TC04292

Appeal number: TC/2011/06834

PROCEDURE – application for adjournment – refused

NATIONAL INSURANCE CONTRIBUTIONS – whether entitled to contribute before became UK resident – no – whether entitled to contribute after reaching retirement age – no – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

MANJULA BANERJEE **Appellant**

- and -

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

TRIBUNAL: JUDGE BARBARA MOSEDALE
MRS CAROLINE DE ALBUQUERQUE

Sitting in public at Fox Court, Gray's Inn Road, London on 27 January 2015

Ms Mou Banerjee representing the appellant in her absence on the postponement application; otherwise the appellant was not present and not represented

Ms L A Crawford, HMRC officer, for the Respondents

DECISION

1. HMRC were asked to make a decision on the appellant's contribution record and did so on 13 July 2007. The appellant appealed this decision but HMRC stayed this appeal when she asked them to do so because of her ill health. Nothing further happened until in 2010 the Upper Tribunal on an appeal from the Social Entitlement Chamber directed HMRC to complete the appeal because it was holding up resolution of her appeal to that Chamber over her entitlement to old age pension.

2. In February 2010 HMRC therefore offered the appellant a review of the decision dated 13 July 2007. The appellant failed to deal with this as she was, she said, in India. The offer of a review was not accepted until 27 June 2011 despite a number of letters passing between the parties. The review was undertaken and on 4 August 2011 upheld the original decision.

3. The appellant lodged her appeal (with the aid of a firm of solicitors) with this Tribunal on 2 September 2011. The grounds of appeal were stated to be:

> "The appellant should have been granted permission to top up her contribution record for the period 16 March 1959 to 6 October 1968"

Representation

4. The appellant was not present at the hearing. However, her daughter, Ms Mou Banerjee was present and she gave us a signed letter from her mother which stated:

> "I authorise my daughter, Mou Banerjee to request an adjournment on behalf at the Tax Tribunal on 27 January 2015"

5. We were satisfied that Ms Mou Banerjee was a properly authorised representative of her mother at the hearing of the postponement application. We indicated, however, at the start of the hearing, that if the postponement application was unsuccessful, there would be an issue over whether the appellant could be represented by her daughter at the hearing of the appeal because the letter on its face limited her power of representation to the request for the postponement.

6. Ms Mou Banerjee was supported by a relative, another Ms Banerjee, but she took no part in the proceedings.

Postponement application

7. Miss Mou Banerjee applied at the hearing for postponement on the basis of a number of grounds and we deal with them each below.

8. This was not the first postponement application either for this hearing or in this appeal. Three previous hearings (the first over two years ago) were postponed at the appellant's request. The first application to postpone *this* hearing was made on 22 December 2014 and refused, after objections from HMRC, on 7 January. The

application was repeated on 12, 19 and 25 January and refused on all occasions. The appellant was informed the application could be renewed at the hearing and it was.

History of the appeal

9. When considering a postponement application, the history of the appeal may be a relevant matter, particularly where there have been previous postponement applications. We find as follows:

10. Once HMRC's statement of case was received, the Tribunal issued standard directions to progress the case to hearing. Under these directions, lists of documents and listing information were due from both parties on 27 January 2012, coincidentally precisely three years before the hearing before us. The appellant asked for the compliance dates to be put back by 6 months due to the recent death of her father and because she intended to go away to India for a time. The Tribunal originally gave her only an extra three months but then agreed to a further delay.

11. The appellant then asked for the date of compliance for provision of her list of documents to be put back to 30 October 2012, and then 15 November 2012. Various reasons were given in each letter of request, including difficulties of travel during the Olympic games, a planned absence in India and ill health.

12. The first hearing was called on 24 September 2012. The appellant asked for and got it postponed. She was reminded her list of documents were due on 15 November 2012. She provided re-listing information by the due date but only promised to provide her list of documents by a new self-imposed deadline of 28 February 2013. She then changed her dates to avoid a number of times and then asked for the hearing to be delayed until November 2013 for a number of reasons, including the death of her father (nearly two years earlier), she was looking for pro bono help, she was ill, she had suffered a burglary and it was an 'extremely complex' case.

13. New directions were issued stating her list of documents would be due on 26 April 2013 and that the hearing would take place in July 2013. The appellant asked the Tribunal to rescind this direction for much the same reasons as given before. She said her health had 'broken down' and enclosed a report from Dr Fernandez who recommended rest for 6-8 months. The Tribunal did not rescind the direction.

14. The appellant applied to the Tribunal for permission to appeal the direction which was refused. She did not renew the application in the Upper Tribunal (in that she failed to provide the Upper Tribunal with information which they requested so her application was rejected). The Tribunal listed the hearing on 19 July 2013.

15. The Appellant applied for postponement, accompanying this with a letter from Dr Fernandez who now wrote "she is unfit to attend the Tribunal in July or to handle the proceedings…" The hearing was postponed but the appellant directed to provide medical evidence of her health by 31 October 2013.

16. The appellant complied with this albeit late and after a reminder: Dr Fernandez said in November 2013 that she remained unfit to prepare for or attend a tribunal hearing for the next 6 months.

17. HMRC's response was to suggest that the matter could be dealt with on the papers. The appellant did not agree. The Tribunal wrote in January 2014 suggesting a hearing was unnecessary if the appellant's date of entry into the UK was not an issue. The appellant insisted on her right to an oral hearing but did not state whether there was a dispute over her date of entry into the UK.

18. Following this and in order to progress the matter, the Tribunal issued a direction on 27 February 2014 that the appellant should state in writing whether she first entered the UK on or before 6 October 1968 or after 6 October 1968 and that unless she did so her appeal would be struck out. She replied asking the Tribunal to reconsider this direction on grounds that the case was important to her; she was old; she was ill; she was going into therapy and would not read a reply for 4 weeks. She also said that she had *not* agreed to HMRC's chronology, which appeared to be a reference to HMRC's case that she entered the UK on 10 October 1968.

19. Unfortunately this letter did not receive a specific response, although a hearing was listed for 7 November 2014. The appellant applied to postpone this on 30 October on a number of grounds including that the funeral of a friend was being held on the same day. The application was not opposed by HMRC and was granted. The re-listed hearing was today's hearing.

20. In summary, the Tribunal finds that the appellant has been responsible for the long delays in resolution of this appeal. The stays and postponements have always been at her request. Her applications for stays and postponements have normally been made on the basis of a large number of reasons. Her ill heath we deal with below. Some of the other excuses given appear to us very weak indeed (such as asking for a stay partly due to the Olympic games and her reliance on her father's death over two years after it had occurred).

21. We also find that she appears never to have undertaken any steps to progress the appeal to a resolution: she has never provided her list of documents despite both Tribunal and self-imposed deadlines to do so. She has never answered the very simply question of whether her date of arrival in the UK was in issue, despite very many requests from HMRC and the Tribunal to do so. This lack of cooperation may make it difficult to achieve justice: both parties to litigation have the right to know in advance the case that the other party puts. The appellant's failure to provide her list of documents and her refusal to state whether she disputes 10 October 1968 as her date of entry into the UK has left HMRC uncertain of her case.

22. The overall impression, reading her many letters to the Tribunal, looking at the history of this appeal, and even the doctors letters referred to below, is that the appellant believes resolution of her appeal should be indefinitely postponed.

23. We go on to consider the reasons that she has asked for postponement on this occasion in detail, as follows.

Illness

24. The appellant refers to herself as 'too ill' to attend. Miss Mou Banerjee said her mother was 'extremely' ill and had been too ill to deal with the appeal for at least two years.

25. The evidence we had (including medical evidence) was that the appellant suffers from rheumatoid arthritis in her right hand. She has damaged her ring finger on her right hand and she is currently resting it: if it does not repair naturally, her consultant is considering operating on it. She does not yet know whether the operation will be needed. Miss Mou Banerjee said it was important for her mother to rest her right hand as rest might obviate the need for an operation: she is right handed and preparing for the hearing will necessarily tax her right hand.

26. Miss Mou Banerjee also said her mother is fatigued from the arthritis which is an illness of the immune system which is known to make sufferers tired; she is on strong medication and, Miss Mou Banerjee suggested, this medication also made her mother unfit to attend a hearing. She emphasised how important it was for her mother to rest. Her opinion was that mother would be able to attend a hearing in April 2015.

27. We take into account that in the application for postponement dated 25 January the appellant mentioned that she had fallen several times recently and 'hurt myself seriously' but this was not mentioned by her daughter nor her doctors. Over the years, other letters from her have also mentioned recent falls but none of the doctors' letters referred to falls. In view of the fact that none of the many and recent doctors' letters refer to any illness over than rheumatoid arthritis, we are unable to accept that any falls she may have had have left her unable to attend this hearing.

28. The Tribunal also had in front of it letters from various doctors.

29. Mr Fernandez, a GP, asked on 6 November 2014 for a postponement of this hearing until January or February 2015 on grounds she was unwell from her rheumatoid arthritis. It is of course now January 2015. Mr Goddard, consultant surgeon who was dealing with her right hand, recommended on 24 November 2014 that the appellant 'rest and refrain from strenuous activity' for two to three months (ie until February or March 2015). A Dr Beynon was consulted on 28 November 2011. He mentions she has rheumatoid arthritis and that 'she does not feel fit enough to attend' her court case and that he would 'be grateful if this could be taken into account.' Contrary to Ms Mou Banerjee's claim that medication left her mother unable to deal with the appeal, this is not mentioned by any of the doctors.

30. In conclusion, none of the doctors say that she is currently unfit to attend a hearing. And so far as Dr Fernandez and Dr Beynon were concerned, both had expressed this view in relation to earlier periods. Dr Beynon indeed appears careful to say that it was the appellant's opinion that she was unfit: he does not say this was his

own opinion. So far as Mr Goddard's view is concerned, we do not consider preparing and attending a tribunal hearing to be 'strenuous' activity.

Conclusion on medical case

31. There were two issues for us to consider; one was whether we found the appellant to be too ill to attend today; and the other was whether we should grant the postponement if she was too ill to attend. Postponement would not follow automatically on a finding of ill health.

32. So far as the matter of fact was concerned, we found that the appellant had not satisfied us that she was too ill to attend proceedings. While we accepted that she suffered from rheumatoid arthritis, and that this had particularly affected her right hand and that she had fairly recently ruptured tendons in two fingers, we did not consider that it was shown that any of this prevented her preparing for or attending the hearing.

33. We took into account that she was right handed and might have difficulties writing but that she clearly had help from relatives including her daughter. She had either typed or had typed on her behalf the many long letters she had written to the Tribunal over the years.

34. We found unreliable her own and her daughter's assessment of her health. There seemed to be a gulf between the descriptions of her ill-health given both by her in her letters and by her daughter in the hearing compared to other sources of information. She represented herself as "too ill" to attend; she had earlier described her heath as 'broken down' and her daughter described her as 'extremely ill' yet the doctors referred to rheumatoid arthritis and damaged tendons in one hand and none of them said she was unfit to attend this hearing.

35. We accept that in respect of past periods Dr Fernandez, who appeared to be a private GP, had stated on a number of occasions that she would be unfit to attend a tribunal hearing for the next 6-8 months. But we do not place much weight on his opinions: his opinions were vague in that they gave no real reason for his view.

36. Moreover we notice inconsistencies in her case of ill health. For instance, Ms Mou Banerjee said although her mother had received the bundles for the hearing from HMRC in 2012 she had been too ill to read them at any time since their receipt. Indeed, the appellant herself says as much in her letter of 14 March 2014. Yet we find that throughout this appeal the appellant has typed (or on occasions had typed for her) long letters requesting postponements. She has also, on her case, approached various persons for pro bono representation, and travelled to India, and lodged a freedom of information act request with HMRC (see below). She was able to do this so the Tribunal does not accept that the appellant has been throughout the intervening two and half years too ill to read the fairly small bundles which HMRC sent her in mid-2012.

37. We do not accept that she was too ill to prepare for or attend today's hearing and do not consider that the hearing should be postponed on grounds of ill health.

38. We note that in any event, even if ill health were proved, it is not necessarily a ground for postponement. A civil case, such as this, is not a criminal case. There is no requirement that the appellant is fit to attend the hearing. It is simply that the Tribunal must try to do justice between the parties.

39. On the one hand, someone who is too sick to attend, or attends while unwell, may fail to represent themselves as effectively as they would have done if well. On the other hand, delay is prejudicial as it leaves unresolved cases hanging over the parties. Both parties are entitled to justice. Ms Banerjee suggested that HMRC would not be prejudiced by delay but we do not accept that. HMRC is a public department and the public in general have an interest in seeing that even a Government department is not denied justice.

40. So the Tribunal has to weigh up competing interests between speedy access to justice and giving a sick appellant a chance to recuperate before having to represent herself at a hearing.

41. In this case, although Ms Mou Banerjee suggested that her mother only wanted a postponement until April, had we accepted that she was currently too ill to attend, we would have seen no reason to suppose that she would be any better able to attend in April than now. Had we accepted the appellant's accounts of her own illness, we would have had to accept that she has been too ill since at least mid -2012. The cause was rheumatoid arthritis which is incurable.

42. Moreover, this case has in reality been on hold since 2007 (see §1) and the stays and postponements appear mainly to have been granted to the appellant on grounds of her ill-health.

43. Therefore, even if we had accepted she was too ill to attend, we would have refused postponement on the grounds that real injustice was being done in the delay in hearing this case already delayed by over two years (in reality 8 years) and a further delay was unlikely to serve any purpose in that there appears to be little prospect that the appellant will ever consider herself well enough to attend the hearing. It is inimical to justice to continually adjourn a case without any real prospect that the circumstances underlying the request for the adjournment will ever change.

Lack of representation

44. The appellant considers that complicated and important issues of law are at stake and she needs legal representation. She is, she says, unable to afford to pay for representation and has been investigating the possibility of pro bono representation. Her case was that such representation would be forthcoming, but everyone she had asked needed more time to consider and prepare her case. A short postponement would give them this preparation time.

45. We were shown redacted copies of emails from various persons, comprising a Law Centre, Age UK Barnet, three barristers, and a peer (who apparently had contacts with barristers prepared to act pro bono). All replies refused to give help for a hearing on 27 January. None of them contained a clear promise that help would be forthcoming on a future occasion although some kept the possibility open.

46. While Ms Mou Banerjee said her mother had approached these persons for help with this hearing in plenty of time, what evidence we had did not support that contention. While it was clear that the appellant had been in contact with some of them on an earlier date, the approach for help with the matter at issue in this hearing appeared to be made late in all those instances for which we had evidence. For instance, the approach to the Law Centre and Age UK was made on 12 January 2015. The approach to the peer was made on 19 January 2015. These were after her first application to postpone this hearing was refused and long after notice of hearing was given, and certainly years after the appeal commenced.

47. We did not consider that the case should be adjourned to allow her time to find pro bono help. She has had years to find such help but has clearly taken no steps to do so until that last few weeks before the hearing. She was clearly aware of the possibility of pro bono barristers as she had referred to an intention to seek such help in letters written much earlier in proceedings. Ms Mou Banerjee said her mother had been too ill to seek help before but, as we have said, we do not accept that. We note that in any event what Ms Mou Banerjee said here was contradictory in that she said her mother had been too ill to contact the barristers before January but had been in contact with the peer and Age UK for a long time, so again, for that reason, we do not accept that it was shown the appellant had been too ill to make contact in good time.

48. Justice should not continue to be delayed because an appellant, who was clearly aware of the possibility of pro bono help, chose to do nothing about it until the last moment.

Received a direction from Upper Tribunal

49. We find that a direction dated 10 December 2014 was made by Judge David Williams in the Upper Tribunal in an appeal by the appellant from a decision of the Social Entitlement Chamber on her entitlement to old age pension. Ms Mou Banerjee did not refer to this in the hearing but it was mentioned in the appellant's applications for postponement made on 12 and 19 January (which were refused). She said she needed time to consider the direction.

50. We consider it. It requires the appellant to show cause why the Upper Tribunal should not determine her appeal on the basis that she should be paid a pension reflecting a full contributions record from arrival in UK in the first full week in October 1968 until retirement age on 16 March 2003.

51. In other words, the Upper Tribunal was unable to close her pensions appeal until this Tribunal had determined her National Insurance contributions record, but that the appeal against the HMRC decision on her contributions record dated 2007

was still undecided 8 years later. So the delay in dealing with this appeal was inevitably causing delay in the related pensions appeal.

52. We find that the appellant did not need time to consider this Direction. What was needed was for this Tribunal to determine this appeal on her contributions record so that the Upper Tribunal could determine the pensions appeal.

53. There was nothing in the Direction which suggested this hearing should be delayed.

Case important to appellant

54. We accept that the case is very important to the appellant as it affects how much pension she receives. Old age pension together with her occupational pension are her main sources of income.

55. Nevertheless, that does not mean that the case should be postponed. On the contrary, the importance of the case to the appellant means that delay in the hearing is not in the interests of the appellant. What Ms Mou Banerjee really meant was that because the case was important, it should be delayed until her mother is well and/or has representation. But we have already dealt with our reasons for saying that her mother's illness and lack of representation do not justify any further delay in this case.

Hearing pending in Employment Tribunal

56. This is new matter not mentioned in any of her letters requesting postponement. As is clear from earlier correspondence, the appellant has been in dispute with her former employer over her occupational pension. She has lodged an appeal with the Employment Tribunal. A hearing due to take place in September 2014 was postponed on the grounds of her ill health and will now take place on 17 April 2015. Ms Mou Banerjee asked that this hearing should be adjourned because her mother should not have to prepare for both at the same time.

57. This seemed nonsensical. If the appellant had prepared for the tax tribunal hearing on today's date, she would then be left with nearly three months to prepare for the Employment Tribunal case in April. Yet the appellant asked in this hearing for an adjournment until late April, which, if granted, really would require the appellant to prepare for both at the same time.

58. In any event we did not accept that a pending hearing in April 2015 prevented Mrs Banerjee from preparing for this hearing, which was very straightforward.

59. Ms Mou Banerjee also suggested that the two cases interrelated although she was not able to explain to us how this might be so. We can see no link between the cases: we are to determine the appellant's National Insurance contribution record for the purpose of her state pension. Her occupational pension appeal is completely irrelevant to the determination which this Tribunal has to make.

Complex hearing?

60. The appellant had often in letters referred to this appeal as complex and Ms Mou Banerjee repeated this submission. She listed various matters which she considered were in issue and they are outlined below. None of them were matters which the Tribunal considered were difficult matters to deal with. This is an expert tribunal; tribunals are expert so that unrepresented appellants can get a fair hearing.

61. HMRC considered that only one matter of fact was in issue and that was the date the appellant first came to the UK. We consider that that too is a very simple matter which this Tribunal could easily determine from whatever evidence was presented.

62. We therefore do not agree that the hearing would be complex and that it should be delayed. Complexity is not a reason to delay a hearing in any event. This was simply another way of saying that the hearing should be delayed so that the appellant could obtain representation: but we have already rejected that submission for reasons given above.

Application under Freedom of Information Act

63. Again Ms Mou Banerjee did not refer to this in the hearing but it was mentioned in the appellant's application for postponement made on 19 January (which was refused). The application was, according to the appellant, for copies of all correspondence between her and HMRC in order that she could prove that she had never been advised that she could delay taking her pension at age 60 and continue to contribute.

64. However, this is a pointless application as the matter is not in dispute. HMRC accept that they never told her this: it is their position still that she cannot make contributions after her retirement age was reached.

Matter could be resolved without hearing

65. In her letter dated 19 January she also asked for postponement on the basis that the appeal could be resolved without a hearing, if HMRC were to agree to allow her to pay contributions after age 60. However, it is clear that HMRC have already answered and refused this request in their letter dated 2 December 2014. There is no prospect of a settlement on this basis.

The appellant was not present

66. We took into account that a refusal to postpone the hearing would necessarily mean that the hearing would go ahead in the absence of the appellant and without representation. As mentioned above, her daughter had only been appointed as her representative for the postponement application and not for the hearing of the appeal.

67. We considered that her failure to attend was her own choice. We had found that it was not shown that she was too ill to attend. She was clearly well aware the hearing was taking place.

68. Moreover, we did not consider her failure to attend was likely to prejudice her case. All the points she wished to raise appeared to be covered in her letters and had been listed by her daughter when asking for the postponement. The main factual question was whether her date of entry to the UK was before 10 October 1968. We have mentioned (see §21) her lack of cooperation with the Tribunal in stating whether she disputed this date and we deal with the matter in detail below at §79-83: for the reasons stated below it seemed unlikely that the appellant intended to make out a case that her date of entry was prior to 10 October 1968 and unlikely she could succeed in such a case if she did.

69. In conclusion, her failure to attend was her own choice and was unlikely to affect the outcome of the hearing. Similarly we noted that it was her choice that her daughter's authority to act was limited to the postponement application. In any event we considered her lack of representation unlikely to affect the outcome of the hearing. We considered that it would be in the interests of justice to proceed in her absence and in the absence of representation.

Decision on postponement

70. The appellant's representative failed to make out a case that the hearing should be postponed. We did not need to hear HMRC in reply. We announced our decision at the hearing that the hearing would not be postponed for the reasons given above. In summary, we do not consider that any of the reasons advanced either together or by themselves justified a further postponement in this appeal.

71. Had we been in two minds on the matter (which we were not) we would also have taken into account, as we concluded at §22, that the appellant seemed to us to desire to have this matter indefinitely postponed and that we think it very likely that had we postponed this hearing, she would have applied to postpone any subsequently listed hearing. We would also have taken into account the appellant's lack of cooperation with the Tribunal (§§18 and 21) and that would also have militated against the grant of postponement.

The appeal

Representation

72. We informed Ms Mou Banerjee that our prima facie reading of her mother's letter of authorisation was that she could not represent her mother in this part of the hearing. We asked her if she wanted to put the contrary case, but she did not take up this offer. She did say she would ring her mother to ask her to give her permission for her daughter to represent her in the appeal. We informed her that the Tribunal's rules required written authorisation but that she could apply for the rules to be waived, although we could not say until such an application was made, whether we would

consider it appropriate to waive the rules. At this point Ms Mou Banerjee said her mother would be sleeping and she did not wish to wake her up.

73. We said in that case our conclusion was that Ms Mou Banerjee had not been authorised to act as her mother's representative at the hearing of the appeal and that therefore Ms Mou Banerjee would be unable to speak in the hearing. Nevertheless, we informed her that she could stay to listen and make notes, which she and her companion did.

Absence of appellant

74. As recorded above, the Tribunal considered that it was in the interests of justice that the hearing should continue in the absence of the appellant.

The issues

75. The Tribunal has jurisdiction to determine the appellant's contribution record. This is because the Social Security Contributions (Transfer of Functions, etc) Act 1999 Section 8(1)(d) provided that it was for officers of the Inland Revenue (later HMRC):

> "to decide whether a person is or was entitled to pay contributions of any particular class that he is or was not liable to pay and, if so, the amount that he is or was entitled to pay"

Section 11 of the same Act provided that this Tribunal has jurisdiction on appeal from such a decision.

76. HMRC's position was that any contributions made after the age of 60 would not count towards the appellant's old age pension, although that was a matter for the Social Entitlement Chamber to determine. Their position was that from 10 October 1968 until she reached 60 (16 March 2003) she had or was credited with a full contribution record. In their opinion, the only live issue was whether she had the right to pay contributions for any period before 7 October 1968 (the start of the week in which 10 October 1968 fell).

Right to pay contributions for period before 7 October 1968?

77. As a matter of law we find that the appellant would only have the right to pay contributions for any period before 7 October 1968 if she had been resident in the UK. This is because the legislation at that time, the National Insurance Act 1965 s 1(a) (ii) required someone, in order to be liable to pay NICs to fufill 'such conditions as may be prescribed as to residence in Great Britain'.

78. The residence condition applicable at the time was contained in the National Insurance (Residence and Persons Abroad) Regulations 1948 paragraph 2 which provided that a person had to be 'resident in Great Britain for a continuous period of

26 weeks …" before being able to pay contributions. UK residence is still required under the various reincarnations of those Regulations.

79. The Tribunal has evidence from 1971 that the appellant's date of entry into the UK was 10 October 1968 as this is what was recorded on her contributions card. The Tribunal also takes into account that the appellant has for years been well aware that the date of her entry into the UK was highly relevant to her appeal and she has never suggested her date of entry was anything other than 10 October 1968. For instance, in a letter she wrote on 4 May 2007 she said:

> "You say that I came here in 1968 and so I am not entitled to a full state pension.
>
> I was never told at any stage that as an immigrant of 1968, I would never be entitled to a full state pension…"

80. The appellant here clearly felt aggrieved that arriving in 1968 meant she would not quality for a full state pension: had she arrived earlier than 1968 it seems inevitable that she would have told HMRC this. She clearly wanted to improve her entitlement. So the fact she did not claim to arrive earlier than 1968, strongly indicates to us that her date of arrival was what HMRC said it was: 10 October 1968.

81. There are other examples in the letters where she did not take the offered opportunity to state a date of entry other than 10 October 1968. Moreover, she was asked to state it on numerous occasions, including once under an unless order from the Tribunal (§18), but she chose never to state her position. Her daughter told us (in the postponement application) that her mother had said she was aggrieved that her pension depended on when she arrived in the UK: so it was clear the appellant was very alive to the issue. Her daughter had also told us (in the postponement application) that her mother considered she ought to be entitled to a pension for a period before she arrived in the UK due to her father's employment in the Government in India. Again this clearly indicates the appellant was very alive to the issue of residence in the UK and it is inconceivable that if her arrival in the UK was before 10 October 1968 that she would not have told HMRC that this was the case.

82. While she never clearly stated her date of arrival was 10 October 1968, we attach no significance to this. As we have said, she chose not to cooperate with the Tribunal (§18 and 21) and appeared to wish to indefinitely postpone the resolution of appeal (§22). Failing to state the date of her arrival is, we think, a reflection of that attitude. It was not, we find, because there was any doubt about her date of arrival.

83. We find her date of arrival in the UK was 10 October 1968. Therefore, we find that the earliest date she could be credited with contributions was 7 October 1968. She has been credited with contributions from that date until the date of her retirement.

84. It is therefore the case that she has been, as HMRC have said on many occasions to her, credited with full contributions for the maximum possible period, 7 October 1968 to her retirement. She did not pay contributions for the period before 7 October 1968 and is not and was not entitled to do so.

85. We now turn to address the issues raised by the appellant.

Entitlement to pay after date of retirement

86. Strictly speaking the appeal concerned only the issue of whether the appellant could pay contributions for the period before 7 October 1968, because that issue is the only issue addressed in the Notice of Appeal.

87. Nevertheless, for the sake of completeness we address all the issues raised by the appellant. One of those was that she considered herself entitled to pay voluntary contributions for the period after she retired, aged 60 in 2003. She also considered that she should have been advised to stay in work and pay national insurance contributions. HMRC agree that they did not give her this advice: they consider that such advice would have been erroneous.

88. The Social Security Contributions and Benefits Act 1992 required contributions to be paid for a certain number of years of a persons 'working life' (s 5(3)(a)) which was defined as the period between age 16 and the year in which he attained pensionable age. It also required contributions to be paid in a 'relevant year': a relevant year was defined as one which ended before the contributor attained pensionable age (s 5(5)). For the appellant, who was born in 1943, her pensionable age was 60.

89. It has since increased for women born after 1950 but this does not affect the appellant born in 1943.

90. Compulsory contributions are not due after reaching pensionable age (s 6(3)) and payment of voluntary contributions after that date is prohibited by the Social Security (Contributions) Regulations 2001:

> **Precluded Class 3 contributions**
>
> 49.—(1) Subject to paragraph (2), no person shall be entitled to pay a Class 3 contribution—
>
> ….
>
> (e) in respect of the year in which he attains pensionable age or in respect of any subsequent year

91. So the appellant has no entitlement (or liability) to pay any contributions after reaching pensionable age in 2003. She cannot complain she was not told that she could make such payments, because she cannot make such contributions.

Other people in a similar position have full pensions

92. One theme of complaint over the years from the appellant is that she knows of other people who, she says, were immigrants who arrived in the UK after she did yet receive the full state pension. She considers herself unfairly treated.

93. The answer to this is straightforward. The Tribunal itself has no discretion in the matter of the appellant's contributions record. It must simply apply the legislation set down by Parliament. Moreover, it has no power to supervise the actions of government bodies, and in particular no power to supervise HMRC in the exercise of the discretion which HMRC possesses. If the appellant is right and some persons have been credited by HMRC with contributions which they did not make and this has given them pensions to which they were not entitled, this Tribunal has no jurisdiction to deal with the matter. Her only option would be to initiate what is known as a 'judicial review' action in the Administrative Court against HMRC.

94. To do so, she would of course require evidence. No evidence was presented to this Tribunal. No names were given. The allegations were extremely vague.

95. We recognise that public bodies (unlike this Tribunal) do have a measure of discretion in applying the law, and it seems to the Tribunal that the appellant has benefited from HMRC's decision to exercise its discretion in her favour. Firstly, she actually only paid reduced rate contributions in the period 1971-1988 which impacted badly on her rights to a state pension. Nevertheless, HMRC, in their discretion, credited her with full contributions for that period without any payment by her, on the basis (we understand) that she may not have understood the implications of paying reduced contributions. This greatly improved her pension entitlement. Moreover, although she only started paying contributions in 1971 she was, in HMRC's discretion, allowed to pay contributions back to 1968 at the then rates, the effect of which was to bring her up to a 90% pension for a modest outlay of less than £100. So far as this Tribunal can see, HMRC gave no reason at all for this last exercise of discretion in her favour, which did away with the 26 month requirement mentioned at §78 above.

96. So the Tribunal recognises that the appellant might well expect HMRC to exercise their discretion yet again in her favour and she may suspect other people have benefited to an even greater degree from HMRC's discretion than she has. But we have no evidence of this and it would not matter if we did. This Tribunal has no discretion and no powers to supervise HMRC's conduct.

Single working mother

97. Another theme in her letters was that she is entitled to a full pension and/or should be allowed to pay contributions from age 16 because she raised her children single handedly (her husband returned to India within a few years of their arrival) and she did so while working full time as a social worker. While this is no doubt admirable, in law it has no effect on her NIC contributions record.

98. Similarly, she mentions her work with young people and various testimonials she has received. Again these have no impact on her NIC contributions record.

Unfair treatment

99. The appellant also claims unfair treatment by HMRC and/or DWP or treatment in breach of human rights. This appears to relate to a number of matters, such as her First tier Tribunal hearing in the Social entitlement chamber which she did not attend and which determined the matter in her absence, and to the DWP contacting relatives in India at the time of her retirement in order to clarify her marital status.

100. Although she was unhappy about these matters, she has given no further information and so she has not demonstrated that any of the DWP's or Tribunal's actions were unfair or in breach of the Convention on Human Rights. And most importantly, even if they were, it makes no difference to her NIC record. She appears to expect 'compensation' in the form of being allowed to pay contributions before 7 October 1968: the Tribunal has no discretion to permit this.

101. She also clearly considers the law to be unfair. She considers she ought to be able to pay contributions for the period before 7 October 1968 or after her retirement date. But the Tribunal applies the law. Her opinion that the law is unfair is irrelevant.

102. She also complains that all other taxpayers were given forecasts of their pension before they retired but she says that she was not. Even if true, this has no impact on her NIC record.

Conclusions

103. We find that the appellant has a full National Insurance contribution record from 7 October 1968 until her retirement and only for that period; she has no right to pay voluntary contributions for any period.

104. 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.

BARBARA MOSEDALE
TRIBUNAL JUDGE

RELEASE DATE: 19 February 2015