10 November 2010.

16. On 11 November 2010 the Appellant supplied further receipts of payments for 2006/07 from various employers. On 7 December 2010 HMRC responded pointing out:

5 (1) The Appellant's engagements as an examiner with the International Baccalaureate Organisation (IBO), University of Cambridge and London Examination were categorised as self-employment for NI purposes.

(2) One of the pay statements for the 2007/08 tax year related to a year when he was over age 65 and there was no NI liability.

10 (3) The Appellant's employment with the BBC was self employment but even if the Appellant has been categorised as an employed earner the amounts paid to him fell below the lower earnings level and did not attract NI liability.

15 17. On 22 January 2011 the Appellant replied stating that he disputed his categorisation as a self employed earner with BBC, and his right to pay contributions at the contracted-out rate with various employers. On 18 March 2011 HMRC supplied a full response to the points raised by the Appellant.

20 18. On 25 January 2011 the Appellant requested the Tribunal to re-list the Appeal hearing. On 5 March 2011 the Tribunal Registrar issued directions to progress the Appeal. On 25 March 2011 the Tribunal received the bundle of documents from HMRC. On 25 July 2011 the Appellant submitted an additional bundle. On 3 August HMRC provided an updated statement of case.

Hearing on 9 August 2011

25 19. The Tribunal that heard the Appeal on 2 September 2010 reconvened. The Tribunal advised the parties at the outset that as it had previously heard evidence it intended to regulate the proceedings of the Appeal. The Tribunal commenced with the schedule of contributions as set out in paragraph 2 of HMRC's statement of case and requested the Appellant to indicate whether he agreed or disagreed with the entry for each contribution year. Where the Appellant disagreed with a specific entry he was asked for his reasons to which HMRC was given the opportunity to comment. After going through the schedule the Tribunal explored with the parties the areas of
30 disagreement. The Tribunal then gave the parties the opportunity to ask questions of each other, and make final submissions. The Tribunal gave leave to the Appellant to supply a copy of his written closing submissions to HMRC and Tribunal within seven days. The Tribunal reserved its judgment.

35 20. The Tribunal considered the Appellant's written closing submissions which were sent by the due date. The submissions covered more ground than the oral ones made at the end of the hearing and went beyond the legitimate function of closing submissions by introducing new evidence or contradicting the Appellant's evidence given at the hearing. In paragraphs 1, 13 and 14 of the submissions the Appellant
40 appeared to be undermining the agreed basis upon which the Appeal was heard as identified in the comments section of the *Schedule of Contributions* as set out in the next paragraph (22) of this decision. Also at paragraph 17 of the written submissions the Appellant introduced new matters which did not form part of the evidence at the

hearing. The Appellant has been given every opportunity by the Tribunal to state his case at two separate hearings. On 2 September 2010 the Tribunal adjourned the hearing to enable the Appellant to supply HMRC with any additional evidence of NI contributions. The Tribunal at the hearing on 9 August 2011 asked the Appellant to indicate his agreement or disagreement with each year of his contribution record, and identify the dispute where he disagreed.

21. The Tribunal intends to deal with the Appeal on the basis of the disputes identified at the hearing which are recorded in the next paragraph, and the evidence heard in relation to those disputes. The Tribunal, therefore, disregards those parts of the written closing submissions which contradicted the Appellant's evidence at the hearing or introduced new matters. Although the Appellant represented himself he was not unfamiliar with Tribunal procedure, and understood the consequences of the Tribunal's direction to identify the extent of the dispute at the hearing on 9 August 2011. Given the circumstances of the conduct of this Appeal the Tribunal considers its action was in accordance with the overriding objective of dealing with cases fairly and justly.

The Schedule of Contributions

22. The Tribunal sets out below the schedule of contributions with comments which indicate the Appellant's response and his brief reasons for disagreeing with a specific entry.

Contribution Year	Class 1	Class 2	Class 3	Comments
1967/68	8	Nil	Nil	Agreed
1968/69	52	Nil	Nil	Agreed
1969/70	53	Nil	Nil	Agreed
1970/71	39	Nil	13	Agreed
1971/72	48	Nil	Nil	Agreed
1972/73	52	Nil	Nil	Agreed
1973/74	52	Nil	Nil	Agreed
1974/75	18	Nil	Nil	Agreed
1975/76	£197.28	Nil	Nil	Agreed
1976/77	£281.09	Nil	Nil	Agreed

1977/78	£306.60	Nil	Nil	Agreed
1978/79	£275.45	Nil	Nil	Agreed
1979/80	£315.22	Nil	Nil	Disputed. Appellant contended that his earnings from BBC should be aggregated with his other employment earnings.
1980/81	£423.06	Nil	Nil	Disputed. Appellant contended that his earnings from BBC should be aggregated with his other employment earnings.
1981/82	£604.28	Nil	Nil	Disputed. Appellant contended that his earnings from BBC should be aggregated with his other employment earnings.
1982/83	£698.63	Nil	Nil	Disputed. Appellant contended that his earnings from BBC should be aggregated with his other employment earnings.
1983/84	£803.27	Nil	Nil	Disputed. Appellant contended that his earnings from BBC should be aggregated with his other employment earnings.
1984/85	£813.66	Nil	Nil	Agreed
1985/86	£887.38	Nil	Nil	Agreed
1986/87	£968.94	Nil	Nil	Disputed. Appellant contended that his earnings from RSA should be aggregated with his other employment earnings.
1987/88	£1,022.72	Nil	Nil	Disputed. Appellant contended that his earnings from RSA should be aggregated with his other employment earnings.
1988/89	£1,145.64	Nil	Nil	Agreed
1989/90	£1,147.92	Nil	Nil	Agreed. The Appellant accepted that the NI contribution (£30.75) in respect of his employment with LRB had been included.
1990/91	£1,176.34	Nil	Nil	Agreed
1991/92	£1,274.90	Nil	Nil	Agreed
1992/93	£1,333.80	Nil	Nil	Agreed

1993/94	£392.64	32	Nil	Disputed. Appellant contended that his earnings from LB Tower Hamlets (Translation Work) should be aggregated with his other employment earnings. Also in view of the Appellant's retrospective membership of the occupational pension scheme for the College of North East London, his record should include a value for the NI contributions as contracted out.
1994/95	£355.52	52	Nil	Disputed. His record should include a value for the NI contributions as contracted out.
1995/96	£178.56	52	Nil	Disputed. His record should include a value for the NI contributions as contracted out.
1996/97	£125.59	52	Nil	Disputed. The Appellant has pending proceedings before the Employment Tribunal regarding the contracted out status of his NI contributions from his employment with College of North East London. The Appellant also contended that his self employed earnings with the International Baccalaureate Office (IBO) and his earnings with London Examinations should be aggregated with his other earnings.
1997/98	£380.69	53	Nil	Disputed. The correct characterisation of NI contributions as contracted out. The Appellant also contended that his self employed earnings with IBO and his earnings with the Mary Ward Centre should be aggregated with his other earnings.
1998/99	£305.51	52	Nil	Disputed. The correct characterisation of NI contributions as contracted out. The Appellant also contended that his self employed earnings with IBO should be aggregated with his other earnings.
1999/2000	£277.28	52	Nil	Disputed. The correct characterisation of NI contributions as contracted out. The Appellant also contended that his self

				employed earnings with IBO should be aggregated with his other earnings.
2000/01	£416.10	52	Nil	Disputed. The correct characterisation of NI contributions as contracted out. The Appellant also contended that his self employed earnings with IBO should be aggregated with his other earnings.
2001/02	£905.62	52	Nil	Disputed. The correct characterisation of NI contributions as contracted out. The Appellant also contended that his self employed earnings with IBO should be aggregated with his other earnings.
2002/03	£599.69	52	Nil	Disputed. The correct characterisation of NI contributions as contracted out. The Appellant also contended that his self employed earnings with IBO should be aggregated with his other earnings.
2003/04	£9.15	52	Nil	Disputed. The correct characterisation of NI contributions as contracted out. The Appellant also contended that his self employed earnings with IBO should be aggregated with his other earnings.
2004/05	£255.57	52	Nil	Disputed. The correct characterisation of NI contributions as contracted out. The Appellant also contended that his self employed earnings with IBO should be aggregated with his other earnings. Appellant accepted that his earnings record had included the amount of £450 in respect of his settlement by Commonwealth Law College for previous earnings
2005/06	£33.20	52	Nil	Disputed. The correct characterisation of NI contributions in respect of his employment with Zedx Limited as contracted out. The Appellant also contended that his self employed earnings with IBO should be aggregated with his other earnings.

2006/07	Nil	52	Nil	Disputed. The Appellant also contended that his self employed earnings with IBO should be aggregated with his other earnings.
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Details of the Disputes

Contracting out

23. The Appellant produced an order of the Employment Tribunal dated 29 March
5 2011 which declared that the Appellant was entitled to retrospective membership of
the College of North East London occupational pension scheme from 20 September
1993 to 3 July 1995. The Employment Tribunal also ordered by no later than two
months from the date of promulgation of the judgment the College of North East
London must write to the pension fund trustees requiring the trustees to state the
10 terms on which they would admit the Appellant to membership of the scheme
between 20 September 1993 to 3 July 1995.

24. The Appellant has also taken action in the Employment Tribunal in respect of his
claim against College of North East London for retrospective access to the teacher's
pension scheme from 1996 to 2003.

15 25. HMRC accepted that the most likely effect of the Appellant's retrospective
membership of the teacher's pension scheme was that the Appellant's national
insurance contributions from his employment with College of North East London
would be calculated on a contracted out basis. This would result in his record
containing a value for the contracted out NI contributions for the relevant years and
20 render a refund of excess NI contributions to the Appellant. HMRC stated that it
would effect the necessary alterations to the Appellant's NI record once it received
the appropriate notification from the Trustees of the Pension Scheme. HMRC,
however, pointed out that this was a matter between the Appellant and his employers,
and not one which concerned this Tribunal and the Appeal before it.

25 26. The Appellant maintained that his retrospective membership of the pension
scheme would also affect the status of his contributions (£33.20) from his
employment with Zedx Ltd in 2005/06. HMRC repeated that this was a matter
between the Appellant and his employer, and if the Pension Scheme Trustees
informed it of his membership arising from his Zedx Ltd employment it would
30 implement the required changes to the Appellant's record.

BBC

27. The Appellant supplied HMRC and the Tribunal with copies of contracts and
remittance advices from BBC in respect of the Appellant's engagement as an artist
supplying a reading contribution in the tax years 1979/80 to 1983/84. The payments
35 were made gross with no deduction of income tax and NI contributions.

28. The payments made were as follows:

Contribution Year	Date of Payment	Amount (£)	Weekly Lower Earnings Rate (£)
1979/80	12 May 1979	7.60	19.50
1980/81	8 August 1980	8.15	23.00
	21 November 1980	9.30	
	11 December 1980	8.15	
	12 December 1980	9.30	
	3 January 1981	9.30	
	11 March 1981	9.30	
1981/82	11 May 1981	9.30	27.00
	11 August 1981	9.30	
	30 September 1981	9.30	
1982/83	3 June 1982	10.05	29.50
	7 October 1982	20.10	
	21 October 1982	10.85	
	11 January 1983	19.65	
	24 February 1983	10.85	
	15 March 1983	10.85	
1983/84	25 July 1983	10.85	32.50
	8 August 1983	10.85	
	1 September 1983	10.85	

29. The Appellant submitted that his contract with the BBC was one of employment, and that his earnings from this source of employment should be aggregated for NI purposes with his other sources of employment earnings from GLC & London Teachers and ILEA during the relevant tax years.

- 5 30. HMRC contended that the income from the BBC was self employed earnings but if it was employment earnings, the payments made were below the lower earnings rate and not eligible for NI contributions. HMRC pointed out that the Appellant had adduced no evidence to support aggregation.

Royal Society of Arts (RSA)

- 10 31. There were three payments from RSA which were £20 (2 July 1986), £60 (13 May 1987) and £107 (15 July 1987). The payments were described as fees, the rate of which was £20 in 1986/87 and £15 or £15.50 in 1987/88. The pay advices produced showed deductions of tax but no NI contributions.

- 15 32. The Appellant submitted that the fees were employment earnings and should be aggregated with his earnings with Tower Hamlets College. RSA and Tower Hamlets College shared the same educational aims.

- 20 33. HMRC considered the RSA payments as self employed earnings. HMRC pointed out that examiners were a specific category of self employed earner defined by Statutory Instrument. In any event, even the earnings were those of employment they were below the lower earnings rate for NI contributions and the Appellant had adduced no evidence to support aggregation.

London Borough of Tower Hamlets

- 25 34. The Appellant supplied a P60 for 2003/04 in respect of his earnings as a translator for the London Borough of Tower Hamlets. The P60 showed a gross pay of £2,710.93 with a tax refund of £675.50 and nil NI contributions. The Appellant asserted that his earnings from the London Borough of Tower Hamlets should have been aggregated with his earnings from Tower Hamlets College.

- 30 35. HMRC argued that there was no evidence to support the Appellant's assertion for aggregating the two sets of earnings. The respective P60s for the London Borough of Tower Hamlets and Tower Hamlets College indicated that they were separate employers. The P60s did not record the same staff number. The P60 for the Borough of Tower Hamlets showed that the Appellant's earnings were below the lower earnings rate resulting in no deductions for NI contributions

International Baccalaureate Office (IBO)

- 35 36. The Appellant received regular income in connection with his engagement with IBO from 1996/97 to his retirement in 2007. The Appellant accepted that the income constituted self employment earnings. The Appellant, however, maintained that the self employment earnings should be aggregated with his employment earnings during the relevant years to calculate his NI contributions. HMRC submitted that there was
40 no legal power to aggregate self employment earnings with employment earnings to calculate liability for Class 1 NI contributions.

London Examinations

37. The Appellant supplied a creditor remittance from London Examinations dated 30 August 1996 which revealed fees of £95.80, expenses of £10.58 with a tax deduction of £22.99. The Appellant contended that the fees were employment earnings which should be aggregated with his other sources of employment earnings in that year.

38. HMRC submitted that the remittance from London Examinations constituted self employment earnings. If they were employment earnings, the Appellant adduced no evidence of the earnings period and of aggregation of these earnings with other sources of employment income.

Mary Ward Centre

39. The Appellant supplied two payment slips in respect of his employment with Mary Ward Centre which showed gross pay of £187.05 for 16 June 1997, and £104.40 for 14 July 1997. Each slip declared a deduction for tax but no contribution for NI. The Appellant contended that the earnings from Mary Ward Centre should be aggregated with his other employment earnings for that year.

40. HMRC submitted that the earnings were below the monthly lower earnings limit for NI contributions, and that the Appellant had adduced no evidence to substantiate aggregation of these earnings with other sources of employed income during 1997/98.

20 Consideration

41. Until 1 April 1999 the Department of Social Security was responsible for the National Insurance system. From 1 April 1999 the Inland Revenue (now HMRC) assumed the functions associated with the income side of the National Insurance fund, whilst the Department of Social Security (now Department of Work and Pensions) continued to handle contributory and non-contributory benefits. Essentially HMRC's responsibilities in respect of National Insurance fall under the following three categories

(1) Collecting National Insurance contributions with particular emphasis on ensuring full compliance by employers with payment and notification requirements.

(2) Maintaining about 76 million individual records of which 43 million are active under unique National Insurance Numbers.

(3) Providing NI-related information to government departments and pension providers to enable benefits to be paid promptly and accurately.

42. This division of responsibility is critical in understanding the Appeal jurisdiction of the Tribunal. Following the transfer of NI functions to HMRC, the Social Security Contributions (Transfer of Functions etc) Act 1999 introduced new decision and appeals procedures for NI matters. Section 8 of the 1999 Act gives authority for HMRC Officers to give decisions on certain NI matters. Section 11 of the 1989 Act provides a right of Appeal to the First Tier (Tax) Tribunal against a section 8 decision,

which includes a determination of the correctness of an individual's NI record. Appeals against decisions in respect of home responsibilities protection (now carer's credit), contracting-out and pension entitlement are heard by the Social Entitlement Chamber of the First Tier Tribunal.

5 43. The complexities of the Appellate jurisdiction in relation to National Insurance matters were illustrated in this Appeal. The Appellant's dispute regarding his entitlement to State Pension has involved three separate Tribunals, the Social Entitlement Chamber in respect of the calculation of his State Pension, the Employment Tribunal regarding his retrospective admission into occupational pension
10 schemes, and the Tax Chamber in respect of the correctness of his record of NI contributions.

44. This Tribunal was dealing with the Appellant's appeal against HMRC's decision dated 17 September 2009 that *he had paid National Insurance contributions as shown in the attached schedules*. The Tribunal's powers on appeal are governed by
15 regulation 10 of the Social Security Contributions (Decision and Appeals) Regulations 1999. Regulation 10 states that

“If on appeal it appears to the Tribunal that the decision should be varied in a particular manner, the decision shall be varied in that manner, but otherwise shall stand good”.

20 45. The Tribunal is of the view that its jurisdiction in this Appeal was limited to determining whether HMRC's decision of 17 September 2009 was correct. The onus was on the Appellant on the balance of the probabilities to show that the record of his NIC payments was incorrect.

46. The schedule of contributions included in HMRC's statement of case and set out
25 in paragraph 20 above replicated the information in the schedules attached to HMRC's disputed decision of 17 September 2009. Since that date the Appellant has supplied no evidence substantiating payment of additional NI contributions. The Appellant has produced a series of earnings remittances from a range of organisations, none of which have supplied information undermining the accuracy of the record of
30 NI contributions on HMRC's schedule of 17 September 2009. The Appellant's dispute with the record as highlighted in the comments section of the schedule in paragraph 20 above did not challenge the accuracy of the actual payments made and recorded.

47. The nature of the Appellant's dispute concerned two principal issues, namely,
35 whether HMRC had recorded the value of contracted out contributions and whether the earnings from some organisations which were below the lower earnings rate should be aggregated with the Appellant's other sources of earnings in order to calculate the Appellant's NI contributions.

48. If an employee does not belong to an occupational pension scheme, he and his
40 employer will pay a Class 1 NI contribution towards the State Second Pension which replaced the State Earnings Related Pension in 2002. If an employee is a member of an occupational pension scheme, his employer may contract him out of the State

Second Pension which means that the employee would be entitled to a rebate on his NI contributions between the lower and upper earnings limit, and effectively pay NI contributions at a lower rate.

5 49. The Appellant argued that HMRC should have recorded a contracted out value
for his NI contributions from his employments with the Commonwealth Law College
and Zedx Limited. The amounts of NI contributions involved were £6.05 and £33.20
respectively. The Appellant adduced no evidence that these employers were members
of an occupational pension scheme. HMRC's record of the status of the NI
10 contributions for the Appellant's employment with Zedx was derived from the
Appellant's payslip. The Appellant through no fault of his own was unable to supply
HMRC with a P45, P60 or statement of earnings in respect of his employment with
the Commonwealth Law College. In its letters dated 3 July 2009 and 11 August 2009
HMRC provided the Appellant with a detailed explanation of how it arrived at the
15 figure for the NI contributions for the Appellant's employment with the College. The
Tribunal considers HMRC's explanation well founded and not undermined by the
Appellant's evidence.

20 50. The schedule of the Appellant's record of NI contributions in respect of his
employment with the College of North East London did not record a value for
contracted out contributions which was in accordance with the information supplied
in the Appellant's P60 for the relevant tax years. The Appellant has taken proceedings
against the College of North East London and the Secretary of State for Education
before the Employment Tribunal to resolve the question of his membership of the
occupational pension scheme for the College of North East London. The Employment
Tribunal has declared that the Appellant was entitled to retrospective membership of
25 the pension scheme from 20 September 1993 to 3 July 1995 but has not yet made its
decision in respect of the period from 4 January 1996 until 14 March 2003. HMRC
has indicated that once it receives the necessary authority from the Trustees of the
Pension Scheme it would amend the Appellant's NI contribution record. HMRC
argued that this dispute was outwith the Tribunal's jurisdiction and did not affect the
30 accuracy of the Appellant's NI contribution record as it currently stood. The Tribunal
agrees with HMRC's submission.

35 51. The Tribunal notes that a significant part of the Appellant's written closing
submissions involved extending the scope of the *contracting out* dispute in respect of
the applicable years and the number of employers involved. The Tribunal considers
its decision on the *contracting out* dispute applied equally to the extended dispute set
out in the closing submissions.

52. The other principal dispute concerned whether the Appellant's earnings in
particular years should be aggregated for the purposes of calculating his NI
contributions.

40 53. Section 2(5) of the Social Security Contributions and Benefits Act 1992 provides
that

5 “for the purposes of the Act that a person shall be treated as a self employed earner as respects any week during any part of which he is such an earner (without prejudice to his being also treated as an employed earner as respects that week by reference to any other employment of his)”.

54. Section 6 (5) of the 1992 Act provides that

10 “Except as provided by this Act, the primary and secondary Class 1 contributions in respect of earnings paid to or for the benefit of an earner in respect of any one employment of his shall be payable without regard to any such payment of earnings in respect of any other employment of his”.

15 55. The effect of section 2(5) of the 1992 Act is that a person’s self employment earnings should be kept separate from his employment earnings for the purposes of NI contributions. Thus it is not possible in law to aggregate self employment earnings with employment earnings to calculate a single NI contribution. The 1992 Act allocates separate categories of NI contributions for self employment earnings and employment earnings, which was reflected in the Appellant’s NI contribution record with the division between Class 1 (employed) and Class 2 (self employed) contributions.

20 56. Section 6(5) sets out the principal rule governing the NI contribution regime for earnings from multiple employments which is that a person must pay a NI contribution for each employment provided the earnings for each employment exceed the lower earnings rate. Paragraph 1(1) of schedule 1 of the 1992 Act, however, permits in certain circumstances the aggregation of earnings from multiple employments for the purposes of determining whether Class 1 contributions are payable. Regulations 14 and 15 of the Social Security (Contributions) Regulations 2001 defines the circumstances under which aggregation is possible. The two main situations are employments under the same employer, and different employments involving different secondary contributors who, in respect of those employments, carry on business in association with each other. Aggregation under these two situations is subject to the impracticability exception which is that aggregation is not to take place if such aggregation is not reasonably practicable.

35 57. The Appellant contended that aggregation applied in three sets of circumstances. The first concerned his earnings from IBO during 1996/97 to 2006/07 which the Appellant said should be aggregated with his employment earnings during the said years. The Appellant accepted that he was engaged with IBO as self employed. The Appellant’s contention has no foundation in law. As indicated earlier the aggregation of self employment earnings and employment earnings for the purposes of NI contributions is contrary to section 2(5) of the 1992 Act.

40 58. The second set involved his earnings from BBC (1979/80 – 1983/84), Royal Society of Arts (1986/87 & 1987/88), and London Examinations (1996/97). The Appellant argued that he was an employee of the three separate bodies. HMRC was of the view that he was self employed. The issue of employment status has been raised relatively late in the proceedings. The Tribunal was not in a position to deal with the

issue, although it held strong doubts about the validity of the Appellant's assertions of employed status¹, particularly in respect of his engagements as an examiner which are classified as self employment by the Social Security (Categorisation of Earners) Regulations 1978². In view of the time taken to deal with this Appeal, the Tribunal proceeded on the alternative argument of HMRC, that if the Appellant was an employee there were no grounds to aggregate the Appellant's earnings from BBC, Royal Society of Arts and London Examinations for the purposes of NI contributions.

59. The Tribunal finds that during the relevant years the earnings from BBC, the Royal Society of Arts and London Examinations³ were below the lower earnings threshold for NI contributions, and that those earnings were not connected with earnings from the same employer. Further the Tribunal finds that the Appellant has failed to establish that the three organisations carried on business in association with the other employers during the relevant years⁴.

60. The third set of circumstances concerned the Appellant's earnings from the London Borough of Tower Hamlets and the Mary Ward Centre. The Tribunal finds that during the relevant years the earnings from the London Borough of Tower Hamlets and the Mary Ward Centre were below the lower earnings threshold for NI contributions, and that those earnings were not connected with earnings from the same employer. The Appellant suggested that the London Borough of Tower Hamlets and Tower Hamlets College carried on business in association with each other. According to the Appellant the same persons were on the management boards for the two organisations. The Tribunal considers the Appellant's submission was without foundation. On the evidence the two organisations carried on different businesses and had separate payrolls. The Appellant adduced no evidence that the Mary Ward Centre carried on business in association with the Appellant's other employers in 1996/97.

61. The Tribunal is satisfied that the Appellant has failed to establish that the legal requirements were met for aggregation of earnings during the relevant periods. The Tribunal, however, makes two further findings in respect of the aggregation dispute.

62. HMRC compiled its record of the Appellant's NI contributions from the information supplied by the Appellant and his employers. The information provided made no reference to the question of aggregation or put HMRC on notice that aggregation was a potential issue. In this respect HMRC's record was correct and in accordance with the information supplied.

¹ The Appellant in his closing submissions enclosed copies of authorities on employed/self employed status which the Tribunal gave him permission to do so. The Tribunal, however, for reasons given in paragraph 58 did not consider it necessary to determine the employed/self employed dispute.

² See Reg 2(3); Sch 1 Part II para 6

³ The earnings from London Examinations were below the lower earnings threshold calculated on the weekly and annual basis. The Appellant adduced no evidence of the earnings period.

⁴ If the Tribunal is wrong on the aggregation issue, it would be necessary to determine the employed/self employed status of the Appellant in respect of his engagements with the said organizations.

63. The Tribunal questions whether it has jurisdiction to deal with the aggregation dispute, which formed no part of HMRC's determination on 17 September 2009. It would appear that the Appellant did not raise the question of aggregation with the various organisations involved at the time of his "employment" with them, and has not requested HMRC to make a formal determination of the issue. The question of aggregation impacted not only upon the Appellant but also on the various organisations which paid the earnings, and presumably they would be a party to any proceedings. The length of time which has elapsed between the Appellant's cessation of "employment" with the various organisations would also cast doubt on whether any such action by the Appellant would be in time.

The Appellant's Other Grounds of Appeal

64. The Tribunal's findings on the Appellant's other grounds of Appeal are as follows:

(1) *HMRC failed to determine accurately appropriate earning factors*: the calculation of earnings factor is a matter for the Department of Work and Pensions (The Pension Service) and falls within the Appellant's appeal to the Social Entitlement Chamber of the First Tier Tribunal.

(2) *HMRC failed to assess any entitlement to NI contributions and appropriate adjustments in relation to the Appellant's child care*: the Tribunal understands that home responsibilities protection makes no difference to the Appellant's NI contribution record because he already had the requisite maximum NI contributions for the years when the protection applied. It would also appear that jurisdiction for determining home responsibilities protection rests with the Social Entitlement Chamber not the Tax Chamber of the First Tier Tribunal.

(3) *HMRC failed to assess entitlement to NI contributions in relation to employers' non-payment of pay increases in 1993, 1994, 1995 etc*: the Tribunal is satisfied that HMRC's record of the Appellant's NI contributions was accurate and based upon the statements of earnings provided by the Appellant and his employers. The question of non-payment of pay increases was not a matter for this Tribunal.

(4) *No investigation report has been submitted by HMRC in spite of the Appellant's repeated requests*: the Tribunal is satisfied that HMRC has supplied the Appellant with a full explanation of the decisions that it has reached on his NI contribution record, and has responded promptly to the Appellant's enquiries. This, however, is a matter which falls within HMRC's care and management responsibilities, and is dealt with under HMRC's complaint procedures not by the Tribunal.

(5) *HMRC failed to comply with directions of the Tribunal*: HMRC's purported failure related to the directions of the Social Entitlement Chamber not of this Tribunal.

(6) *HMRC was in breach of Human Rights Act 1997*: the Appellant failed to substantiate HMRC's purported breach of the Human Rights Act 1997.

Decision

65. The Tribunal's principal findings in this Appeal are as follows:

5 (1) HMRC has thoroughly investigated the Appellant's claims regarding the inaccuracy of his National Insurance contribution record. HMRC has examined the information supplied by the Appellant and given its reasons why the information has had no effect on his record or amended the record if appropriate.

10 (2) The additional information supplied by the Appellant since the disputed decision of 17 September 2009 has not provided any new evidence of National Insurance contributions which have not been included in his record.

15 (3) The Appellant's National Insurance contributions record kept by HMRC was an accurate reflection of the information of the National Insurance contributions made by the Appellant supplied by the Appellant and his employers.

(4) The Appellant's current disputes with his National Insurance record concerned the legal basis for how his former "employers" recorded his contributions. The Tribunal has given its full reasons why these disputes were not relevant to this Appeal.

20 66. For the reasons given above and in the body of the decision the Tribunal is satisfied that HMRC's record of the Appellant's payment of NI contributions is correct. The Tribunal dismisses the Appeal and that HMRC's decision dated 17 September 2009 stands good.

25 67. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

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TRIBUNAL JUDGE
RELEASE DATE: 27 SEPTEMBER 2011

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