



TC02378

Appeal number: TC/2012/06470

NATIONAL INSURANCE CONTRIBUTIONS – whether appellant had paid Class 3 contributions later than the last time when they could be accepted by HMRC – held, yes – whether the ignorance or error that caused the deal was caused by the appellant’s failure to exercise due care and diligence – held, yes – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ABIODUN ADENKULE ONANUGA

Appellant

- and -

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

TRIBUNAL: JUDGE JOHN WALTERS QC

The Tribunal determined the appeal on 12 November 2012 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 15 June 2012, HMRC’s Statement of Case submitted on 7 August 2012 and the Appellant’s Reply dated 29 August 2012.

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DECISION

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1. The Tribunal decided that the appeal will be DISMISSED.

2. The appeal is against a decision in a letter sent by HMRC (Personal Tax, National Insurance Contributions & Employer Office, Director's Correspondence & Appeals) dated 11 April 2012 in which HMRC reaffirmed its decision that Mr
10 Onanuga had not paid class 3 NI contributions before the final time limit for the tax years 1996-97 to 2002-03 inclusive, which was 5 April 2009.

3. This letter followed one dated 15 March 2012 which was sent by HMRC to Mr Onanuga. In that letter of 15 March 2012, HMRC gave further explanation of its
15 decision that after 5 April 2009 Mr Onanuga was 'precluded' from paying class 3 NI contributions for those years, and also for the year 2003-04, because although Mr Onanuga's payment of class 3 NI contributions for that year (2003-04) was in time, it would not, by itself, give entitlement to a basic State Pension.

4. HMRC received a payment from Mr Onanuga of £2,761.20 on 9 October 2009.

5. This represented the total amounts of contributions which he had been told by
20 HMRC could be paid *without penalty*:

- if paid before 5 April 2007, in the case of contributions for the years 2002-03 and 2003-04; and
- if paid before 5 April 2009 in the case of contributions for the years 1996-97 to 2001-02 inclusive (regulations 6A of the Social Security (Crediting and
25 Treatment of Contributions and National Insurance Numbers) Regulations 2001 ("the 2001 regulations") and regulation 65A of the Social Security (Contributions) Regulations 2001 ("the 2001 Contributions Regulations").

6. The payment was made after both of the above time limits.

7. Further, in respect of contributions made for the years 1996-97 to 2002-03
30 inclusive they were made after the *final time limits* for those years (the final time limit for the years 1996-97 to 2001-02 inclusive was 5 April 2009 – regulation 6A of the 2001 Regulations).

8. Also, in respect of contributions made for the year 2002-03, the *final time limit*
35 was 5 April 2009 as well – the end of the sixth tax year following 2002-03 (see: regulation 4(3) of the 2001 Regulations).

9. HMRC say that the consequence is that in the case of the contributions made for the years 1996-97 to 2002-03 were precluded because they cannot count towards Mr Onanuga's basic State Pension (regulations 4(3) and 6A of the 2001 Regulations).

10. They also say that in the case of the contributions made for the year 2003-04, they could count, if paid at the rate (including a penalty for a payment made after 5 April 2007) of £626.50. However, because Mr Onanuga could not obtain entitlement to a basic State Pension based only on class 3 contributions paid for the year 2003-04, these contributions, as well, were precluded.

11. Precluded contributions are refundable pursuant to regulation 52 of the 2001 Contributions Regulations.

12. All of the above, according to HMRC, is (pursuant to regulation 50 of the 2001 Contributions Regulations) subject to Mr Onanuga not being able to show to the satisfaction of an officer of HMRC that his failure to pay contributions within the respective prescribed period:

(a) is attributable to ignorance or error on his part; and

(b) that ignorance or error not being due to any failure on Mr Onanuga's part to exercise due care and diligence.

13. HMRC accept that Mr Onanuga's failure to pay the class 3 contributions for the years 1996-97 to 2002-03 inclusive before the *final time limit* of 5 April 2009 was due to ignorance or error on his part. However they consider that Mr Onanuga's ignorance or error was due to his failure to exercise due care and diligence.

14. In support of this contention, HMRC point to the fact that Mr Onanuga was sent information about paying voluntary class 3 NI contributions by the Pensions Service in a letter dated 13 November 2006. This letter explained in a table, in the case of each of the years 1996-97 to 2003-04 inclusive, the contribution amounts (which totalled £2,761.20 – the amount Mr Onanuga paid in October 2009) the time limits for payment of those respective contribution amounts without penalty, and also the *final time limits* for payment of those respective contribution amounts. The letter, correctly, explained the position as follows under the heading "**Strict time limits for the payment of NI contributions**":

'Usually you have to pay voluntary Class 3 contributions before the end of the 6th tax year following the year in which they are due. These limits can be extended in certain circumstances. Also, if you pay Class 3 contributions later than the end of the second tax year in which they were due, you would normally be charged at a higher amount.'

We have extended the time limits for paying voluntary Class 3 contributions for the tax years 1996/97 to 2001/02 to 5 April 2009. The table below shows what you can pay.

If you do not pay by the first date shown [the date under the heading "**Pay without penalty**" in the table], the amount may be more when you do come to pay. We cannot accept payment if we get it after the final time limit shown [that is, the respective dates under the heading "**Final time limit**" in the table].'

15. HMRC dealt with this matter in correspondence with Mr Onanuga making the point that his error was due to the fact that he failed to read or understand that HMRC would not accept payment of class 3 contributions after the final time limit, and that

he assumed that his circumstances would allow him to pay class 3 contributions after the final time limit and he did not make any further enquiries to check his assumption.

16. In their Statement of Case, HMRC refer to various decided cases where regulation 50 of the 2001 Contributions Regulations has been considered. They are
5 *Philip Langley Rose v HMRC*, *Bernard David James Walsh v Secretary of State for Social Security*, *Mrs Adelolapo Fehinola Adojutelegan v Derek Clark* (a decision of the Special Commissioners SpC430), and *Roland Eugene Thompson v HMRC*. These citations support their case in this appeal.

17. Mr Onanuga's grounds of appeal were that his payment on 9 October 2009 was
10 before the *final time limit* in respect of the year 2003-04 (which the Tribunal accepts it was). He also contended that he was qualified to pay [on 9 October 2009, as the Tribunal must assume] with (as opposed to without) a penalty in respect of the earlier years 'because according to the last paragraph of the said pamphlet [the Tribunal assumes the letter dated 13 November 2006 is referred to] "if you do not pay by the
15 first date shown, the amount may be more when you do come to pay"'.

18. In Mr Onanuga's reply to the Statement of Case, which, in the Tribunal's view, inappropriately (because not supported by any evidence), accused HMRC of being on a 'brazenly illegal path' and a named officer of HMRC of not hiding 'her incandescent dislike for my race', stated that it was 'preposterous' to charge a penalty
20 for a payment (in respect of 2003-04) which was paid late (i.e. 2½ years after 5 April 2007) and not to accept a payment with penalty when the payment was made only 108 days after the time limit of 5 April 2009.

19. He also says in his reply that he exercised due care and diligence by paying on 9
25 October 2009, 'seven months before the 5 April 2010 final time limit the year 2003-2004 tax year'.

20. The Tribunal cannot accept Mr Onanuga's arguments. As a matter of law, HMRC are correct that the payments made (on 9 October 2009) in respect of the years (1996-97 to 2002-03 inclusive) for which the *final time limit* was specified as 5 April 2009 in the letter dated 13 November 2006, are precluded and ought to be repaid to
30 Mr Onanuga.

21. The only payment made before the applicable *final time limit* was the payment made in respect of the year 2003-04 and that, on its own, was not enough to fund a basic State Pension. In those circumstances it is right that HMRC should regard it as precluded and repayable to Mr Onanuga.

35 22. Regulation 50 of the 2001 Contributions Regulations does not assist Mr Onanuga, because the Tribunal agrees that his ignorance or error causing his late payment in respect of the years 1997-97 to 2002-03 inclusive was the result of Mr Onanuga's failure to exercise due care and diligence. He did not read the letter dated 13 November 2006 (which he refers to as the pamphlet) correctly. This was not
40 because the letter was confusing or ambiguous as a matter of language. It set out the position plainly and comprehensibly. If, nevertheless, Mr Onanuga had difficulty in

5 understanding it, the Tribunal agrees with HMRC that there was a burden on him to exercise due care and diligence, and that burden required him to make enquiries of HMRC or some other adviser to explain the situation to him in terms that he could understand. Having failed to make any such enquiries, he cannot, in the Tribunal's view, be regarded as having exercised due care and diligence.

23. For these reasons, the Tribunal dismisses Mr Onanuga's appeal.

10 24. 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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**JOHN WALTERS QC
TRIBUNAL JUDGE**

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RELEASE DATE: 20 November 2012