



**TC04880**

**Appeal number: TC/2015/00358**

***NATIONAL INSURANCE CONTRIBUTIONS – Class 2 self-employed –  
whether contribution record correct – appeal dismissed***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Mr TERENCE NORTHROP**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE Abigail McGregor  
Lesley Stalker CTA**

**Sitting in public at Ashford Tribunal Centre on 3 December 2015**

**The appellant in person**

**Linda Ramsey, Officer of HM Revenue and Customs, for the Respondents**

## DECISION

### **The appeal**

- 5 1. The appellant, Mr Terence Northrop, was appealing against the decision of HMRC, dated 12 February 2014, which set out Mr Northrop's National Insurance Contributions (NICs) record from 1965 to 2013. In particular Mr Northrop appealed against that part of the schedule which related to the tax years 1993/94 to 1996/97.

### **The evidence**

- 10 2. Mr Northrop submitted:
- (1) letters addressed to Mr Northrop dated February and April 1992 showing his address at Durlock, Minster;
  - (2) a statement from the Inland Revenue dated 29 January 2001 relating to a tax enquiry for the tax year 1997/98;
  - 15 (3) a NICs account dated 3 July 1999 relating to the quarter ended 10 July 1999; and
  - (4) letters between Mr Northrop, his MP and the Pensions Service relating to his entitlement to state pension.
3. HMRC submitted:
- 20 (1) letters and records of telephone calls between HMRC and Mr Northrop between 24 April 2013 to 18 February 2015;
- (2) print outs from HMRC's internal systems showing Mr Northrop's NICs record from tax year 1963/64 to tax year 2012/13 and the quarterly billing records for the period 8 October 1995 to 11 July 1998; and
- 25 (3) a witness statement from Mrs Lesley Crawford, Officer of HMRC working in the Disputes, Decisions and Appeals Team. Mrs Crawford also gave evidence at the hearing.

### **Grounds of appeal**

4. Mr Northrop raised the following grounds of appeal:
- 30 (1) it is HMRC's obligation to show that the NICs were not paid in the period under appeal;
- (2) it was the obligation of HMRC (or its previous incarnations) to send him statements showing the NICs due within 14 days under Social Security (Contributions) Regulations 1979 (SI 1979/591, regulation 54(2)(b));
- 35 (3) he did not receive any statements relating to the period under appeal that would have alerted him to any non-payment of NICs and he did not receive any

letters or other communications from the debt management unit pursuing him for unpaid contributions;

(4) his address remained the same throughout the period and he would not have been difficult to find;

5 (5) he was submitting self-employed income tax returns for the same period, and that the Inland Revenue (“IR”) and National Insurance Contributions Agency (“NICA”) (as they then were) must have shared the information;

10 (6) he employed a reputable accountant during the relevant time who must have informed him of any forms he needed to fill in, which he would have done if the accountant had done so;

(7) a tax enquiry relating to the tax year 1997/98 must have included any arrears of class 2 contributions; and

(8) the NICs account he received in 1999 made no reference to arrears at that stage and therefore the arrears must not have been present.

## 15 **Facts**

5. The background to this appeal was as follows:

(1) Mr Northrop worked in both employed and self-employed roles between 1965 and 2013, when he retired;

20 (2) on 8 April 2013 Mr Northrop was sent an Award Notice from the Department for Work and Pensions (“DWP”) setting out the amount of state pension he would receive. Mr Northrop was dissatisfied with the amount and queried his NICs record;

(3) as a result the DWP notified HMRC of the dispute, who sent Mr Northrop a full breakdown of the NICs made during the course of his career;

25 (4) Mr Northrop queried a number of matters on that breakdown, including the periods of nil payment in 1993/94 to 1996/97;

(5) HMRC then issued the formal decision notice that is under appeal on 12 February 2014; and

30 (6) Mr Northrop had initially been concerned that the absence of these contributions would affect the pension he (or his wife under the widow’s pension) would receive. However, he confirmed at the hearing that he was now sure that there would be no impact on his or his wife’s pension entitlements.

35 6. In relation to the period under appeal, the only agreed fact was that Mr Northrop was self-employed from 28 March 1993 until 6 July 1996, ie there was no dispute that it was class 2 NICs that were due in this period.

## Submissions and discussion

### *The burden of proof (ground 1)*

7. The first question was whether the burden of proof was on Mr Northrop or HMRC to show whether NICs had been paid during the period under appeal. Mr Northrop submitted that it was HMRC's obligation to prove the accuracy of their records and HMRC submitted that it was for Mr Northrop to show he had made the payments.

8. The decision under appeal is one made under section 8 of the Social Security Contributions (Transfer of Functions, etc) Act 1999. This section gives an officer of HMRC the power "to decide whether contributions of a particular class have been paid in respect of any period".

9. Mr Northrop has the right to appeal against that decision under section 11 of the same Act. Since it is a decision made by HMRC and Mr Northrop is bringing the appeal, it is Mr Northrop who must meet the burden of showing that the decision of HMRC was incorrect. Therefore Mr Northrop fails on his first ground of appeal.

### *Notification of self-employment and the obligation to send statements (grounds 2, 5 and 6)*

10. In relation to the question of whether Mr Northrop had correctly notified NICA of his self-employment, Mr Northrop submitted that:

(1) he had submitted tax returns to the IR for the relevant period and the IR must have communicated that to the NICA; and

(2) he had an accountant during that time who would have told him about his obligation to register with the NICA and he would have filled out the relevant forms if he was told about them.

11. Mr Northrop also submitted, based on a reading of the Social Security (Contributions) Regulations 1979 (SI 1979/591, regulation 54(2)(b)), that it was the duty of the Secretary of State (undertaken by the NICA) to send a written notice of the contributions due from the contributor in respect of a given quarter within 14 days of the end of the period; and that such written notices had not been received.

12. HMRC submitted that the IR and the NICA did not merge until 1999, well after the period in question, and that transfer of information between the two bodies did not start until after that.

13. HMRC also submitted that:

(1) the obligation to register for class 2 NICs was a personal liability of Mr Northrop and that this was separate from his obligation to notify the IR of his self-employment for income tax purposes, based on National Insurance (Contributions) Regulations 1979, regulation 53A;

(2) HMRC contribution records show that a notification of self-employment was received from Mr Northrop on 15 December 1995; and

(3) the obligation to send statements to the contributor did not arise under regulation 54 unless the notification from the contributor had been made under regulation 53A.

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14. Regulation 53A stated (to the extent relevant):

(1) Every person to whom paragraph (2) of this regulation applies shall immediately notify the relevant date to the Secretary of State in writing.

(2) This paragraph applies to a person who –

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(a) becomes or ceases to be, liable to pay a class 2 contribution;

(b) ...

15. Regulation 54 stated (to the extent relevant):

(1) ...

(2) Where

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(a) A person who is liable to pay a Class 2 contribution in respect of any contribution week in a contribution quarter has notified the Secretary of State of his liability in accordance with the provisions of regulation 53A (notification of commencement or cessation of payment of Class 2 or Class 3 contributions); and

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(b) The Secretary of State, within 14 days after the end of the quarter in question, has issued him with written notice of the number of contribution weeks in that quarter, of the weekly rate at which the contribution is payable and of the date specified as the date of notification

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That person shall pay to the Secretary of State the amount of contributions for which he is liable not later than 28 days after the specified date of notification.

16. The wording of the regulations is clear and unambiguous that:

(1) the burden was on Mr Northrop to notify the NICA (acting as the agent for the Secretary of State) that he had become liable to pay class 2 contributions (because he had become self-employed); and

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(2) NICA's obligation (again acting as the agent for the Secretary of State) to send statements only arose if that burden of notification had been met by the Mr Northrop.

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17. Although Mr Northrop's disbelief that the IR and NICA were not sharing information in the mid-1990s is an understandable one, that does not alter the facts that at the relevant time, they were two separate bodies with separate sets of regulations and that the burden was on Mr Northrop to inform the NICA directly (in addition to the IR).

18. We do not find Mr Northrop's assumption that his accountant would have told him to submit the forms and therefore he would have done it sufficiently persuasive to displace the evidence in HMRC's records that the notification of self-employment did not take place until December 1995. Therefore we find that Mr Northrop did not make the notification of self-employment to NICA until December 1995 and that therefore any obligation on NICA to send statements did not arise until the last quarter of 1995 for which the NICs paid are not in dispute.

*Inland Revenue Enquiry (ground 7)*

19. Along similar lines, Mr Northrop submitted that the Inland Revenue enquiry into his tax affairs relating to tax year 1996/97 must have included class 2 NICs.

20. HMRC submitted that such an enquiry would not have included class 2 contributions because they were dealt with by the NICA, not the IR.

21. Again, while this might have made sense to Mr Northrop, an IR enquiry would not have dealt with class 2 contributions. In fact legislation has been introduced in 2015 to enable a self-assessment tax return enquiry to deal with class 2 contributions for the first time. Therefore we also dismiss this ground of appeal.

*Address and lack of letters (grounds 3 and 4)*

22. Mr Northrop raised a number of arguments relating to his address and whether or not he received any statements or communications from the NICA (including the Debt Management Unit (DMU)) during or after the period in question.

23. Mr Northrop submitted:

(1) evidence of the address he lived at during the period, which remained the same from some time in 1991 to well after 1996;

(2) that he did not receive any communications from NICA and stated that if he had, he would have paid any arrears that were referred to as they would have been relatively small amounts that he would have been able to pay;

(3) that Mr Northrop would not have been difficult to trace if the DMU had been pursuing him and that he would have received any letters that had been sent to him at the relevant time; and

(4) that surely the DMU would have pursued every debt that arose.

24. HMRC submitted evidence from their computer systems that stated that 'deficiency notices' were sent to Mr Northrop relating to the tax years 1993/94 and 1994/95 relating to the deficiency in his class 1 contributions. Mrs Crawford submitted that these deficiency notices were automatically generated based on the information available in the computer on that person's record after the end of the tax year, once all relevant returns would have been submitted. She stated that the system would have sent the class 1 deficiency notice (rather than any notice relating to class 2 NICs) because his previous contributions had been class 1 contributions and no

notification that self-employment had commenced had been recorded in the system until December 1995. The computer print-out showed no record of notices being returned undelivered and HMRC submitted that it would have so recorded if the letters had been returned undelivered from the post office.

5 25. No deficiency notice was recorded in the computer print-out for the tax year 1995/96. Mrs Crawford gave evidence that this was because the procedure at the time was that if no reply had been received from a contributor for two successive tax years, no further communications were sent from the system.

10 26. HMRC also submitted an example of the template deficiency notice that would have been sent out. It stated that it was not a demand for payment, but offered an opportunity for those who had not paid all their contributions in the relevant tax year to pay them. It also included a part of the form to fill in if “you have been self-employed during the year shown in the letter and you have not paid contributions”. HMRC did not keep copies of the actual notices sent.

15 27. The same print out records that a new address for Mr Northrop was notified to the NICA on 24 May 1994. This new address was the address at Durlock. The print out states that a different address had been held for the 1992/93 year but does not record what that address was.

20 28. Mrs Crawford submitted, on behalf of HMRC, that, given that deficiency notices were not sent out until all other returns that might affect an individual’s contribution record had been received, eg employer returns, the deficiency notices were not usually sent until several months after the end of the tax year, so it was likely that the deficiency notices for 1993/4 and 1994/5 were sent to the correct address at Durlock. However, the HMRC records do not show the date on which deficiency  
25 notices were sent.

29. HMRC provided another print out that showed the quarterly billing arrangements starting from 7 October 1995. HMRC submitted that the procedure at the time was to start quarterly billing from the beginning of the quarter in which they had been notified of a liability to class 2 NICs. HMRC records show that a  
30 notification of liability was made by Mr Northrop on 15 December 1995. The beginning of that quarter was 8 October 1995. The HMRC records show that no payment was actually received from Mr Northrop until well into 1996 and that the DMU were involved in making some of those collections and allocating them to the quarter commencing 7 October 1995.

35 30. HMRC conceded that they did not have any evidence to support the contention (contained in two letters sent to Mr Northrop) that the DMU was involved with trying to recover unpaid class 2 contributions relating to the period from 28 March 1993 to 7  
40 October 1995 (ie before quarterly billing was set up). Mrs Crawford gave evidence that the procedure at the time would have been for the arrears to be passed to the DMU, but whether or not the DMU would have decided to pursue any particular debt would have been up to that unit and would depend on the size of the debt, the other debts that were being dealt with by the DMU at the time and the resources available to

the DMU for pursuing debts. Therefore there would have been circumstances in which the DMU did not pursue arrears. Mrs Crawford further submitted that the DMU did not generally employ debt collection agencies at that time. Mrs Crawford also explained that the computer system used by the DMU became obsolete in 2007 so it is not possible to obtain records showing what happened in the DMU at that time.

31. HMRC submitted that the regulations that applied at the time (Social Security (Contributions) Regulations 1979 (SI 1979/591), regulation 53B put the obligation on the person who is liable for class 2 contributions to notify the Secretary of State in writing of any change in address immediately. Therefore any incorrect address that was held by the NICA was the fault of Mr Northrop and not the NICA.

32. Regulation 53B stated:

“Every person who is –

- a) liable to pay Class 2 contributions; or
- b) paying either Class 2 contributions although not liable to do so, or Class 3 contributions,

shall immediately notify the Secretary of State in writing of any change of his address.”

33. We find that the wording in Regulation 53B is clear and unambiguous in putting the obligation on Mr Northrop to notify his change of address immediately after the change.

34. We find that nothing Mr Northrop submitted displaced HMRC’s contention based on computer records that the notification of change of address occurred on (or shortly before) 25 May 1994.

35. However, we also find that the question of whether or not Mr Northrop received deficiency notices or other communications from NICA, including its DMU, is also not determinative of this appeal. The question is whether he had made the contributions in the period, not whether letters and notices were being sent to the correct address, nor whether arrears were pursued by DMU.

*NICs account showing no arrears (ground 8)*

36. Mr Northrop submitted evidence in the form of a letter from the NICA showing his NICs account from 1999 (ie after this period). This letter did not include any reference to arrears of NICs or amounts that were outstanding and being pursued by the DMU. MR Northrop therefore submitted that there must not have been any arrears at that time.

37. HMRC submitted that the arrears box on the letter would have only shown those arrears that were being dealt with by the self-employed unit, not those that were being pursued by the DMU.



38. While it is not helpful to a taxpayer or contributor to receive letters from HMRC (or its previous incarnations) that do not contain full details of the person's tax or NICs position (particularly without explanation of why certain things are not included), the question of whether NICs are due and payable is a question of law and the application of that law to the facts of the case at hand. The exclusion of NICs from a letter does not alter that application

### **Decision**

39. In summary, we find that:

- 10 (1) the obligations to notify NICA both of a liability to pay class 2 contributions and of a change of address was very clearly on Mr Northrop under Social Security (Contributions) Regulations 1979 (SI 1979/591), regulations 53A and 53B;
- 15 (2) Mr Northrop did not meet the burden of proof to displace HMRC's evidence in its computer records that notification of liability did not happen until December 1995 and of address until May 1994; and
- (3) Mr Northrop did not meet the burden of proof to show that HMRC's records of non-payment of NICs in the relevant period were wrong.

40. Mr Northrop's appeal is therefore dismissed and HMRC's record of contributions stands.

41. 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.

30 **ABIGAIL MCGREGOR**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 12 FEBRUARY 2016**