



TC03247

Appeal number: TC/2013/02353

NATIONAL INSURANCE CONTRIBUTIONS – self-employed person - Class 2 NI contributions - amount of basic state pension - whether fully-stamped contribution cards submitted by taxpayer in every relevant year notwithstanding contributions not shown on his NI record - no - whether taxpayer entitled to make contributions outside time limits on grounds that his error in failing to make contributions was not due to his failure to exercise due care and diligence - no - s 11(1) Social Security Contributions and Benefits Act 1992 - regulations 4 and 6 Social Security (Crediting and Treatment of Contributions and National Insurance Numbers) Regulations 2001 - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

COLIN PARTRIDGE

Appellant

- and -

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

**TRIBUNAL: JUDGE EDWARD SADLER
MRS SONIA GABLE**

Sitting in public at Brighton on 6 December 2013

The Appellant appeared in person

Mrs Logan, of the Disputes, Decisions and Appeals Team of the National Insurance Contributions and Employer Office of HM Revenue and Customs, for the Respondents

DECISION

Introduction

5 1. This is an appeal by Mr Colin Partridge ("Mr Partridge") against a decision made on 2 January 2013 by The Commissioners for Her Majesty's Revenue and Customs ("HMRC") which specified the National Insurance contributions Mr Partridge had made and determined that any late contributions he might choose to pay could not be treated as paid on an earlier date for the purposes of calculating the amount of his basic state retirement pension. That decision was made under section 8
10 of the Social Security Contributions (Transfer of Functions) Act 1999.

2. That decision of HMRC was reviewed at the request of Mr Partridge, but the review by HMRC upheld the original decision. Mr Partridge then appealed to this tribunal. An appeal to this tribunal against a decision made under section 8 of the
15 Social Security Contributions (Transfer of Functions) Act 1999 may be made under section 11 of that Act.

3. Mr Partridge's Notice of Appeal is dated 28 March 2013. As we explain below, the grounds of Mr Partridge's appeal are that he made more Class 2 National Insurance contributions than have been recorded on his National Insurance record
20 now held by HMRC, and that, additionally, for the years he made no contributions he should be permitted to make late contributions.

4. Mr Partridge has spent much of his working life as a self-employed painter and decorator. Therefore he has been liable to make Class 2 National Insurance contributions("NICs") in respect of each week of the year he has been a self-
25 employed worker. The amount of his basic state retirement pension, to which he is now entitled, is determined in part by his record of Class 2 NICs. His NICs record maintained by the National Insurance Contributions and Employer Office of HMRC shows that he made contributions in the years 1965-66 to 1973-74 (but not in 1971-72), but no contributions thereafter until the years 2005-06 to 2011-12 (at which point he became entitled to his state pension).
30

5. Mr Partridge's case is that he did make Class 2 NICs for every year until and including 1992-93 (that is, whilst the system of making contributions allowed him to do so by purchasing stamps for a contributions card), but that he did not make Class 2 NICs for the period 1993-94 to 2004-05 (when the system of payment changed to
35 monthly direct debit payment or quarterly, then latterly half-yearly, payment by cheque or direct debit). He argues that for this period he should be allowed to make payments now and that they should be related back to those years. His case is that his basic state retirement pension should be increased to take account of the contributions he made up to 1992-93 (and for which there is no official record) and the
40 contributions he is prepared to make now for the period 1993-94 to 2004-05.

6. HMRC argue that there is no evidence that Mr Partridge made Class 2 NICs for the period 1974-75 to 1992-93, and that by his admission he made no contributions

for the period 1993-94 to 2004-05. They argue that if he makes payments now in relation to those periods they cannot be related back and thus will not be taken into account in the calculation of his basic state retirement pension. They point to the relevant provisions in the Social Security (Crediting and Treatment of Contributions and National Insurance Numbers) Regulations 2001 ("the SSCC Regulations 2001") which provide that late contributions may be treated as having been paid on an earlier date only if it can be shown that failure to pay at the due time is attributable to ignorance or error on the taxpayer's part and that ignorance or error was not due to any failure by the taxpayer to exercise due care and diligence. They argue that Mr Partridge knew he should be making Class 2 NICs, and he failed to act with care or diligence in that he did not take the necessary steps to make the contributions.

7. The issue we therefore have to decide is whether Mr Partridge paid Class 2 NICs for the period 3 June 1974 to 5 April 1993 (notwithstanding that no such contributions appear on his NI record); and whether any contributions he may pay now for contribution years in the period 6 April 1993 to 5 April 2005 can be treated as having been paid in the years they were due and therefore must be taken into account in determining the amount of his basic state retirement pension.

8. Our decision is that for each contribution year in the period 3 June 1974 to 5 April 1993 Mr Partridge purchased Class 2 NIC stamps, but only for those weeks in the contribution year in which he worked, and not for the full 52 weeks (or, when required, 53 weeks) in any contribution year. He did not therefore make full contributions for any of those contribution years. For the period 6 April 1993 to 5 April 2005 Mr Partridge made no Class 2 NICs; his failure to make those contributions was attributable to error on his part, but that error was due to his failure to exercise due care and diligence. Accordingly, if he now makes Class 2 NICs, they cannot be related back to the years for which they were properly due and therefore will not be taken into account for the purpose of determining the amount of his basic state retirement pension.

9. We therefore dismiss Mr Partridge's appeal.

30 *The statutory framework*

10. The statutes and regulations governing NICs are extensive and complex. There is no dispute between the parties as to the terms of the legislation: the dispute is as to the facts to which the legislation is to be applied. It will suffice, therefore, to give a summary of the legislative provisions of principal relevance to Mr Partridge's appeal.

35 11. A self-employed earner, such as Mr Partridge, is liable to pay Class 2 NICs at a specified weekly rate during his working life until he reaches pensionable age - this liability is now found in section 11 of the Social Security Contributions and Benefits Act 1992. Regulations require a person to notify HMRC when he becomes liable to pay a Class 2 NIC and when he ceases to be so liable.

40 12. Until April 1975 what is now regulation 54 of the Social Security (Contributions) Regulations 1979 required that a Class 2 NIC should be paid by

affixing a stamp of the relevant weekly amount to a contribution card issued to the earner by the National Insurance Office¹ for the purpose - the card specified each week of the contribution year, and a stamp was required to be affixed to each of those weeks. Regulation 54 of the Social Security (Contributions) Regulations required the earner to return the stamped contribution card to his local office of the National Insurance Office within six days of the end of the contribution year.

13. From April 1975 an earner could, instead, pay his Class 2 NICs by monthly direct debit. With effect from 11 April 1993 the regulations were amended to require an earner to pay his Class 2 NICs by cheque or direct debit on a quarterly (and now a half-yearly) basis, with HMRC sending a statement to the earner specifying the amount of the quarterly payment and the date it is due. Payment could no longer be made by stamped contribution card.

14. The legislation specifies the time limits within which Class 2 NICs must be paid if they are to be taken into account for the purpose of an earner's entitlement to a contributory benefit (including the basic state retirement pension). Regulation 4 of the SSCC Regulations 2001 specifies that, for the period from 6 April 1975 to 5 April 1983, Class 2 NICs must be paid before the end of the second year following the year in which the contributions were due (for these purposes contribution years are tax years). Thus, by way of illustration, if an earner was liable to pay Class 2 NICs for the contribution year ended 5 April 1981, provided he paid those contributions not later than 5 April 1983, his contributions would count towards his entitlement to a basic state retirement pension. If they were paid on or after 6 April 1983 they would not count.

15. For contributions years beginning on or after 6 April 1983 this two year period of grace is extended to six years (and Mr Partridge validly exercised his rights in this grace period when he became aware that his pension entitlement was affected by the lack of Class 2 NICs - he paid contributions in 2011 which were related back to each of the contribution year 2005/06 and the following five contribution years, and those contributions count towards the calculation of his basic state retirement pension).

16. More significantly for the purposes of Mr Partridge's appeal, regulation 6 of the SSCC Regulations 2001 gives HMRC a discretion to allow "late" Class 2 contributions made by an earner to be related back to earlier years without limit and thereby count towards the calculation of his basic state retirement pension. That discretion may be exercised only in cases where the failure to make the contribution within the normal time limit was due to the earner's ignorance or error, and then only where such ignorance or error was not due to the earner's failure to exercise due care and diligence. Since Mr Partridge's case (in part) is that he should be allowed to make out of time contributions now and to relate them back to contribution years in the

¹ Over the period relevant to this appeal the system of National Insurance contributions has been administered by, variously, the Department of Health and Social Security, the Contributions Agency and latterly HMRC. We use the expression "National Insurance Office" as an umbrella term to indicate the agency responsible at any one time for collecting and recording contributions and generally administering the system of National Insurance contributions.

period 6 April 1993 to 5 April 2005 (that is, he argues, his circumstances are within the scope of the discretion which regulation 6 of the SSCC Regulations 2001 give to HMRC) it is helpful to set out regulation 6(1) in full:

5 *In the case of a contribution paid by or in respect of a person after the due date, where -*

 (a) *the contribution is paid after the time when it would, under regulation 4 or 5 above, have been treated as paid for the purpose of entitlement to contributory benefit; and*

10 (b) *it is shown to the satisfaction of an officer of [HMRC] that the failure to pay the contribution before that time is attributable to ignorance or error on the part of that person or the person making the payment and that that ignorance or error was not due to any failure on the part of such person to exercise due care and diligence,*

15 *an officer of [HMRC] may direct, for the purposes of those regulations, the contribution shall be treated as paid on such earlier day as the officer considers appropriate in the circumstances, and those regulations shall have effect subject to any such direction.*

17. Therefore, to succeed on this part of his case (that is, to show that in his particular circumstances HMRC can exercise its discretion to allow "late" contributions to count towards his basic state retirement pension entitlement), Mr Partridge, who acknowledges that he made no Class 2 contributions between 1993 and 2005, has to establish that he failed to make those contributions because he did not know he was liable to make them, or because of some mistake on his part. If he can establish that this was the case (and that his failure to make the contributions was not, for example, a deliberate refusal by him to pay what he knew he was liable in law to pay), then he must further establish that his ignorance or mistake was not the result of his own failure to take the care, or to make the diligent effort, which is reasonably to be expected of the conscientious person who is liable to make Class 2 NICs.

30 *The evidence and the findings of fact*

18. In evidence we had a number of documents comprising the correspondence between Mr Partridge and HMRC in relation to the matters giving rise to Mr Partridge's appeal; a schedule of the NICs paid by Mr Partridge according to the records of HMRC; the notice of the decision by HMRC (and the review of that decision) against which Mr Partridge appeals; sample National Insurance documents, including contribution cards and notices sent to earners where stamped contribution cards have not been submitted in due time; and extracts from HMRC's records as to contributions received from Mr Partridge.

19. We also heard witness evidence at the hearing of the appeal from Mr Partridge and his wife, Mrs Susan Partridge. For HMRC we had evidence from Mr Alan Greenshields, an officer of HMRC who throughout his career has been involved in National Insurance Office procedures relating to contributions. Mr Greenshields's evidence related to those procedures, to the records held by the National Insurance

Office in relation to Mr Partridge, and to the investigations made by the National Insurance Office in response to Mr Partridge's contentions as to contributions made.

20. We refer below to the evidence of Mrs Susan Partridge and certain of the evidence of Mr Partridge. We accept the evidence of Mr Greenshields.

5 21. We also had a written statement made by Mrs Edna A Partridge and signed by her. Mrs Edna Partridge is Mr Partridge's mother. She is aged 90 and was too physically frail to attend the hearing. Her evidence was to the effect that for the period 1966 to 1979 she purchased National Insurance weekly stamps from her local post office on behalf of both her husband and Mr Partridge her son. Although, of course, there was not the opportunity for Mrs Edna Partridge to be cross-examined, we accept her evidence.

22. From the evidence we find the facts as set out in paragraphs 23 to 47 below.

23. Mr Partridge, as he asked us to accept, has limited skills in reading and writing.

15 24. From 1961 to 1966 Mr Partridge was in employment as an employee and as an employed person was not therefore liable to make Class 2 NICs (he was liable, instead, to make Class 1 NICs, and in the years of his employment he made some Class 1 NICs). In 1966 he joined his father working as a self-employed painter and decorator, and continued in that line of business (and as self-employed) until at least 2011 when he reached pensionable age.

20 25. Mr Partridge did not work every week: apart from time off for holidays and illness, there were times when he had no work, and he also took time off from work throughout his working life to assist in the care of his brother, who has cerebral palsy.

26. The records of HMRC show that Mr Partridge made Class 2 NICs as follows for the years of his self-employment:

Contribution year	Number of weekly contributions in the year
1965-66	31
1966-67	36
1967-68	30
1968-69	45
1969-70	0
1970-71	51
1971-72	0

1972-73	30
1973-74	14
1974-75 to 2004-05	0
2005-06	52
2006-07	52
2007-08	52
2008-09	52
2009-10	52
2010-11	52
2011-12	26

27. In the contribution year 1969-70 Mr Partridge is recorded as having made 40 Class 3 (non-employed) NICs.

28. Until April 1975 the procedures for purchasing and recording Class 2 NICs were as follows:

- (1) The self-employed earner purchased a National Insurance stamp weekly from the Post Office to affix to his contribution card;
- (2) During the first week in June each year he surrendered the stamped (and therefore expired) contribution card to his local Department of Social Security office, exchanging the expired card for a new card;
- (3) At the Records Branch of the National Insurance Office the expired contribution card was matched to the earner's NI contribution record by reference to the NI number and other identity details recorded on the contribution card;
- (4) The total of the number of stamps affixed to the contribution card for the contribution year was entered onto the earner's record sheet;
- (5) Expired contribution cards were retained for two years and then destroyed;
- (6) If an earner did not surrender his contribution card on time he was sent a standard letter by post asking for it to be returned to his local Social Security office;

(7) If a contribution card was not fully stamped for the contribution year in question, the earner was sent a statement of account notifying him of the number of contributions made and giving him the opportunity to pay the missing weeks;

5 (8) These processes were subject to internal and external audits.

29. In each of the contribution years 1965-66, 1969-70, 1971-72, 1972-73 and 1973-74 Mr Partridge failed to surrender his expired contribution card by the due date, and was sent a letter prompting him to hand it in to his local Social Security office.

10 30. In each contribution year in which Mr Partridge surrendered an expired and stamped contribution card, the card was not fully stamped (which required 52 or 53 weekly stamps), and Mr Partridge did not take the opportunity to pay the missing weeks at a later date.

15 31. From 6 April 1975 the recording of NICs was made on a computer system. An earner could pay Class 2 NICs by direct debit from that date, but could also continue making contributions by the weekly stamping of an annual contribution card, (with the annual surrender and exchange of contribution cards) as previously. Contribution years were aligned with tax years.

20 32. From 6 April 1993 it was no longer possible to pay Class 2 NICs by stamping a contribution card. An earner was required either to pay contributions quarterly, either by direct debit, or pursuant to a bill sent to him by HMRC.

25 33. The National Insurance Office has a specialist section to deal with contribution cards received which do not match the record of contributions which they hold (as might be the case, for example, where a contribution card bears an incorrect National Insurance number). In such a case other means of identification (name of the earner, address of the earner, date of birth of the earner) are used to match the contribution card to the record of contributions, and thereby to enter onto the record the contributions recorded on the card. If (as in the present case) it is asserted that contributions have been made, but they have not been recorded, further investigations are made at the local office where the contribution cards would have been exchanged. The National Insurance Office also maintains a "suspense account" for contributions which are not matched to an earner, and that is searched to see if any contributions held on that account can be attributed to the earner who is alleging that contributions have been made. In Mr Partridge's case, where he is claiming that contributions were made for the years 1974-75 to 1992-93, these various investigations have been made, but no evidence has been discovered that contributions were made in that period, or which suggests that contributions held in the "suspense account" should be attributed to Mr Partridge.

35 34. For National Insurance (and also tax) purposes Mr Partridge used his former home address (that is, his parents' address) at East Preston, Littlehampton. On one occasion, in relation to the 1969-1970 contribution year, a letter sent to Mr Partridge at that address (prompting him to return his contribution card) was returned as

undelivered. The address was, however, re-instated on his record at the National Insurance Office by February 1972.

5 35. On 16 September 1974 the National Insurance Office wrote in the standard form to Mr Partridge requesting him to surrender his contribution card for the contribution year 1973-74. That letter was returned as undelivered on 20 December 1974. The National Insurance Office received no further communication from Mr Partridge (until 2011) and no contributions it could match to its record of his contributions.

10 36. However, on 22 November 1974 the Department of Health and Social Security office at Littlehampton (the office at which Mr Partridge in previous years had handed in his expired contribution card) issued him with a receipt for 10 weekly loose stamps which were received by that office, shown as contributions for the contribution year 1973-74. The receipt correctly states Mr Partridge's East Preston address and his National Insurance number. Those 10 stamps are recorded in Mr Partridge's record of contributions at the National Insurance Office (14 weekly contributions are in fact recorded for the contribution year 1973-74). Mr Partridge has no recollection of handing in loose stamps, nor can he recall why the stamps were not affixed to a contribution card.

20 37. From December 1974, for the purposes of Class 2 NICs, the National Insurance Office treated Mr Partridge as no longer registered as a self-employed earner on the basis that they had no address for him. In consequence, no further letters were sent to him to prompt his surrender of expired contribution cards, and when the system of collecting Class 2 NICs changed in 1993 the National Insurance Office did not write to Mr Partridge to advise him of those changes and of the need for him to make quarterly contributions.

25 38. The 1993 changes were widely publicised in the press and at post offices. Self-employed persons were also advised of these changes by their tax offices with information sent out with tax returns.

30 39. Throughout, Mr Partridge paid income tax as a self-employed person, and his Class 4 NIC contributions were collected together with his income tax. Mr Partridge engaged the services of an accountant for the purposes of preparing and submitting his tax returns.

35 40. As mentioned, we heard evidence from Mrs Susan Partridge. We accept her evidence. Mrs Susan Partridge's evidence was that, from about 1979 or 1980 she took on from Mrs Edna Partridge the responsibility of purchasing her husband's National Insurance weekly stamps. She went to the post office to purchase the National Insurance stamps for her husband, and she handed them to him. This was only for those weeks when he gave her the money for the stamps, and when he was not for any reason working in a week he did not give her the money for the stamp for that week, and no stamp was purchased. She continued to make purchases of stamps on this basis until April 1993. In early 1993 she was told at the post office that the system was changing and that future Class 2 NICs would have to be paid quarterly by direct debit or by cash or cheque to a National Insurance Office bank account.

41. We also heard evidence from Mr Partridge. We have recorded above those matters of his evidence which are uncontroversial and which we accept. There are, however, a number of matters in his evidence which require particular examination.

5 42. First, Mr Partridge said that he continued to buy Class 2 NIC stamps (through the agency, first, of his mother, and then his wife, since he was working during the post office's opening hours) from April 1974 until April 1993. He could not recall if the stamps had been affixed to a contributions card, but he assumed that they were and that each year a card was handed in to the Department of Social Security office in Littlehampton. We accept that he purchased stamps throughout this period, since that is also the evidence of Mrs Susan Partridge, who actually purchased the stamps at the post office. But we do not accept that the stamps were affixed to a contributions card and handed in each year to the Department of Social Security office in Littlehampton. If that had been the case we are confident that the procedures within the National Insurance Office were such that the contributions would have been recorded on Mr Partridge's record of contributions which that office maintained. Furthermore, his address would most likely have been re-instated (as happened on the earlier occasion - in 1969-70) once a contribution card with his address was received, so that "chasing" letters would then have followed if in any year a contributions card was not surrendered at the proper time.

20 43. We are supported in the view that Mr Partridge did not surrender contribution cards from 1974-75 onwards by the history of those years (1965-66 to 1972-73) when he did surrender a contribution card in exchange for a new card: in five of those years Mr Partridge had to be "chased" by the National Insurance Office since, by the September following the end of the contribution year he had not surrendered his card (the due date for surrender was in June following the end of the contribution year). It is clear, therefore, that Mr Partridge largely complied in fulfilling his National Insurance obligations only in response to express promptings from the National Insurance Office. Once those promptings ceased (as they did when the National Insurance Office removed his address from their records when in December 1974 their letter was returned to him as undelivered), the probability is that he no longer complied with the procedures for surrendering a contribution card and taking a new card in exchange.

35 44. If we accept, as we do, that throughout the period 1974-75 to 1992-93 Mr Partridge purchased Class 2 weekly stamps, the question is whether he purchased a stamp for every week of the contribution year, as he was required to do. Mr Partridge's evidence was that, as he grew older and became more conscious of impending pensionable age, he was more diligent in purchasing stamps, and so should be treated as having purchased stamps for the 52 (or 53) weeks in each of those contribution years. We do not accept this. The evidence of Mrs Susan Partridge was that stamps were purchased only for those weeks in which he worked. Her evidence is consistent with the pattern of purchases of stamps made in the preceding years - in no contribution year did Mr Partridge purchase a full set of Class 2 NIC stamps.

40 45. We therefore conclude that although in each contribution year during the period 1974-75 to 1992-93 Mr Partridge made some purchases of Class 2 NIC stamps, he did

not, on the balance of probabilities, in any contribution year purchase a Class 2 NIC stamp for each week of that year. Therefore in no contribution year in that period did Mr Partridge pay in full the Class 2 NICs he was liable to pay.

5 46. Mr Partridge's evidence also related to the contribution years 1993-94 to 2004-05, when he accepts that (following the abolition of payment of contributions by the purchase of stamps) he made no Class 2 NICs. He also accepts that he was aware that the system of making contribution payments changed as from 6 April 1993. His evidence relates to the action he took to try to make contributions payments - to get
10 back into the system, so to speak. He says that first he waited to be told about the new contribution payment system, but he received nothing. He says that on several occasions in the mid-1990s he telephoned the National Insurance helpline, which he found a frustrating and unhelpful experience, since the most information he was given was that there was no record at the National Insurance Office of him as a self-employed earner. He then started paying Class 4 NICs, and took that to be the new
15 system. He did not visit the local office at Littlehampton to see what he should do, nor did he visit a post office to seek information.

47. We were told by HMRC that there was no record of any telephone calls made by Mr Partridge to the helpline, and that the standard advice given to callers who are self-employed and who are not shown as such on the records of the National
20 Insurance Office is that they should register as self-employed for National Insurance purposes so that they can make Class 2 NICs.

Did Mr Partridge make Class 2 NIC contributions in the period 3 June 1974 to 5 April 1993? - Submissions and conclusions

48. This is a question of fact, which we have largely dealt with above.

25 49. Mr Partridge says that he continued to purchase weekly stamps in respect of Class 2 NICs for each of the contribution years 1974-75 to 1992-93, and that for each of those years he surrendered a fully stamped contribution card at the Littlehampton office of the Department of Social Security. He argues that the National Insurance Office must have lost those cards, or for some other reason must have failed to record
30 against his name the contributions he made, or must have deleted these contributions from his record. He suggests that this may have happened when records were computerised.

50. HMRC rely upon their procedures, and the thorough investigations they have made to see if they can identify contributions which should have been attributed to Mr
35 Partridge.

51. For the reasons given above, we think that on the balance of probabilities Mr Partridge did continue to purchase weekly stamps throughout this period - that was the evidence of Mrs Susan Partridge, as the person who bought stamps at the post office, and we considered her to be a convincing witness. But we do not accept that
40 Mr Partridge used those stamps to complete a contribution card (or if he did, we do not accept that he surrendered an expired contribution card). As we have mentioned,

for most of the preceding years Mr Partridge only acted to surrender his contribution card when prompted to do so by the National Insurance Office, and we can accept that when that prompting ceased (as it did after one of their prompting letters was returned as not delivered to the East Preston address) Mr Partridge no longer complied with the requirement to surrender an expired card, and the whole system of exchanging an expired card for a new card each year ceased to function for him. We are confident that the procedures operated by the National Insurance Office, which we have described in some detail above from the evidence of Mr Greenshields, were such that, had Mr Partridge at any time handed in a stamped contribution card with any of his name, National Insurance number, or address, then his contributions would have been recorded, and he would have been back, so to speak, within the system.

52. It is material to note that in respect of 1973-74 Mr Partridge did not hand in a stamped contribution card, but loose stamps (for which he obtained a receipt, and which were recorded against his name on National Insurance Office records), and it is entirely consistent with that that in subsequent years he should have failed to hand in a stamped contribution card.

53. The issue, however, is not whether Mr Partridge surrendered a stamped contribution card, but whether he made Class 2 contributions by purchasing stamps in each of the contribution years in this period, and we have found that he did.

54. Without contribution cards there is no conclusive evidence as to the number of weekly stamps which he purchased in each contribution year. The point here, as we were advised by Mrs Logan, who represented HMRC at the hearing, is that since 1974 an earner was required to make full Class 2 contributions in order for a contribution year to be a qualifying year for the purpose of calculating the amount of the basic state retirement pension to which the earner is entitled - in other words, if in any contribution year Mr Partridge purchased fewer than 52 weekly Class 2 NIC stamps (or 53 in a 53 week contribution year), that would not be a qualifying year. For someone who is surrendering stamped cards each year, they are advised by the National Insurance Office that they should fully stamp the card in order to secure the benefits which are dependent upon a full record of contributions for the year.

55. We therefore have to decide whether, in each contribution year during this period, Mr Partridge purchased all the weekly stamps required to complete the contributions for that year. On the evidence before us, as set out above, we conclude that he did not in any contribution year in this period purchase 52 (or, where required, 53) weekly stamps. We prefer the evidence of Mrs Susan Partridge which was that stamps were purchased only for those weeks in which Mr Partridge was actually working, and that was not every week. Her evidence is given credibility by the fact that in every previous year in which Mr Partridge was making Class 2 contributions shown on surrendered contribution cards, he failed to purchase a stamp for each week of that year. Furthermore, in those years, even though the National Insurance Office wrote to him to point out that he had not made a full contribution, and inviting him to complete his contributions, Mr Partridge did not take the opportunity to complete his contributions.

56. If it were necessary for us to decide how many stamps Mr Partridge purchased in each contribution year in which he failed to surrender a stamped contribution card, we would conclude that the same pattern of purchasing stamps continued in 1974-75 and subsequently as was the case in the period 1965-66 to 1973-74. Applying the figures for that earlier period (but for calculation purposes disregarding 1965-66, when Mr Partridge changed from employed to self-employed status and also 1969-70, when Mr Partridge made no Class 2 NICs but is credited with Class 3 - non-employed - contributions), Mr Partridge would be treated as having purchased, on the basis of average, 34 stamps in each contribution year 1974-75 to 1992-93.

10 *Should Mr Partridge be allowed to make contributions now which are related back to each contribution year in the period 6 April 1993 to 5 April 2005? - Submissions and conclusions*

57. Mr Partridge acknowledges that he made no Class 2 NICs once the system of purchasing weekly stamps was terminated on 5 April 1993. He now wishes to make full contributions for each contribution year in the period 6 April 1993 to 5 April 2005, but only if such contributions are taken into effect so that the years in question are treated as qualifying years and thereby increase the amount of his basic state retirement pension. (The strict legal position is that, since Mr Partridge was liable in law to make full contributions in each of those years, HMRC could require him to make them now, but in a practice which HMRC have applied in Mr Partridge's case, HMRC waive the obligation on an earner to make past contributions where, in their view, such contributions would not secure increased benefits for the earner.)

58. Mr Partridge is entitled as of right to make "late" contributions which can be related back to the six prior years (with each of those years counting, for benefit purposes, as a qualifying year), and this he has done for the contribution years 2005-06 to 2010-11. As we have explained above (see paragraphs 16 and 17), "late" contributions can be related back to earlier years before that six year period (and counted for benefit purposes) only if the circumstances come within the scope of regulation 6 of the SSCC Regulations 2001 (and then only if HMRC exercise their discretionary right given to them by regulation 6 to treat the contributions as paid on the dates they should have been paid).

59. To come within the scope of regulation 6 of the SSCC Regulations 2001 Mr Partridge has to show that his failure to pay the Class 2 NICs at the proper time was attributable to his ignorance or error. If that is the case, he has to show, further, that such ignorance or error was not due to any failure on his part to exercise due care and diligence.

60. Mr Partridge's case is that he was aware that he could no longer pay his Class 2 NICs by purchasing weekly stamps, and that the National Insurance Office should have written to him to tell him how to proceed under the contribution payment arrangements introduced with effect from 6 April 1993. He says that it was not his fault that the National Insurance Office had deleted his address from their records when they received back the undelivered letter, and that his tax office was aware throughout of his address and corresponded with him there.

61. Mr Partridge denies that he failed to exercise due care and diligence: he says that he made several calls to the relevant helpline, which were fruitless since he was told no more than that there was no record of his being a self-employed earner and therefore could not make Class 2 NICs.
- 5 62. Mr Partridge also says that he was aware that he was paying Class 4 NICs together with his income tax, and that he concluded that that satisfied his liabilities as a self-employed earner to make National Insurance contributions.
63. Mrs Logan, for HMRC, submits that Mr Partridge's failure to pay Class 2 NICs in this period is attributable to his error, and that error was because he failed to take the action open to him to make payment - it was an error due to his failure to exercise due care and diligence. He knew he had a liability in this period to make Class 2 NICs, and apart from making some telephone calls he took no action to comply with his obligations over a period of 18 years, until in 2011 he realised the consequences of his inaction when he sought a statement of his state retirement pension entitlement.
- 10
- 15 64. Mrs Logan referred us to a number of cases which have considered the question of whether an earner's failure to make contributions is due to his failure to exercise due care and diligence: *Walsh v Secretary of State for Social Security* (a decision of the High Court in March 1994 under reference CO 3050/93); *Mrs A F Adojutelegan v Derek Clark (Officer of the Board)* Special Commissioners' Decision SpC430; *HMRC v Thompson* [2005] EWHC 3388 (Ch) (also a decision of the High Court); and *Rose v HMRC* (a decision of the Special Commissioners in 2006). Those cases establish, Mrs Logan argues, that if an earner is aware that he should be making contributions, but takes little or no action to make contributions, his ignorance or error in not making contributions is due to his failure to exercise due care and diligence.
- 20
- 25 65. Mr Partridge knew, and he quite properly accepts this to be the case, that from 6 April 1993 he needed to make Class 2 NICs in a different way from purchasing weekly stamps. Mrs Susan Partridge was told this at the post office where, until then, she had purchased weekly stamps on Mr Partridge's behalf. Publicity, not least through leaflets at post offices, was given to this important change in procedure, and it is reasonable to assume that Mrs Susan Partridge was given such a leaflet - or could have picked one up - at the post office where she regularly purchased contribution stamps for Mr Partridge.
- 30
66. Mr Partridge's evidence is that he took no action for some considerable time - perhaps for two years, despite knowing that he should be continuing to pay his contributions. As he told us, he waited to be told what he should do. He did then make some telephone enquiries, which he described as a frustrating experience, since no record could be found of him as a self-employed person. Thereafter he took no further action until he made enquiries in 2011 about his pension entitlement.
- 35
67. As we have already mentioned, it was probable that in the course of his telephone enquiries Mr Partridge was advised that if he was self-employed, but was not registered as such by the National Insurance Office, then he should register in order to make contributions. We were told that such advice was standard procedure
- 40

when a person called the helpline and no current record could be found of their self-employed status. It is an obvious point to make in response to an enquiry of the sort Mr Partridge would have made, and so it is likely that that was what Mr Partridge was told.

5 68. However, even if the telephone enquiries were as unhelpful as Mr Partridge states, other avenues of enquiry were open to him. Most obviously, he could have visited the Littlehampton office of the Department of Social Security, which, in the times he surrendered stamped contribution cards, was his personal point of contact with the National Insurance Office. Alternatively, he could have visited his post
10 office, where he would have been directed to the leaflets by which the National Insurance Office publicised these matters. Another possibility open to him was to enquire what he should do from the accountant who he told us prepared his income tax returns. We had no evidence from Mr Partridge that any of these possible avenues of enquiry was pursued.

15 69. We therefore conclude that Mr Partridge did not act or behave in the way which it is reasonable to expect an earner should act or behave when he knows he should be making National Insurance contributions. He made limited enquiries in the course of a period of 18 years but since, by his account, those enquiries elicited an unhelpful response, he did not seek to take the matter any further, or to make other enquiries
20 which could have resulted in his being registered as self-employed so that he could have made the Class 2 NICs which he knew he should have been paying.

70. Our conclusion is supported by the wider context of Mr Partridge's "history" of making Class 2 NICs: essentially it is a history of responding when prompted by the National Insurance Office, but of matters lapsing once that stimulus is no longer
25 provided. Further, he did not always respond even to promptings - when advised that he had made less than the full amount of contributions (that is, he had surrendered only partially-stamped contributions cards), and was requested to complete his contributions, he did not do so. Mr Partridge cannot therefore in his support point to a pattern of consistent and unprompted compliance in relation to his National Insurance
30 contribution obligations.

71. In the language of regulation 6 of the SSCC Regulations 2001, in the period with which we are concerned Mr Partridge's failure to pay the Class 2 NICs due in each contribution year was attributable to his error (the error being that he knew he should make the contributions and did not make the relevant payments), and that error
35 was because he failed to exercise due care and diligence. He did not take the steps which it is reasonable to expect a person in his position to take to comply with what he knew was his liability to make Class 2 NICs.

72. In reaching this conclusion we have taken into account Mr Partridge's limited skills in reading and writing. In practice, in pursuing his claim first in correspondence
40 with the National Insurance Office and then before this tribunal, he has shown a commendable ability to engage with and debate these rather difficult matters. In any event, we do not think that such limitation as he may have in his skills would have prevented him from pursuing more vigorously and purposefully than he did in 1993

and subsequently those enquiries which would have resulted in his paying the contributions which he knew he ought to be making.

73. Our conclusion on this issue is therefore that there is no ability for HMRC to treat any Class 2 NICs which Mr Partridge might now make in respect of any of the contribution years 1993-94 to 2004-2005 as paid in those years. Therefore if Mr Partridge chooses to make any such contributions they cannot count in the computation of the amount of the basic state retirement pension to which he is entitled.

74. We dismiss Mr Partridge's appeal.

10 *Right to apply for permission to appeal against this decision*

75. 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.

20

**EDWARD SADLER
TRIBUNAL JUDGE**

RELEASE DATE: 22 January 2014

25