



TC02594

Appeal number: TC/2012/01066

NATIONAL INSURANCE CONTRIBUTIONS – entitlement to make late payment of excused contributions – power of HMRC to accept late payment of excused contributions – whether contributor in ignorance or error and failing to exercise due care and diligence

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MRS JEAN CHILDS

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE J. BLEWITT
MR W. SNOWDON**

Sitting in public at North Shields on 6 December 2012

The Appellant did not attend and was not represented

Mr Duke, Officer of HM Revenue and Customs, for the Respondents

DECISION

1. This is an appeal against a decision of HMRC made on 14 July 2011 that the Appellant's failure to pay Class 3 National Insurance Contributions ("NIC") for the period 6 July 1964 to 5 April 1995 within the prescribed period was attributable to her ignorance or error and that the ignorance or error was due to the failure on the Appellant's part to exercise due care and diligence. Accordingly HMRC concluded that the Appellant was not entitled to pay Class 3 NIC for the period 6 July 1964 to 5 April 1995.

2. By letter to the Tribunals Service dated 14 November 2012 the Appellant advised that due to health reasons and cost she would not be attending the hearing. The Appellant requested that her plea be taken into account by the Tribunal and accordingly we considered each of the letters of correspondence from the Appellant relating to this matter.

Legislation

3. There was no dispute between the parties as to the legislation applicable in this case. We do not intend to set out the provisions in full, as to do so would be lengthy and unnecessary, however we were referred to the following:

- Section 8 of the Social Security Contributions (Transfer of Functions etc) Act 1998;
- Regulation 2 of the National Insurance and Industrial Injuries (Collection of Contributions) Regulations 1948;
- Regulation 5 of the National Insurance (Residence and Persons Abroad) Regulations 1948;
- Regulation 115 of the Social Security (Contributions) Regulations 1975;
- Regulation 121 of the Social Security (Contributions) Regulations 1979;
- Regulations 24 and 27A of the National Insurance (Contributions) Regulations 1948;
- Regulation 33 (1) of the Social Security (Contributions) Regulations 1975;
- Regulations 27(1) of the National Insurance (Contributions) Regulations 1969;
- Regulation 38 of the Social Security (Contributions) Regulations 1979;
- Regulations 32 of the National Insurance (Contributions) Regulations 1969;
- Regulations 36 of the National Insurance (Contributions) Regulations 1975;

- Regulations 41 of the National Insurance (Contributions) Regulations 1979;
4. We were also referred to the following case authorities:
- *Philip Langley Rose v The Commissioners for HM Revenue and Customs SpC 00574*;
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- Special Commissioners Decision SpC 430 – *Mrs A. F. Adojutelegan v Derek Clark (Officer of the Board)*; and
 - *Bernard David James Walsh v Secretary of State for Social Security (CO 30/50/93)*.

Background

- 10 5. The Appellant registered for National Insurance on 18 April 1953 at a Youth Employment Office and was treated as having entered into insurance on 31 March 1953 (the Appellant's 15th birthday).
6. At that time, NICs were paid by affixing a stamp each week to a card which was handed to an employer so that contributions were paid on a person's behalf. If a person was self-employed or not employed, she was required to pay contributions herself.
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7. There were 3 classes of NICs:
- Class 1 paid by an employed person (the employer paying a share);
 - Class 2 paid by a self-employed person; or
 - Class 3 paid by a non-employed person.
- 20
8. During all of the contribution years from 1952 – 1953 to 1963 – 1964 the Appellant paid Class 1 contributions as an employed person.
9. In May 1964 the Appellant moved with her husband to New Zealand. Once she left the UK she was no longer liable to pay NICs.
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10. There was an option available to pay Class 3 contributions on a voluntary basis. To do so, an application was made to the Overseas Group within HMRC which arranged for payment to be collected each year.
11. The time limits for paying such contributions to be paid in order to count for benefit purposes were as follows:
- 30
- Contributions due in the period from 22 December 1956 to 5 April 1975 had to be paid within 6 years of the contribution year in which they were due;

- 6 April 1975 to 5 April 1982 had to be paid within 2 years of the tax year in which they were due; and
- 6 April 1982 to present time had to be paid within 6 years of the tax year in which they were due.

5 12. If contributions are paid outside of the time limits specified above, they are treated as not paid for benefit purposes and in the case of Class 3 contributions they are regarded as precluded.

10 13. Regulation 27A of the National Insurance (Contributions) Regulations 1948 introduced legislation from 14 October 1967 to allow payment of contributions outside of the statutory time limits. Before payment could be made under this provision, it had to be shown that the failure to pay at the correct time:

- Was attributable to the contributor's ignorance and error, and
- The ignorance or error was not due to the contributor's failure to exercise due diligence and care.

15 **The Appellant's Case**

14. We were provided with numerous letters of correspondence from the Appellant to HMRC, all of which we considered and which included letters dated 4 February 2010, 18 April 2010, 19 October 2010, 12 August 2011, 28 December 2011, 15 April 2012 and 7 June 2012.

20 15. The Appellant's case can be summarised as follows: HMRC should have informed the Appellant that she was eligible to claim voluntary contributions as a fiduciary right; those rights have been denied. Both the UK and New Zealand omitted to provide information and the onus was on HMRC to provide such information. The Appellant was completely ignorant as there was limited information printed in the UK
25 and none at all in New Zealand. Had the Appellant been aware, she would have exercised all due diligence to ensure a claim could be made.

30 16. The Appellant asserts that she did not receive any mail from HMRC regarding a statement of account or shortfalls occurring in any particular year. The Appellant was pregnant when she left the UK and the last thing on her mind was due diligence as there were far more pressing matters with which she was concerned. The Appellant has no recollection of claiming maternity benefit from HMRC's overseas branch and was unaware that such a claim could be made.

HMRC's Case

35 17. HMRC considered the steps taken by the Appellant to ensure that her National Insurance affairs were in order.

18. The Appellant paid contributions on a regular basis before she left the UK in 1964. In addition, HMRC noted that the Appellant had the following contact with HMRC:

- 5 • On 7 February 1955 the Appellant was informed that her record was deficient by one contribution in the 1953-1954 contribution year; subsequently the Appellant paid a Class 3 contribution for the missing week.
- On 30 January 1956 and 4 February 1957 the Appellant was informed that her record was deficient by one contribution in the 1954 – 1955 and 1955 – 1956 years respectively.
- 10 • On 17 March 1960 the Appellant was informed that her contribution card for the 1958 – 1959 year had not been surrendered. When the card arrived, the Appellant was informed on 29 April 1960 that her record was deficient by one contribution.
- Similar letters were issued to the Appellant for the years 1959 – 1960 and 1961 – 1962.
- 15 • Sickness benefit was claimed at Pontefract local office on numerous occasions and contributions were credited during the weeks in which the Appellant was sick and not liable to pay.
- A maternity benefit claim was made with the Department’s Overseas Group in 20 January 1965.

19. As a result of the contact listed above, HMRC concluded that the Appellant was aware of the need to pay contributions and the contributory nature of the National Insurance scheme.

20. When the Appellant ceased employment in 1964 her contribution card would 25 have been returned to her. Page 4 of the card drew attention to leaflet NI 38 “National Insurance for People Abroad”.

21. Up to 1975 letters informing a person about deficiencies in their National Insurance Contribution record were issued clerically and thereafter by computer, despite the fact that there was no statutory obligation for HMRC to do so. HMRC 30 concedes that due to a computer problem no deficiency letters were issued from 1996 – 1997 to 2001 – 2002. The Appellant was not affected by this problem because she was not liable to pay, however as a special concession she was allowed to pay voluntary contributions for the 1996 – 1997 year. Payment was made by the Appellant in 2009.

35 22. The onus rested with the Appellant to ensure her record was properly maintained. HMRC relied on the case of *Philip Langley Rose v The Commissioners for HM Revenue and Customs* in which it was stated:

5 “Was that “ignorance or error” the result of his failure to exercise due care and
diligence? Mr Nawbatt cited a number of authorities about that test to me in
argument. But I do not consider that the phrase presents any difficulty in this case.
The evidence is that Dr Rose was aware at the time of his choices, or at least he
would have been aware of them had he read the leaflets he was sent and had he made
the reasonable enquiries that those leaflets should have prompted. He chose at that
time not to enquire or not to pay. In the context of the current question of protecting
his NI record, he chose not to exercise due care and diligence in protecting his
contribution record.”

10 23. HMRC submitted that the Appellant made no enquiries about paying
contributions once she went abroad and that not only was she not ignorant of the
existence of the National Insurance scheme but the Appellant also failed to exercise
due care and diligence in maintaining her National Insurance record.

15 24. In the Special Commissioners Decision *Mrs A. F. Adojutelegan v Derek Clark*
(*Officer of the Board*) it was said:

20 “Exercising due diligence involves the positive step of making enquiries...The
Appellant had failed to make any enquiries and therefore had not exercised due care
and diligence...If she had never heard of National Insurance I would readily agree
that it could not be said that she had failed to exercise due care and diligence if she
had made no enquiries about it. However she was not ignorant about the existence of
the NI scheme and must have known the basic principle that benefits were in some
way related to contributions.”

Decision

25 25. We considered the submissions of both parties carefully. We were taken
through the documentary evidence exhibited by HMRC which confirmed that letters,
such as those regarding statements on account and deficiencies had been sent to the
Appellant and we found as a fact that the records accurately reflected the Appellant’s
contact with HMRC. The Appellant did not attend to give evidence, and although we
were satisfied that her recollection properly represents her belief we concluded that
30 the recollection that no claims of sickness or maternity were made or letters received
regarding her record is not so reliable that we must prefer it to the documentary
evidence available to us. In reaching our conclusion we did not find that the Appellant
was not telling the truth; we must make clear that it is no easy task for a taxpayer to
35 show that a recollection of events so long ago is more likely to be accurate than a
written record, particularly where case law has held that even though a written record
may be liable to error, the likely rate of error is very small.

40 26. We did not accept the Appellant’s contention that the onus rested with HMRC
to provide information. There is no statutory obligation on HMRC to do so and we
accepted that information was available to the public if requested.

27. We did not accept that the Appellant had been ignorant of the National
Insurance scheme; we found as a fact that the occasion on which the Appellant

responded to HMRC's letter by paying a missing contribution was indicative of her clear understanding as to the scheme and how it worked.

28. Even if we had not so found, we were satisfied (and indeed there was no assertion to the contrary from the Appellant) that no enquiries were made by the Appellant about continuing to pay NICs whilst abroad.

29. We were sympathetic to the fact that the Appellant was pregnant when she left the UK and no doubt had far greater concerns than due diligence in respect of her NICs, however we respectfully agree with the words of Dr Avery-Jones in *Mrs A. F. Adojutelegan v Derek Clark (Officer of the Board)*:

“Exercising due diligence involves the positive step of making enquiries...The Appellant had failed to make any enquiries and therefore had not exercised due care and diligence... However she was not ignorant about the existence of the NI scheme and must have known the basic principle that benefits were in some way related to contributions.”

30. The Appellant accepts that she made no enquiries regarding NICs and in those circumstances we found as a fact that she failed to exercise due care and diligence in that regard.

31. The appeal is dismissed.

32. 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.

J. BLEWITT
TRIBUNAL JUDGE

RELEASE DATE: 12 February 2013