



TC04264

Appeal number: TC/2014/02328

PROCEDURE – strike out application – whether some of issues res judicata because decided by the Special Commissioners in 2006 – held, yes – whether Tribunal had jurisdiction to consider other matters raised – held, no – appeal struck out.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

GEORGE WILKINSON

Appellant

- and -

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

TRIBUNAL: JUDGE ANNE REDSTON

Sitting in public at Fox Court, Gray's Inn Road, London on 6 January 2015

The Appellant in person

**Mrs Linda Gordon, of HM Revenue and Customs' Appeals and Reviews Unit,
for the Respondents**

DECISION

Introduction

1. Mr Wilkinson appealed to the Tribunal because he considers that there are errors in his National Insurance Contribution (“NICs”) record, as a result of which he is being paid a lower pension than that to which he is entitled.

2. He asked the Tribunal to direct that HMRC rectify these alleged errors and repay the shortfall in his pension. He also asked that the Tribunal resolve certain other matters relating to data protection, the costs of court proceedings and communication issues with HMRC.

3. HMRC applied to the Tribunal on 5 August 2014 for the appeal to be struck out on the grounds that:

(1) some of the matters in issue were *res judicata* because they had already been decided by this tribunal in the case of *Wilkinson v HMRC* [2007] STC SCD 9 (“*Wilkinson*”) and/or by other legal proceedings initiated by Mr Wilkinson. *Res judicata* is a legal term which means an issue is “already settled by the court” so cannot be re-opened and decided again; and

(2) the Tribunal had no jurisdiction over the remaining matters. This means that the Tribunal has not been given the power by parliament to consider and decide those issues.

4. I agreed with HMRC. The issues raised by Mr Wilkinson are either *res judicata* or outside the jurisdiction of the Tribunal. Mr Wilkinson’s appeal is therefore struck out. I recognise that he remains very upset and aggrieved about these matters, but there is no legal basis on which he can appeal them to this Tribunal.

5. This decision notice first sets out some background and then considers each of Mr Wilkinson’s grounds of appeal.

The background

6. Mr Wilkinson was an electrical engineer. He left his employment on 31 March 1991 and became self-employed. He reached 65 in May 2002 and was awarded a basic state pension and a graduated retirement benefit totalling £80.01 per week. The payment was reduced because Mr Wilkinson was treated as having been in contracted out employment from 6 April 1985 to 31 March 1991

Hearing at the Special Commissioners

7. Mr Wilkinson appealed to the Special Commissioners, initially on three grounds:

(1) he had not in fact paid contributions at the contracted out rate from 6 April 1985 to 31 March 1991;

(2) the contracting out certificate was not valid, so the employment was not “contracted out” within the meaning of the relevant statutory provisions; and

(3) he was in any event entitled to pay full contributions.

8. Dr Brice heard Mr Wilkinson's appeal over three days, 28 April, 30 August and 30 October 2006.

9. Mr Wilkinson accepted, in advance of the hearing, that he had paid
5 contributions at the reduced rate from 6 April 1985 to 31 March 1991, so ground (1) of his appeal fell away, see [11] of *Wilkinson*.

10. In relation to ground (2) Dr Brice decided that Mr Wilkinson was in contracted-out employment from 6 April 1985 to 31 March 1991, see [53] of *Wilkinson*. In relation to ground (3) she found that he was "neither liable nor entitled to pay contributions at the full rate," see [60] of *Wilkinson*. Dr Brice's decision was not
10 appealed.

Hearings at the Administrative Appeals Chamber and Court of Appeal

11. Mr Wilkinson also raised issues about his guaranteed minimum pension. Those issues, and the amount of his state pension, were decided by the Appeals Service after
15 Dr Brice issued her decision, see [9] of *Wilkinson*.

12. On 13 December 2006, Mr Wilkinson's pension was revised from £80.01 to £122.62, effective from 13 May 2002.

13. On 20 December 2006, Mr Wilkinson appealed against that decision on the grounds that:

- 20 (1) there had been an error in the calculation ("Ground 1"); and
(2) the GMP should have been deducted from the whole of the pre-1997 additional pension ("Ground 2").

14. The appeal was heard by a tribunal which dismissed the appeal on both
25 Grounds, and refused permission to appeal to a Social Security Commissioner. Mr Wilkinson renewed his application for permission to appeal, and at an oral hearing in 2007 Commissioner Rowland refused permission on Ground 1 but adjourned his decision on Ground 2 to allow Mr Wilkinson to obtain representation.

15. On 3 November 2008, the Tribunal, Courts and Enforcement Act 2007 came
30 into force and the Upper Tribunal took over the functions of the Social Security Commissioners. Commissioner Rowland became a judge of the Upper Tribunal and it appears from [6] of the Upper Tribunal judgment (*Wilkinson v Department of Work and Pensions* [2008] UKUT 33 (AAC)) that he gave Mr Wilkinson permission to appeal on Ground 2.

16. Mr Wilkinson obtained legal advice from a barrister acting through the Free
35 Representation Unit. Rowland J, in a careful and detailed judgment, explains the issue and the contentions of the parties, as well as the legal framework and the provisions in dispute. He identified an anomaly in the legislation which had adversely affected Mr Wilkinson, see [24]. However, at [30] he said that:

“I do not consider that I can remove the anomaly that this case reveals merely through judicial interpretation of the legislation. Accordingly, I must dismiss the claimant’s appeal.”

17. He ends his judgment by saying:

5 “It really is not clear to me why, in the present case, the decision of the
pension scheme of which the claimant was a member to opt for a fixed-
rate revaluation of his guaranteed minimum pension should have had
10 the effect that, at least for the first few years of his entitlement to a
retirement pension, the claimant derived less benefit from the
contributions he had made to the National Insurance Fund before and
after his six years of contracted-out employment than he would have
done had he been unemployed for those six years.”

18. On 28 May 2009, Buxton J gave Mr Wilkinson permission to appeal to the
Court of Appeal. The hearing took place on 15 September 2009 before Longmore LJ,
15 Smith LJ and Patten LJ. The Court unanimously dismissed the appeal and confirmed
the judgment of Rowland J.

19. No costs were awarded against Mr Wilkinson for the proceedings at the Upper
Tribunal or the Court of Appeal.

Hearings at Medway County Court

20. Mr Wilkinson made one or more claims against HMRC to recover the money
which he said had been wrongly withheld from his pension. This Tribunal was not
provided with any specifics of these proceedings, other than that:

- (1) there were three hearings at the Medway County Court;
- 25 (2) on 25 November 2011, the Court decided that his claim had no reasonable
prospect of success, and permission to appeal was refused. Mr Wilkinson
renewed his permission application to the High Court but this was refused on 15
October 2012;
- (3) costs of £18,277.68 were awarded against Mr Wilkinson;
- 30 (4) Mr Wilkinson was issued with a civil restraint order. Practice Direction
3C, issued under Rule 3.11 of the Civil Procedure Rules, states in its
Introduction that these orders are “issued against a party who has issued claims
or made applications which are totally without merit.” PD 2.1 says that limited
civil restraint orders “may be made by a judge of any court where a party has
35 made 2 or more applications which are totally without merit.” The order lasted
for two years and expired on 25 November 2013.

21. On 11 December 2013, HMRC offered to accept £15,844 from Mr Wilkinson in
full and final settlement of the costs awarded by the County Court, and threatened to
initiate bankruptcy proceedings if the sum was not paid by 6 January 2014.

22. On 6 January 2014, Mr Wilkinson paid the £15,844 by electronic bank transfer.

Communications with HMRC

23. Mr Wilkinson has engaged in frequent correspondence with many individuals and departments within HMRC, including their Solicitors' Office. He has also raised his concerns with the HMRC Adjudicator, who did not uphold his complaint.

5 24. On 2 September 2013, he wrote asking for a meeting with Ms Lin Homer, HMRC's Chief Executive. On 19 September 2013, Mrs Ruth Owen, Director General of HMRC, replied saying:

10 "Unfortunately, you have not given us any new evidence to suggest that the information we hold on your National Insurance contributions record is incorrect.

You have asked for a meeting with the Chief Executive. We cannot agree to this request. The Upper Tribunal, the Court of Appeal, the Adjudicator and the County Court have all reviewed your concerns and decided there is no case to answer.

15 ...We will continue to read any letters you send us, but we will not acknowledge any further correspondence or reply on this matter unless we consider that you have given us new information.

I am sorry this is not the response you were hoping for."

20 25. At some point between the receipt of that letter and 18 December 2013, Mr Wilkinson made a complaint to the Information Commissioner about the errors he said HMRC had made in relation to the information stored about his pension on HMRC's computer, known as "National Insurance Recording System 2" ("NIRS2").

25 26. On 3 April 2014, Mr Wilkinson wrote to Ms Homer, claiming repayment of £53,620, being the shortfall in his pension, the costs of the county court proceedings, and interest. He wrote further letters on 20 January 2014, 5 March 2014 and 3 April 2014.

30 27. The last of these letters was provided to the Tribunal. It said that interest was accruing on the amount HMRC owed Mr Wilkinson at a rate of £131.87 per week. It asked Ms Homer to "please authorise payment without further delay." In the same letter, he asked Ms Homer to arrange a meeting between him and HMRC's IT supplier, ASPIRE. His letter ends "Your early reply would be appreciated." Ms Homer did not reply.

Mr Wilkinson's grounds of appeal

35 28. On 23 April 2014 Mr Wilkinson filed a Notice of Appeal to the Tribunal. That Notice contained a list of Mr Wilkinson's grounds of appeal. These were supplemented by a letter of 10 June 2014. In this decision, when I refer to "grounds of appeal" I mean those in Mr Wilkinson's Notice to the Tribunal and also those in his letter of 10 June 2014. Mr Wilkinson also helpfully clarified some of the points at the hearing.

The alleged errors in the NIC contribution records

29. Mr Wilkinson's main submission is that the NIRS2 computer contains incorrect information about his pension and that HMRC should be directed to rectify it by the Tribunal.

5 30. At the hearing, Mr Wilkinson accepted he had been in contracted out
employment between 1985 to 1988, but not from 1988 to 1991. Furthermore, he said
that the wrong company name was used on the contracting out certificate, so it was
not valid. He acknowledged that these points had been decided against him by the
Special Commissioner, and also accepted that he had not appealed the decision at the
10 time, but he said he wanted the Tribunal to look at the matter again. He provided a
copy of his P60 for the tax year 1990-91 and said that a box on that form showed he
was not in contracted out employment.

15 31. Mrs Gordon said that these issues were *res judicata*, and the Tribunal could not
reopen it. In relation to the P60, she said that the box was not relevant to the
employment in question.

20 32. I agree with Mrs Gordon that the matters raised are *res judicata*. If a matter
under appeal is decided by the Special Commissioners, a tribunal or a court, the losing
party can only continue to litigate that matter if he appeals to the next level of the
court system. And even then, it is only possible to appeal if the Special
Commissioner, tribunal or court has made an error of law in its decision. If Mr
Wilkinson had disagreed with Dr Brice's decision, his only option was to ask for
permission to appeal shortly after the receipt of her decision, within the time limits set
by the Rules which then applied.

25 33. This is because it is a fundamental principle of our legal system that the
outcome of litigation should be final. In *Taylor v Lawrence* [2002] EWCA Civ 90 at
[6], Lord Woolf reiterated that principle, and went on to state that:

“Where an issue has been determined by a decision of the court, that
decision should definitively determine the issue as between those who
were party to the litigation.”

30 34. The principle applies whether or not a person later identifies something which
he thinks might have assisted his case. Mr Wilkinson's P60 may be one such piece of
evidence: I do not know if it was provided to Dr Brice. I also make no finding on
whether he is right, or whether Mrs Gordon is right, as to what it shows. It is simply
not possible to bring new evidence to the Tribunal and ask that the issue be reopened,
35 some eight years after the Special Commissioners have decided the case. At [9] of
Taylor v Lawrence, Lord Woolf CJ said:

40 It is not uncommon for fresh evidence to come to light after a judgment
has been perfected which puts that judgment in doubt. In such
circumstances the unsuccessful litigant may be able to invoke that
evidence in order to challenge the judgment by an appeal. Once the
judgment is perfected, however, the court that has delivered the
judgment, be it a court of first instance or the Court of Appeal, would
not entertain an application to reopen the judgment in order to consider

the effect of the fresh evidence. This is not because of any express statutory prohibition. In considering the extent of their jurisdiction the courts have ruled that a perfected judgment exhausts their jurisdiction because this accords with the fundamental principle that the outcome of litigation should be final.”

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35. This ground of appeal cannot succeed. The Tribunal has no jurisdiction to hear these matters, because they have already been decided by the Special Commissioner, Dr Brice.

The Schedule and the payments

10 36. Attached to Mr Wilkinson’s Notice of Appeal is a detailed Schedule setting out the NICs he said he had paid since 1985; he asked the Tribunal to “uphold” that Schedule. At the hearing, Mr Wilkinson said that “the people at NICO interfered with my records and are not applying the definition of contracted out employment properly.” He also asked the Tribunal to direct that HMRC stop reducing future
15 payments of his pension.

37. The amount of pension payable is either a matter of law or a matter of calculation. The only matters of law which have been identified in relation to the alleged shortfall in Mr Wilkinson’s pension payments have already been decided by the Special Commissioners and by the Upper Tribunal/Court of Appeal. These
20 matters are therefore *res judicata*.

38. Decisions on matters of calculation are administrative issue not legal issues, and so cannot be appealed through the court or tribunal system, unless the decision taken is one which meets the very high threshold for judicial review. Otherwise, they can only be dealt with by HMRC. The correct route is for Mr Wilkinson to make a
25 complaint to HMRC which can then be referred to the Adjudicator. He is however aware of this route and has made one or more complaints already, which have not been upheld.

Matters linked to the Upper Tribunal and Court of Appeal judgments

30 39. Mr Wilkinson sought to rely on Rowland J’s statement that there were anomalous consequences arising from the statutory provisions, which in turn formed the basis of Buxton J grant of permission to appeal to the Court of Appeal. Mr Wilkinson’s Notice of Appeal to the Tribunal says that Buxton J’s Order “identifies the anomalous effects of HMRC unfair and unlawful processing related to my NI contribution record” and asks the Tribunal to require HMRC to rectify that anomaly.

35 40. This argument cannot succeed. The legislation in question is not tax but social security law, so this Tribunal has no jurisdiction to consider it. Mr Wilkinson has already appealed this matter to the correct court, and his appeals have been dismissed.

41. I simply observe that, although Rowland J identified an anomaly in the statute, he also found that the court could not remedy that anomaly. It is contained in
40 legislation enacted by Parliament, and the court was unable to make any changes

which might help Mr Wilkinson. Mrs Gordon said that HMRC too are also unable to make those changes: they are bound by the law.

42. In other words, the Upper Tribunal and Court of Appeal have carefully considered whether the law can be read in such a way as to help Mr Wilkinson, but found that it could not.

Data control

43. Mr Wilkinson alleges that HMRC have failed in their duty as a data controller by not properly processing his NIC contributions. This Tribunal does not have any jurisdiction to consider complaints about data control. Mr Wilkinson has already made contact with the Information Commissioner.

Costs issues

44. As we have already recorded, Mr Wilkinson lost his claim(s) at the County Court and was required to pay HMRC their costs. His Notice of Appeal to the Tribunal says that the settlement amount was paid “under duress,” and asks the Tribunal to direct that HMRC refund him this money.

45. This Tribunal has no jurisdiction over costs awarded by a different court. It cannot direct that HMRC refund these costs, any more than the County Court could direct a party to refund costs awarded by this Tribunal.

Human rights and the HMRC letter

46. Mr Wilkinson’s Notice of Appeal refers to the letter of 19 September 2013, in which Mrs Owen refused Mr Wilkinson’s request for a meeting with Ms Homer, and says that HMRC will not respond to any further correspondence. Mr Wilkinson submitted that it is a “decision” which:

“breaches my rights under the Human Rights Act 1988 sections 2, 3, 6, 7 and Articles 3, 6 8 and 14, Protocol 1 Article 1.”

47. At the Tribunal, Mr Wilkinson clarified that he was taking issue in particular with the final paragraph, being “the decision not to communicate with me.”

48. Mrs Gordon said that it was not a “decision” which can be appealed to this Tribunal and I agree. This Tribunal has no power to direct that HMRC respond to communications and it has no jurisdiction to consider submissions that HMRC’s refusal to communicate with Mr Wilkinson amounts to a breach of his human rights.

Decision and appeal rights

49. For the reasons set out above, this appeal is struck out. The grounds on which Mr Wilkinson seeks to rely are either matters which have already been decided against him by the Special Commissioners, so are *res judicata*, or are other matters which this Tribunal has no jurisdiction to decide.

50. 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.

51. 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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**ANNE REDSTON
TRIBUNAL JUDGE**

RELEASE DATE: 3 February 2015

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