



**TC04968**

**Appeal number: TC/2015/4390**

***NATIONAL INSURANCE CONTRIBUTIONS – challenges to contributions record – married woman’s election – s 102 National Insurance Act 1965 – reg 2 National Insurance (Married Women) Regulations 1948 – age of contractual capacity***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Mrs JANET POWELL**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: Judge Peter Kempster  
Mr Philip Jolly**

**Sitting in public at Centre City Tower, Birmingham on 25 February 2016**

**The Appellant in person**

**Mrs Lesley Crawford (HMRC Appeals Unit) for the Respondents**

## DECISION

1. The Appellant (“Mrs Powell”) appeals against a decision issued by the Respondents (“HMRC”) dated 10 February 2015 (“the Disputed Decision”) determining her contributions record for the purposes of National Insurance Contributions (“NIC”). The effect of the Disputed Decision is that Mrs Powell has made insufficient contributions to qualify for a full state pension. Mrs Powell disagreed with the Disputed Decision in a number of respects and, further to discussions, HMRC have agreed to amend her record or allow her to pay additional contributions for a number of contribution years. However, Mrs Powell still challenges the Disputed Decision on several issues.

2. The events covered by the appeal extend over many years during which time the names and responsibilities of the various Government departments have changed several times. That history was concisely set out by Special Commissioner Dr David Williams in *Philip Langley Rose v HMRC* (SpC 574) [2007] STC (SCD) 129 at [3-4]. In this decision notice we use “HMRC” to include its predecessor departments, and “DWP” to mean the Department of Work and Pensions and its predecessor departments.

### **Matters in dispute**

3. At the hearing the Tribunal attempted to identify the matters in dispute. Mrs Powell’s statement of case dated 30 November 2015 stated “... there were 2 separate periods that were incorrect. One was in the early 70’s and the other in the mid eighties around the period of my Judicial Separation and Divorce.” HMRC had prepared for the hearing on the basis that the second of those periods had already been resolved by Mrs Powell being permitted to pay (and paying) late contributions for the relevant years, and thus the only period in dispute was 1971 to 1975. However, at the hearing Mrs Powell stated that there were other matters she wished to raise. With the assistance of the Tribunal these were identified to be as listed below. Although this formulation of the dispute was not clarified until the hearing, Mrs Crawford for HMRC was able to address all the points and, therefore, we consider that both parties were able to present fully their respective cases. In reverse chronological order:

(1) For the 2013-14 contributions year – Mrs Powell received Jobseekers Allowance (“JSA”) in this period which she believes should entitle her to credited contributions.

(2) For the 1990-91 contributions year – Mrs Powell had several employers in this period, one of whom was wound up and apparently had not accounted to HMRC for NIC deducted.

(3) For the 1987-88 and 1988-89 contributions years – Mrs Powell was granted a judicial separation from her husband in 1987, which she believes should have terminated her married woman’s election, but HMRC had treated her as exempt for these two years.

(4) For the 1970-71 to 1974-75 contributions years – Mrs Powell denied that she had signed a married woman’s election on 13 April 1971. Further, any such election would have been invalid as she was a minor at that time.

### **2013-14 contributions year**

#### 5 *Mrs Powell’s submissions*

4. Mrs Powell was concerned that DWP had a record of the JSA benefit paid (as evidenced by a letter from Jobcentreplus Nottingham Benefit Service Centre dated 30 November 2015) but HMRC did not; she felt it may be due to a new computer system and that the issue may affect other people as well as Mrs Powell.

#### 10 *HMRC’s submissions*

5. Mrs Crawford for HMRC confirmed that Mrs Powell’s statement of account held by HMRC did not record any JSA for this year (although there was a record of JSA in 2003-04). HMRC held no general record of JSA payments as that was a matter for DWP; DWP would inform HMRC of the amounts and HMRC would then include those figures on the statement of account. The matter had been addressed by the HMRC caseworker in a letter dated 26 November 2015 to Mrs Powell in which it was explained that no NIC was due on JSA in her circumstances and she was advised to contact her local DWP office.

#### *Conclusions*

20 6. Mrs Powell, as appellant, bears the burden of proving, on the balance of probabilities, that HMRC’s statement of account of her NIC record is incorrect. Apart from the DWP letter confirming receipt of JSA, we have no indication that the contributions record is incorrect – to be clear, even if the earnings record should include JSA, there is no basis for the Tribunal to adjust the NIC record as HMRC contend there are no NIC credits attached to JSA in Mrs Powell’s circumstances. On 25 the basis of the evidence available to us we do not accept that the contributions record for 2013-14 is incorrect. At the request of the Tribunal HMRC agreed to contact DWP direct on this point, to check the amounts of JSA paid and the consequent NIC implications, if any.

### 30 **1990-91 contributions year**

#### *Mrs Powell’s submissions*

7. Mrs Powell had three employers in this period: Dialrack Ltd, Related Technology Consultants Ltd and Surface Mount Technologies Ltd (“SMT”). SMT had been wound up and Mrs Powell was concerned that SMT may not have accounted to HMRC for NIC deducted. She was concerned that she might be bearing the consequences of a default where she had no blame; her earnings were above the lower earnings limit and so she assumed NIC would have been deducted; she was also 35 concerned that the issue may affect other people as well as herself.

*HMRC's submissions*

8. Mrs Crawford for HMRC confirmed that Mrs Powell's statement of account held by HMRC recorded for this year a small amount (£5.78) from Related Technology Consultants Ltd and a nil amount from Dialrack Ltd; there was no record  
5 of payments from SMT. Mrs Crawford was aware of situations where HMRC had given credit for deductions withheld but not paid over by the employer, but this would require evidence that NIC had been deducted.

*Conclusions*

9. Again, Mrs Powell, as appellant, bears the burden of proving, on the balance of  
10 probabilities, that HMRC's statement of account of her NIC record is incorrect. The basis on which some credit may be given for failure to pay primary Class 1 contributions where there is no consent, connivance or negligence on the part of the employee was explained by this Tribunal in *Thomas Joseph Beamish v HMRC* [2009] UKFTT 271 (TC) at [31]. Apart from Mrs Powell's recollection of events 25 years  
15 ago we have no evidence that the record is wrong. Mrs Powell confirmed that, understandably, she has not retained her payslips from that time. Mrs Crawford stated that HMRC's employer records were unlikely to record events that long ago. On the basis of the evidence available to us we do not accept that the contributions record for 1990-91 is incorrect. At the hearing we suggested to Mrs Powell that she might  
20 approach DWP to see if they had any record of SMT making withholdings from her pay, but bearing in mind that their records were unlikely to go back that far.

**1987-88 and 1988-89 contributions years**

*Mrs Powell's submissions*

10. Mrs Powell recalled that in February 1987 she visited the DWP (then DSS)  
25 office in Basingstoke and handed over copies of her judicial separation documents. She had been ill and was given a £50 or £100 loan against her NIC record; this would not have been a social security benefit as she was employed at this time; she had also signed a cancellation of the married woman's election; she had informed her then employer (Digital Equipment). HMRC had then unaccountably changed her status  
30 back to married woman without any recourse to her. She believed she should have NIC credits for these two years. Her ex-husband had lost entitlement to married man's allowance from the date of separation. HMRC had acknowledged that the legal separation (rather than the later divorce) removed the married woman's election and thus their records were incorrect; HMRC had allowed her to pay around £200  
35 contributions in respect of those years and she had paid that because she wanted to sort matters out as her father had died recently; on reflection she felt she should be given credits for those years.

*HMRC's submissions*

11. Mrs Crawford for HMRC confirmed that HMRC had amended the date of  
40 termination of the married woman's election to reflect the judicial separation and had

5 allowed Mrs Powell to make late payments of NIC for those two years. Mrs Crawford was unaware of any facility for persons to borrow against their NIC record as described; it sounded like an emergency means payment made by the social security authority. HMRC had no record of notification of a cancellation of the election.

### *Conclusions*

10 12. We conclude that by permitting Mrs Powell to make late contributions for the two years, the contributions record has been amended to address Mrs Powell's concern about her record for those years and there is a full contributions record for those years. Therefore, there is no open issue before the Tribunal on this matter. If Mrs Powell is contending that she should be repaid the amounts but still be given credit then, on the basis of the information available to us, we see no justification for that course of action.

### **1970-71 to 1974-75 contributions years**

15 13. We consider there are two matters for determination by the Tribunal here:

(1) The factual matter of whether Mrs Powell made a married woman's election on 13 April 1971.

(2) The legal matter of whether, if we find that such election was made, it was legally valid, given that Mrs Powell was under the age of 18 at that time.

20 *Whether Mrs Powell made a married woman's election on 13 April 1971*

14. Mrs Powell submitted as follows:

(1) HMRC's practice of relying on the NIC stamps shown on their records was unreliable because:

25 (a) Large employers (including at least one company that employed Mrs Powell) paid without affixing stamps to the employees' cards.

(b) Employers would have been likely to change their payment methods with the advent of decimal currency in 1971 and the three-day-week in 1973.

30 (c) Eventually, statutory provision was made for PAYE and NIC to be paid together.

(2) Thus an analysis by HMRC of the stamps affixed was bound to be misleading. HMRC's records were bound to show that she was a married woman because she had informed them of that fact when she married.

35 (3) She considered that HMRC's NIC Manuals were poorly written. There was confusion between the married woman's stamp and being exempt. Only persons over retirement age were exempt, so it was not the case that she had ever had "exempt" status. The records had incorrectly recorded her as being exempt when in fact she had been paying a married woman's stamp. This

position may have affected a number of married women at the time. She had obtained a letter from her MP and had referred matters to the Parliamentary Ombudsman, but HMRC had ignored both.

5 (4) In *Janet Mary Spraggs v HMRC* [2011] UKFTT 333 (TC) the Tribunal had found that the taxpayer had not made a married woman's election despite HMRC's record to the contrary.

10 (5) Mrs Powell recalled that when she saw the Registrar the week before her marriage in December 1970 she was told that although she was getting married that did not make her an adult in the eyes of the law, and that she could not sign anything until she reached the age of eighteen but that if anything needed to be signed then her husband (but not her parents) would be able to sign on her behalf. Accordingly, she would not have signed the election.

15 (6) She did not make a married woman's election on 13 April 1971. She had made the married woman's election on 7 October 1974, shortly before leaving Crookes Laboratories to work for the AA. She had had to contact her husband to find his NI number and this took around a week. The signing process was quite formal; she was put in an office next to the personnel department at Crookes Laboratories and a chap from the Ministry went through the scheme prior to her signing. She had signed because it was a way of getting extra  
20 money in her pay packet at a time when economic conditions were very bad.

(7) She had no idea why her contributions record (the Form RF1) (which she had seen only recently) marked her as signing the married woman's election on 13 April 1971 – that was the day she started work at Crookes Laboratories.

25 (8) She had paid Graduated NIC, which contradicted the idea of her having a married woman's election in force.

15. In her statement of case Mrs Powell had stated "The remaining items on the RF1 [other than the date of the married woman's election] all make sense." However, at the hearing she stated she wished also to examine other entries on the RF1. Mr Alan Greenshields of HMRC (an officer with extensive experience of the NIC  
30 procedures operated over the years by HMRC and its predecessor departments) had prepared for the hearing a statement of the procedures used at the relevant times, and was present at the hearing. The Tribunal allowed Mrs Powell to quiz Mr Greenshields on the meaning of various entries on the RF1, such as why certain items were recorded in particular columns on the RF1. Mr Greenshields answered all those  
35 questions adequately and it was clear to the Tribunal that Mrs Powell had simply misunderstood some of the abbreviations and terminology used on the RF1.

16. Mrs Powell contended that the manner in which the system for married women was administered by HMRC varied from the description given in the NIC Manuals (particularly at NIM30021 & NIM30022). The Tribunal allowed Mrs Powell to quiz  
40 Mr Greenshields on the procedures. Mr Greenshields answered all those questions adequately and we make a finding that the description given by Mr Greenshields accurately summarises the operation of the married woman's election at the relevant time (and was fully in accordance with the information in the relevant parts of the NIC Manuals), as below:

## “HOW NATIONAL INSURANCE CONTRIBUTIONS WERE PAID AND BROUGHT TO ACCOUNT BEFORE 6 APRIL 1975

Up to 6 April 1975 there were three Classes of National Insurance contributions:

- 5                   • Class 1 contributions were paid by those who were employed, the employee and the employer each paid a share of the cost of the contribution.
- Class 2 contributions were paid by the self-employed
- Class 3 contributions were paid by the non-employed.

10                 Contributions were paid by stamping a contribution card. The employer was responsible for stamping the employee's card and those who were self-employed or non-employed were responsible for the stamping and safe keeping of their card.

15                 Contribution cards had to be exchanged at the local Social Security office on expiry. A new card was issued in exchange and this was in effect a receipt for the expired card. In Mrs Powell's case her contribution card fell to be exchanged during the first week of December each year.

20                 At that time a manually kept clerical record sheet - form RF1- existed for each insured person and these were centrally stored at Records Branch.

25                 Each expired card was forwarded by the local office to Records Branch at Newcastle upon Tyne where it was brought to account. The card was matched to the correct NI contribution record from the NI number and identity details shown on the front of the card. The number of contributions were then counted up and recorded.

### THE POSITION OF EMPLOYED MARRIED WOMEN

30                 A woman who married was required to inform her local Social Security office of her marriage details. Mrs Powell's NI contribution record was updated to show her change of name from Aling to Morris on 15 April 1971.

35                 When a local office received a marriage notification they were required to issue the person with leaflet NI1 "Married Women". The leaflet set out the options available to married women and the effect those option might have on future benefit entitlement.

                    One of those options was for an employed married woman to elect not to pay Class 1 (employed person) National Insurance contributions.

40                 Although an election not to pay removed a married woman's liability to pay Class 1 contributions she was still liable to pay a small contribution which covered her for injuries at work under the Industrial Injuries provisions. This was often referred to as an exempt rate contribution. The election did not remove the employer's liability to pay his share of the Class 1 contribution there was thus no advantage to the employer if the employee elected not to pay.

A form CF9 was attached as a tear-off portion to the leaflet and had to be completed and submitted to the local office if the married woman wished to elect not to pay.

Once the application was approved:

- 5
- a special contribution card was issued to the person
  - a notification was sent to Records Branch so that the person's contribution record sheet could be noted with the date from which the election was effective.

10 The special card gave the employer the authority to deduct only exempt rate contributions from the person's wages.

Mrs Powell elected not to pay contributions from 1 April 1971.

15 The legislation which provided this option was regulation 2 of the National Insurance (Married Women) Regulations 1948. Neither the legislation nor Leaflet NI 1 provided any age restriction when such an election could be made.

When an expired exempt rate card was surrendered for exchange it was forwarded to Records Branch. It was checked against the person's record sheet to make sure an election was noted.

20 The exempt rate contributions were not recorded unless the person had been contracted-out of the Graduated Pension scheme. Mrs Powell's record shows that she was contracted out and exempt rate contributions are recorded in the 1973-1974 and 1974 -1975 contribution years.

#### THE GRADUATED PENSION SCHEME

25 Up to 1961 a basic retirement pension could be earned by the payment of Class 1, 2 or 3 National Insurance contributions. On 3 April 1961 a new scheme was introduced by the Government which provided a pension in addition to the basic retirement pension which could be earned by the payment of additional contributions. This was called the Graduated Pension scheme.

30 Graduated contributions were related to the amount a person earned and were paid by a person who:

- Was age 18 or over
- Was an employed person
- Earned more than £9 per week

35 They were collected along with PAYE tax and collected by the Inland Revenue.

40 To accommodate the recording of Graduated Contributions a computer system was used. This meant that two record keeping systems existed; one for the recording of flat rate contributions paid by stamp card, another for the recording of Graduated Contributions.

At the end of each tax year end of year returns were submitted to Graduated Records at Newcastle upon Tyne where:

- the amount of Graduated Contributions paid was recorded



- the returns were microfilmed for archival purposes
- the returns were sent back to Inland Revenue who were the owners of the documents.

5 There was no provision for a married woman to elect not to pay Graduated Contributions. A married woman's liability to pay Graduated Contributions was not affected by any election she had made not to pay Class 1 National Insurance contributions.”

17. Mrs Crawford for HMRC submitted as follows:

10 (1) The entry on the RF1 of “MW1/NP 13/4/71” was unequivocal that HMRC had received a married woman’s election dated 13 April 1971. As explained in the NIC Manual at NIM30021:

**“Special Cases: Married Women: Background: Position up to 5 April 1975: Administrative procedures**

15 A woman who married was required to notify the DSS of her date of marriage and change of surname. When a local office received such notification a leaflet NI 1 “Married Women” was sent to the woman. The leaflet explained that a married woman could choose whether or not to pay contributions; it also contained form CF9 on which she could make her choice.

20 Invariably the woman brought her marriage certificate to the local office and before making a choice the officer attending to her was required to explain the effect of choosing whether or not to pay. In making her choice the woman declared that she had either read leaflet NI 1 or had it explained to her.

25 Records Branch was the part of the DSS responsible for the maintenance of National Insurance records. When the local office received a form CF9 indicating that the woman did not wish to pay contributions a notification was completed by one officer and cross checked by another before despatch to Records Branch. The form CF9 was kept in the local office for a period of 6 years and then, in line with DSS policy, destroyed.

35 When the notification was received in Records Branch the clerk recorded the election on the permanent record (RF1). The entry on the record was abbreviated as, for example, “MW1/NP” – Married Woman in Class 1 employment who had chosen Not to Pay.

40 During the period from 5.7.48 to 5.4.75 an employed married woman who had chosen not to pay National Insurance contributions still paid a small contribution of a few pence a week which was due under the Industrial Injuries Act. These covered the woman for injuries at work but not for any other benefits.

45 It was necessary for a special stamped card to be issued to enable payment of the industrial injuries rate (commonly known as exempt rate) stamps to be paid. Such stamp cards were quite distinctive from

normal National Insurance cards and gave the employer the authority to deduct contributions from the employee's earnings at the exempt rate.

5                   There was no advantage to be gained by the employer where a married woman chose not to pay as the employer's share of the contribution remained at the same rate as for a normal Class 1 stamp.

...”

10                   (2) There was no evidence that Class 1 contributions had been paid in the years following 13 April 1971. Given the record of the election on the RF1, if Class 1 contributions had been received then an enquiry would have been alerted to examine the discrepancy. There was nothing on Mrs Powell's record to indicate that such enquiries were needed or undertaken.

15                   (3) On 6 April 1975 the NIC scheme was reconstructed and the contributions system was fully computerised. Where a married woman had elected not to pay contributions, that election was treated as an election to pay married woman's reduced rate contributions from 6 April 1975: regs 91 & 100 Social Security (Contributions) Regulations 1975. Mrs Powell's record recorded that reduced rate contributions were deducted by her employers from 1975 until 20 April 20                   1989 when her marriage ended on divorce. That was consistent with the election made on 13 April 1971.

25                   (4) The Graduated Contributions scheme (provided for by ss 1 & 2 National Insurance Act 1959) was a separate scheme and contained no provision for a married woman to be excepted from payment. Thus any Graduated Contributions paid by Mrs Powell were irrelevant to the point now in issue.

18. Our conclusions on the factual matter of whether Mrs Powell made a married woman's election on 13 April 1971 are as follows:

30                   (1) The entry on the RF1 of “MW1/NP 13/4/71” records that HMRC received a married woman's election dated 13 April 1971.

                      (2) The *Spraggs* case can be distinguished because there the RF1 did not record an election having been made: (at [9]) “However, there is no record on the RF1 of Mrs Spraggs having made an election or completing a CF9.” In Mrs Powell's case the RF1 clearly records an election having been made.

35                   (3) As the Tribunal stated in *Joan McPhail v HMRC* [2011] UKFTT 369 (TC) (at [41]) the entries on a RF1 are not conclusive evidence; there remains the possibility of, for example, clerical error.

                      (4) Despite Mrs Powell's arguments to the contrary, we find that everything about her contributions record is consistent with her having made a married woman's election on 13 April 1971.

40                   (5) We considered Mrs Powell to be an honest woman. However, Mrs Powell is doing her best to recall events that occurred over 40 years ago, and her recollections must be seen in that light. She candidly stated to the Tribunal, “I get confused about the years.” She explained that there were several traumatic

5 events (which we need not detail here) in her personal life at the relevant time. She recalled that she made the married woman's election on 7 October 1974, shortly before leaving Crookes Laboratories to work for the AA, but her P11 (tax deduction certificate) from Crookes Laboratories Group Limited shows she left that employment on 22 June 1973. On balance, we conclude that Mrs Powell's recollection of these events is imperfect.

(6) Having considered carefully all the evidence we conclude that Mrs Powell did a make married woman's election on 13 April 1971.

10 *Whether the 13 April 1971 election was legally valid, given that Mrs Powell was under the age of 18 at that time*

19. Mrs Powell submitted as follows:

(1) Section 1 Family Law Reform Act 1969 had set the age of majority at 18 (reduced from 21) with effect from 1 January 1970 (art 2 The Family Law Reform Act 1969 (Commencement No. 1) Order 1969).

15 (2) Mrs Powell's date of birth was 10 September 1953. Thus on 13 April 1971 she had been a minor.

(3) As already stated (see [14(5)] above), prior to her marriage Mrs Powell had been told by the Registrar that although she was getting married that did not make her an adult in the eyes of the law, and that she could not sign anything until she reached the age of eighteen.

(4) In a House of Commons debate on the Latey Committee's Report on the age of majority (Hansard HC Deb 10 April 1968 vol 762 c1402) the Attorney-General (Sir Frederick Elwyn Jones) stated:

25 "The legislation to be introduced will reduce from 21 to 18 the age at which a person has full powers to enter into a binding contract, to give a valid receipt and to hold and dispose of property. The minimum age for making a will, for acting as a trustee or personal representative, for acquiring an independent domicile and for consenting to the giving of blood will also be 18."

30 Also in that debate Mr James Griffiths stated (c1406):

35 "Bearing in mind that it is now over 20 years ago that this House decided for the purpose of our social insurance scheme that persons should be treated as adults both for contributions and for benefits at the age of 18, and bearing in mind, too, that for the purposes which my hon. and learned Friend has outlined again they will be treated as adults, does he not agree that the case for the vote at the age of 18 is overwhelming?"

(5) Accordingly, an election signed by a seventeen year old girl had no legal effect.

40 20. Mrs Crawford for HMRC submitted as follows:

(1) Regulation 2 National Insurance (Married Women) Regulations 1948 provided:

5                   “A woman may elect not to be, and thereafter shall not be, liable to pay contributions under the Act in respect of any employment as an employed person for any period during which she is married.”

(2) There is nothing in the legislation which provides the age at which such an election could be made.

10           (3) A married woman under the age of 18 who did not make a married woman’s election would be liable to pay Class 1 contributions at the “Girls contribution rate”. An election removed that liability.

(4) A person under the age of 18 had the same benefit rights as one over that age.

15           21. We did not have the benefit of detailed legal argument on the matter of whether Mrs Powell’s married woman’s election on 13 April 1971 was legally valid, given that Mrs Powell was under the age of 18 at that time. Our conclusions, from the submissions made to us and our own researches after the hearing, on the point are as follows:

(1) We agree that Mrs Powell was a minor on 13 April 1971.

20           (2) Assuming we are permitted to consider the Hansard debate cited to us (see *Pepper (Inspector of Taxes) v Hart and related appeals* [1992] STC 898), we gain no assistance from it. So far as we are aware, Mr Griffiths MP was Secretary of State for Wales in the administration that introduced the Family Law Reform Act 1969 and we believe his statement was incorrect in that the NIC system applied to persons under 18 as well as those over 18.

25           (3) We agree with HMRC that there is nothing in the relevant legislation (cited above) that limits the statutory provisions in the case of a minor who falls within those provisions. Our conclusion is that it was the intention of Parliament that the married woman’s election should be available to, and binding on, minors as well as women over 18. That is consistent with the  
30           general scheme of the NIC system - that the system (both for contribution liability and eligibility for benefits) should include persons under the age of majority. Accordingly, we conclude that Mrs Powell’s married woman’s election made on 13 April 1971 was valid notwithstanding her age at the time.

35           (4) In case we are wrong in our conclusion in the preceding paragraph and this dispute proceeds further, we also set out here our views on Mrs Powell’s contention that, as a minor, she was legally incapable of having the capacity to enter into a binding election. For the reasons which follow we would also find against Mrs Powell on that point. Our understanding (informed mainly by  
40           Halsbury’s Laws of England Vol 9 paras 12 et seq) is that at common law a minor’s contract was generally voidable at the instance of the minor. We consider that (i) as stated above, the position is actually governed by statute rather than by common law; and (b) the married woman’s election was a statutory facility rather than a contract. Certain contracts were void (as opposed

to voidable) such as those which were obviously prejudicial to the minor; even if (contrary to our view above) a married woman's election constituted a contract, we conclude that it is not one prejudicial to the married woman; indeed, the reason it was available was primarily to enable married women to reduce their NIC burden. On voidable contracts, the law was simplified and clarified by the Minors' Contracts Act 1987 but that, of course, post-dates April 1971. Absent the 1987 Act the position appears to be that:

(a) Even if a contract was voidable, it could be repudiated only before reaching majority or within a reasonable time thereafter – here the election was not questioned by Mrs Powell until around 2015; and

(b) An exception to the general rule of voidability was a contract which was on the whole beneficial to the minor when made – as already stated we consider the election was generally beneficial to married women, at least when it was entered into, and “It cannot be right to enable a contract made in good faith to be avoided because it turns out at a later date that the benefits are not as great as the parties anticipated” (per Danckwerts LJ in *Chaplin v Leslie Frewin (Publishers) Ltd* [1965] 3 All ER 764 at 773).

### **Conclusions**

22. For the reasons stated above we conclude that Mrs Powell's contributions record should not be amended and, accordingly, we would dismiss her appeal.

### **Decision**

23. The appeal is DISMISSED.

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.

**PETER KEMPSTER**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 10 MARCH 2016**