[2016] UKFTT 575 (TC)

TC05324

Appeal number: TC/2014/02473

NATIONAL INSURANCE—Contributions—Whether contributions paid

FIRST-TIER TRIBUNAL
TAX CHAMBER

RONALD REES **Appellant**

- and -

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

TRIBUNAL: JUDGE CHRISTOPHER STAKER
MR DEREK SPELLER FCA

Sitting in public at London on 4 April 2016

No appearance by or on behalf of the Appellant

Mrs L Gordon, presenting officer, for the Respondents

DECISION

Introduction

1. The Appellant appeals against a decision dated 21 October 2013, made by HMRC under the Social Security Contributions (Transfer of Functions, etc) Act 1999 (the Transfer Act). The decision is that the Appellant paid National Insurance (NI) contributions from the 1959-60 contribution year to the 2009-10 tax year in accordance with the schedule attached to that decision. The Appellant disputes the correctness of information shown in that schedule, and complains that as a result of erroneous gaps in his NI record, he is unable to qualify for a full state pension.

The facts

2. In a letter to the Appellant dated 29 July 2008, HMRC advised as follows. HMRC had recently checked its records relating to the Appellant. There was a mismatch in information held on the system of the Department of Work and Pensions (DWP) and information held on the HMRC system. Incapacity credits and approved training course credits had been incorrectly recorded. This had been corrected, but it meant that there was a shortfall in the Appellant's contributions for the years 1998-99 to 2003-04. The shortfall could affect the Appellant's state pension in future years. However, he had an opportunity to make up the shortfall by paying it at the original rate at any time up to 5 April 2014. The Appellant now had 31 qualifying years to 5 April 2006. To qualify for a full state pension he needed 44 years.

3. HMRC state that no reply to this letter was received by the Appellant.

4. HMRC state that the Appellant subsequently appealed against his retirement pension with DWP. As the Appellant considered that his NI record was incorrect, DWP referred his case to HMRC.

5. In an undated letter to the Appellant, which HMRC says was sent on 16 July 2013, HMRC advised as follows. The Appellant was registered for NI on 13 May 1960. There were at the time three classes of contributions: Class 1 (paid by employed persons), Class 2 (paid by self-employed persons), and Class 3 (paid by non-employed persons). Up until 5 April 1975, the Appellant paid or was credited with the following contributions:

Contribution year	Class 1 paid	Class 2 paid	Class 1 credited	Class 3 credited
1958-59				3
1959-60	29			23
1960-61	50		1	
1961-62	44		7	
1962-63	50		2	
1963-64	52			
1964-65	51		1	
1965-66	52			
1966-67	52			

1967-68	52			
1968-69	51		1	
1969-70	52		1	
1970-71	52			
1971-72	52			
1972-73	52			
1973-74	14		32	
1974-75		12	3	

6. That letter went on to state as follows. The 1958-59 contributions did not count towards a State pension, since it is only those contributions which were paid or credited from 6 April in the year in which the Appellant was age 16 that counted. The Appellant is shown as having worked for the following companies: FT Pillivant Ltd, H Tallent & Co Ltd, EJ Broadstreet & Sons Ltd (left 7 February 1964), Rank Xerox Ltd, Evans Bellhouse Ltd (left 30 October 1970), Wilkinson Sword Ltd (left 6 March 1974).

7. The same letter further stated as follows. On 6 April 1975 the reconstructed NI scheme began. From 6 April 1975 until 5 April 2009 the Appellant paid or was credited with the following contributions:

Tax year	Class 1 paid	Credits
1975-76 to 1979-80	Nil	Nil
1980-81	£348.14	
1981-82	£243.55	13
1982-83	£683.80	
1983-84	Nil	Nil
1984-85		51
1985-86		52
1986-87		53
1987-88		8
1988-89	Nil	Nil
1989-90	£211.77	
1990-91		29
1991-92		53
1992-93		52
1993-94		52
1994-95		52
1995-96		52
1996-97		52
1997-98		53
1998-99		15
1999-00 to 2008-09	Nil	Nil

8. That letter then additionally stated as follows. The Appellant is shown as having worked for the following companies: St Ferdinano Vins Francais (1980-81 and 1981-82, left 29 September 1981), Eurobtain Associates Ltd (Eurobtain) (1982-

83), Euro Vine International Ltd (1989-90, left 5 January 1990). The Appellant's NI record shows a period of insolvency from 6 April 1981 to 5 April 1983 (in relation to the company Eurobtain). However, this did not affect the Appellant's basic retirement pension entitlement as sufficient contributions had been paid to make 1981-82 and 1982-83 qualifying years for pension purposes. The Appellant's record showed that although he commenced self-employment, he did not pay any Class 2 (self-employment) contributions from 7 June 1987 to 8 April 1989, having been granted a Small Earnings Exemption (SEE). The Appellant had advised HMRC that he went abroad to Portugal on 2 June 2004 and had advised of his return in December 2012. In correspondence the Appellant had claimed that 17 years of employment had not been awarded to him, and the Appellant was invited to provide documentary evidence of the claimed missing employments.

9. In a letter to HMRC dated 15 August 2013, the Appellant stated amongst other matters as follows. He left school in 1959 at age 15 and worked for a printing company called Wood Rozlaar and Wilkes Ltd. He left Eurobtain before any insolvency had occurred, and he never received any letter regarding the insolvency of this company. The Appellant queried his entitlement to credits during periods of unemployment and periods of disability benefits. The Appellant requested a copy of the letter he was said to have sent HMRC concerning his relocation to Portugal, as he had said that he was thinking of going to Portugal but did not state that he had left the UK to go to Portugal.

10. In a letter to the Appellant dated 30 September 2013, HMRC advised as follows. Only contributions paid or credited from 6 April in the year in which the Appellant was age 16 are counted towards the state pension. Records relating to insolvency in the 1980s had long been destroyed. Questions as to benefit related credits should be directed to DWP as HMRC has no jurisdiction over such matters. The information that the Appellant had gone abroad in 2 June 2004 was provided by DWP in March 2010, and if this information was not correct the Appellant should contact DWP.

11. In an e-mail dated 4 October 2013, the Appellant provided more information about his employment history. He had passed an entrance exam to commence art school beginning in September 1959. However, due to the illness of his parents he could not take this up as he needed to work. He took up part time jobs for a period. He then began working in a printing firm called Wood Rozlaar and Wilkes Ltd in November 1959. The Appellant has very vivid memories of this period. The Appellant denied any bankruptcy in the 1980s in his name. HMRC have also omitted one of his earlier employers, Technical Artists Ltd. For a period he also worked for Asram UK Ltd until 1976. He worked for a period for LAS. He was unemployed from 1976 to 1981. He left Eurobtain due to illness and claimed sickness benefits. He left "book plant limited" in 1990 due to being involved in a car accident and was then on sickness and disability benefits for many years. He is concerned that he has not got credit for his period of unemployment and sickness. The Appellant feels that he has been set an impossible task to provide exact information going back 50 years when HMRC admits that there is a mismatch between its own records and those of DWP. It would only be fair to give the Appellant the benefit of the doubt. The letter

refers to two documents not included in the hearing bundle, namely a letter to the Appellant dated 7 March 1996, and a letter from the Appellant dated 3 February 2013.

12. In a letter to the Appellant dated 21 October 2013, HMRC advised as follows. The Appellant's retirement pension was based on the amount of NI contributions paid, not on his employment record. Until 5 April 1975, records of employers were not normally kept by the Government unless a person paid Graduated Contributions. It was recalled that the Appellant had the opportunity to pay the shortfall in contributions at the original rate any time until 5 April 2014.

13. In a formal decision dated 21 October 2013, which is the decision that is the subject of the present appeal, HMRC also decided that the NI contributions that the Appellant had paid were as follows:

Contributions paid up to 5 April 1975

Contribution year	Class 1 paid	Class 2 paid
1958-59		
1959-60	29	
1960-61	50	
1961-62	44	
1962-63	50	
1963-64	52	
1964-65	51	
1965-66	52	
1966-67	52	
1967-68	52	
1968-69	51	
1969-70	52	
1970-71	52	
1971-72	52	
1972-73	52	
1973-74	14	
1974-75		12

Contributions paid from 6 April 1975

Tax year	Class 1 paid
1975-76 to 1979-80	Nil
1980-81	£348.14
1981-82	£243.55
1982-83	£683.80
1983-84 to 1988-89	Nil
1989-90	£211.77
1990-91 to 2009-10	Nil

14. The Appellant sent further letters to HMRC dated 7 November 2013, 19 January 2014, 24 January 2014 and 8 February 2014, in which he contended as follows. He had been working and paying tax and NI contributions prior to the date on which he is said to have registered for NI, and this should count towards his state pension. He was employed by Technical Artists after 1 April 1961. HMRC had a duty to keep records of his employers and NI contributions, and cannot ignore periods of employment. HMRC had incorrectly assumed that the Appellant had moved to Portugal in 2004, when he had merely written to HMRC to ask what his tax position would be if he were to move to live in Spain (not Portugal). However, the Appellant then appears to accept that he did spend some time in Portugal during a period of illness, and says that he returned to the UK in October 2012. In 1981-82 and 1982-83 Eurovine was not trading and the Appellant was at the time working for St Ferdinand Vins Francais. He was entitled to any shortfall. HMRC should explain the absence of records. The period of bankruptcy was disputed and the full credits for that period should be awarded to the Appellant. The Appellant refers to some documents that have not been included in the hearing bundle (including correspondence involving Morgan Hemp & Co Chartered Accountants, and correspondence between the Appellant and the benefits agency).

15. In a review decision dated 12 March 2014, HMRC decided that the 21 October 2013 decision should be upheld.

16. In a letter from the Appellant received by HMRC on 2 May 2014, the Appellant reiterated some of the points made by him above.

Applicable legislation

17. Section 8 of the Transfer Act relevantly provides:

> **8.— Decisions by officers of Board.**
>
> (1) Subject to the provisions of this Part, it shall be for an officer of the Board—
>
> …
>
> (e) to decide whether contributions of a particular class have been paid in respect of any period …

18. Sections 11 and following of that Act provide for appeals against decisions under s 8. Section 13 empowers the making of regulations with respect to such appeals. The regulations made in exercise of that power are the Social Security Contributions (Decisions and Appeals) Regulations, SI 1999/1027. Regulation 7 of those regulations applies with certain modifications the provisions of ss 49A to 49I of the Taxes Management Act 1970 to such appeals. Regulation 10 of those regulations provides that "If, on an appeal … it appears to the tribunal that the decision should be varied in a particular manner, the decision shall be varied in that manner, but otherwise shall stand good".

19. The general principle is that the burden of proof in relation to a disputed fact lies on the person who advances that disputed fact, and the standard of proof is the

civil standard of a balance of probabilities: see for instance *Morgan v Revenue and Customs (National Insurance Contributions: Other)* [2016] UKFTT 231 (TC) at [104]-[105].

20. Paragraph 5(8) of Schedule 3 to the Social Security Contributions and Benefits Act 1992 (the 1992 Act) provides:

> (1) For the purposes of Parts I to VI of this Act a person's working life is the period between—
>
> (a) (inclusive) the tax year in which he attained the age of 16; and
>
> (b) (exclusive) the tax year in which he attained pensionable age or died under that age.

21. According to HMRC, regulation 2 of the National Insurance and Industrial Injuries (Collection of Contributions) Regulations 1948 (since repealed) provided that a person who attained school leaving age was required to apply for an NI card.

22. According to HMRC, s 2(2)(c) of the National Insurance Act 1946 provided that every person resident in Great Britain over school leaving age and under pensionable age was required to become an insured person according to their classification as an employed person, a self-employed person or a non-employed person.

23. According to HMRC, s 3 of the National Insurance Act 1965 and ss 5 and 7 of the Social Security Act 1975 (since repealed) provided that every employed and self-employed earner was liable to pay a NI contribution at the appropriate rate.

Evidence and arguments of the Appellant

24. The evidence and arguments of the Appellant are set out above. The Tribunal has been informed that the Appellant has suffered serious illness and has in consequence been unable to attend the hearing.

Evidence and arguments of HMRC

25. A witness statement of HMRC Officer Lesley Crawford describes the procedures followed in the period to April 1975 for recording NI contributions. It goes on to state as follows.

26. The Appellant's clerical record shows that he was a student until 13 May 1960 and then paid 29 Class 1 (employed person) contributions from 16 May 1960. The Appellant did not reach age 16 until 16 November 1960. HMRC have no record of the employers he worked for before 1961. Any Class 1 (employed person) contributions paid before age 16 counted for short term benefits only, for example sickness benefit or unemployment benefit. Although HMRC is not qualified to determine the question, HMRC understand that the Appellant has the maximum number of qualifying years prior to 6 April 1975, namely 15 qualifying years.

27. The Appellant's NI record shows that Class 1 (employed person) contributions were posted to the Appellant's NI account for the tax years 1981-82 and 1982-83 (but were not actually paid) when he was a director of Eurobtain. Regulation 39 of the Social Security (Contributions) Regulations 1979 provides for the treatment for the purpose of any contributory benefit of late paid or unpaid primary Class 1 contributions where there was no consent, connivance or negligence by the primary contributor. A director is always considered to be negligent if primary Class 1 NI contributions due from him were not paid. In order to prove non-negligence a director must show that non-payment did not occur because of his actions, with his consent or with his connivance. At the time, the procedure was for the Bankruptcy Section to make a decision in relation to this matter. The Appellant's NI record shows that the Bankruptcy Section, after investigations, concluded that he was a negligent director and no contributions had been paid. A letter would have been sent to the Appellant after investigations were complete to tell him the Department had considered all the facts and outlined his NI position. Unless he paid the Class 1 contributions due, his record would remain unchanged. His record shows that Bankruptcy Section completed form CF346 to show minus postings for tax years 1981-82 and 1982-83, which indicates that the Appellant did not make good his record for these years after investigations were completed.

28. The arguments of HMRC were as follows.

29. Until 1975, NI was recorded according to contribution years, rather than tax years. The Appellant's contribution period at that time was from the first Monday in December to the day before the first Monday in the December of the following year. From 6 April 1975 all NI contributions were recorded on a computer based system.

30. HMRC has no jurisdiction over the calculation of the Appellant's state pension. However, given the definition of "working life" in paragraph 5(8) of Schedule 3 to the 1992 Act, the Tribunal has no basis in law to allow any contribution paid before 6 April 1960, which was the beginning of the tax year in which he turned 16.

31. If the Appellant considers that his NI record is incorrect, the burden is on him to establish that. He has not done so.

32. Although NI contributions for 1981-82 and 1982-83 relating to his employment with Eurobtain were removed from his NI record as he was deemed to be negligent, these years are still qualifying years for his state pension as he paid sufficient contributions with other employers.

33. HMRC therefore submit that the NI records are correct.

34. At the hearing, it was explained to the Tribunal by the HMRC representative that there is a list at the bottom of page 54 of the hearing bundle of the years from 6 April 1976 that are qualifying years for purposes of the Appellant's state pension. These years are 1980-81, 1981-82, 1982-83, 1985-86, 1986-87, 1989-90, 1991-92, 1992-93, 1993-94, 1994-95, 1995-96, 1996-97, 1997-98.

The Tribunal's findings

35. The first issue in dispute concerns the HMRC contentions that the Appellant only registered for NI in May 1960, that NI contributions paid before 6 April 1960 do not count towards the Appellant's state pension, and that the Tribunal has no jurisdiction to determine that the Appellant made NI contributions before 6 April 1960.

36. The Tribunal does not accept these HMRC contentions for the following reasons.

37. As to the Tribunal's jurisdiction, it is noted that this is an appeal against a decision under s 8(1)(e) of the Transfer Act, which provides that it shall be for an officer of the Board to decide whether contributions of a particular class have been paid in respect of any period. The Tribunal has not been referred to any provision that would restrict the power of the officer under s 8(1)(e) to making determinations in respect of periods that are within a person's "working life" as defined in paragraph 5(8) of Schedule 3 to the 1992 Act. The position of HMRC has been that it is not the role of HMRC, or of this Tribunal in an appeal against a decision of HMRC, to determine what are the Appellant's pension entitlements. Rather, the role of HMRC, and of this Tribunal, is confined simply to determining what NI contributions have been paid by the Appellant in particular periods of time. That is a pure question of fact.

38. No evidence or authorities were provided to the Tribunal as to what was school leaving age in 1959. The Tribunal will take judicial notice of the fact that it was the age of 15. The Appellant turned 15 on 20 November 1959. If HMRC is correct in its summary of the legislation referred to at paragraphs 22-23 above, on 20 November 1959 the Appellant became required to become an insured person, and became liable as of that date to pay NI contributions at the appropriate rate. Consistently with this, the Appellant's pre-1975 NI record sheet states 20 November 1959 as the "date of entry".

39. According to HMRC, prior to 1975, NI contributions were recorded according to contribution years, which in the Appellant's case ran from the first Monday in December to the day before the first Monday in the December of the following year. The Tribunal takes judicial notice of the fact that the first Monday in December 1959 was 7 December 1959, and the first Monday in December 1960 was 5 December 1960. Therefore, the Appellant's 1959-60 contribution year ran from 7 December 1959 to 4 December 1960. There was thus a period from 20 November 1959 to 6 December 1959 falling in the 1958-59 contribution year (a period of some 2 weeks and two days) in which the Appellant was liable to be insured and to pay NI contributions.

40. The Appellant has given detailed and consistent evidence in his correspondence that from November 1959, when he turned 15, he worked for Wood Rozlaar and Wilkes Ltd, and that immediately thereafter he worked for Technical Artists. However, he says that he was already 16 years old when he began working for

Technical Artists, so that his change in employer must have been after 20 November 1960.

41. The Appellant's pre-1975 NI record sheet contains a date in a box on the left hand side, which is 13 May 1960. According to HMRC and the evidence of Officer Crawford, this means that the Appellant registered for NI on 13 May 1960. The Appellant says that he has no recollection of registering for NI in May 1960.

42. What is clear to the Tribunal is that even if this paper record sheet was only created on 13 May 1960, it contains entries that are retrospective to November 1959. According to the record sheet, the Appellant was credited with three Class 3 (unemployed) contributions in 1958-59 (which must relate to the period from 20 November 1959 to 6 December 1959), and with 52 NI contributions (29 of which Class 1 and 23 of which Class 3) in 1959-60 (which must relate to all 52 weeks from 7 December 1959 to 4 December 1960).

43. The record sheet shows 3 Class 3 (unemployed) contributions in 1958-59 and 23 Class 3 (unemployed) contributions in 1959-60. The record sheet does not indicate which particular weeks in 1959-60 were the subject of Class 1 contributions, and which weeks were the subject of Class 3 contributions. The Tribunal notes that there are approximately 25 weeks between the date on which the Appellant turned 15 and 13 May 1960, the date on which the record sheet is said to have been created. The Tribunal draws the inference that when the record sheet was created in May 1960, all previous weeks going back to the Appellant's 15th birthday were retrospectively recorded as credited with Class 3 contributions, and all weeks in 1959-60 after 13 May 1960 were the subject of Class 1 contributions.

44. HMRC are unable to say exactly why this happened. No further details are provided in the HMRC records, and the HMRC case is based on the submission that HMRC records are the most reliable evidence before the Tribunal. Against this, the Appellant insists that he was from November 1959 until at least November 1960 working with Wood Rozlaar and Wilkes Ltd.

45. Having considered and weighed all the evidence in the case, the Tribunal is persuaded on a balance of probability that the Appellant was working with Wood Rozlaar and Wilkes Ltd from November 1959. On the basis of that finding, the question why the NI record sheet was created only on 13 May 1960, and why the period from the Appellant's 15th birthday until that date was retrospectively recorded as Class 3 contributions, remains unanswered. A possible explanation is that there was simply a mistake, although any answer would be speculative. Although it will perhaps never be known what happened, in this appeal the Tribunal is satisfied on a balance of probability that for one reason or another the record sheet is incorrect. The Tribunal finds that the 3 Class 3 contributions in 1958-59 and the 23 Class 3 contributions in 1959-60 should be recorded instead as being Class 1 contributions.

46. The second issue in dispute concerns the cancellation of certain Class 1 contributions for tax years 1981-82 and 1982-83. The HMRC position is that the cancellation of these Class 1 contributions will have no effect on the Appellant's state

pension, since these years still remain qualifying years. If that is so, it may be that this second issue in dispute is purely academic. However, in the event that the issue may have some practical significance, the Tribunal will proceed to decide it.

47. The general burden on proof is on the Appellant to make out his grounds of appeal. However, in a case where HMRC alleges that Class 1 contributions with which the Appellant was credited were not actually paid, and that non-payment was due to the consent, connivance or negligence by the Appellant as primary contributor, then HMRC must be expected to be able to provide evidence of those allegations. The Tribunal does not consider the witness statement of Officer Crawford to be sufficient for this purpose. Officer Crawford evidently does not have personal knowledge of the matters in question, but merely provides her interpretation of what the records indicate, based on her expertise in reading such records. She says that a director of a company that fails to pay NI contributions in respect of that director is always considered to be negligent unless the director proves non-negligence. The Tribunal was not pointed to any legislation to this effect, and it seems this may be a statement of what was at the time the policy of HMRC's predecessor, rather than a statement of the law.

48. Officer Crawford indicates that Bankruptcy Section would have conducted an investigation before reaching the conclusion that it did, but there is no record of the details of any such investigation or of the precise conclusions that it reached. In particular, paragraph 24 of the witness statement of Officer Crawford lists a number of matters which she says Bankruptcy Section would have investigated, but there is nothing before the Tribunal to indicate what were the conclusions of Bankruptcy Section in relation to each of those matters. She says that a letter "would have been" sent to the Appellant after the investigation was completed, but there is no record in evidence before the Tribunal to show that a letter was in fact sent to the Appellant, and the Appellant denies receiving one.

49. A notice in the London Gazette dated 9 May 1984 indicates that it was only on 25 April 1984 that the members of Eurobtain Associates Ltd adopted a resolution for the voluntary winding up of the company. This was after the two tax years to which this disputed issue relates. The Appellant's RD18 statement of account indicates that the cancelled NI contributions in 1981-82 and 1982-83 related not to his employment with "EUROBT" (presumably Eurobtain), but rather to his employment with "EUR AS" (presumably another company). The forms CF 364 dated 28 January 1985 making the deductions indicate that the deductions relate to tax years 1980-81 and 1981-82, yet in the RD18 the relevant deductions were made in respect of tax years 1981-82 and 1982-83.

50. In all the circumstances, the Tribunal is not satisfied on all of the evidence before it that there was a non-payment of NI contributions in these two years for which the Appellant was at fault. The Tribunal is therefore satisfied on a balance of probabilities for purposes of this appeal that the Appellant should be credited with the Class 1 contributions that were deducted in 1981-82 and 1982-83.

51. The third issue in dispute concerns the Appellant's contention that certain periods of employment with certain employers have been omitted from his NI record.

52. It is noted that the Appellant refers to the fact that he had periods of unemployment or disability. The concern he expresses is that he feels that he has not been given full credit for such periods in the calculation of his State pension. An example of this concern, at least as the Tribunal understands it, is tax year 1983-84. According to the details given at the bottom of page 54 of the hearing bundle, 1983-84 is not treated as a qualifying year for purposes of the Appellant's state pension. The RD18 statement of account indicates for this year that the Appellant made no primary contributions, had no contributions or credits and had a zero total earnings factor. This can be contrasted for instance with tax year 1991-92, which is treated as a qualifying year for purposes of the state pension. In 1991-92, the Appellant is also indicated as having made no primary contributions, but has 53 credits from "DSS LO" (presumably the local office of the Department of Social Security). This suggests that 1991-92 counts as a qualifying year because the Appellant was in receipt of unemployment or disability benefit throughout that year and received NI credits on that basis. It is unclear why the Appellant did not receive NI credits on the same basis in 1983-84.

53. However, while the Tribunal understands the Appellant's concern, the Tribunal does not have the competence to resolve the matter. The jurisdiction of this Tribunal is limited to the question which HMRC is empowered to decide under s 8(1)(e) of the Transfer Act, namely "whether contributions of a particular class have been *paid* in respect of any period" (emphasis added). The Tribunal does not have jurisdiction to determine whether the Appellant should have received NI credits in respect of particular periods of claimed unemployment or disability. This is a matter that will need to be pursued with DWP.

54. According to Officer Crawford, the Appellant has the maximum number of qualifying years for the period until 5 April 1975. The Tribunal makes the following observations on the subsequent years which are indicated on page 54 of the hearing bundle as not being qualifying years for purposes of the Appellant's state pension.

55. The first period that does not count as qualifying years is the period from 1975-76 to 1979-80 inclusive. The Appellant's RD18 statement of account shows him as working for "SFVF" (presumably San Ferdinand Vins Francais) in 1980-81, but shows him and not having any employment in the 5 years prior to that. The Appellant's 4 October 2013 letter states that he was unemployed from 1976 to 1981, which is broadly consistent with the RD18. Although the Appellant can justifiably make the point that it is difficult for him after such a passage of time to recall precise details of all employers, the Appellant could be expected to be able to explain in general terms where he was working during a period in his life of some 5 years, if he undertook any work in this period. He does not do so.

56. The second period that does not count as qualifying years consists of the tax years 1983-84 and 1984-85. This period immediately followed the Appellant's employment with "EUROBT" (presumably Eurobtain). Again, notwithstanding the

passage of time, the Appellant should be able to state for whom he was working in this two year period if he claims to have been employed at the time. He has not done so.

57. The third period that does not count as qualifying years consists of the tax years 1987-88 and 1988-89. According to HMRC, the Appellant's record showed that although he commenced self-employment, he did not pay any Class 2 (self-employment) contributions from 7 June 1987 to 8 April 1989, having been granted a Small Earnings Exemption (SEE). The Appellant has not sought to contradict this.

58. The fourth period that does not count as qualifying years is tax year 1990-91. The Appellant's RD18 appears to show that in this year he received 29 credits from "DSS LO" in respect of unemployment or disability. Apparently, this has been considered insufficient for this year to count as a qualifying year for purposes of the State pension. For the reasons above, the jurisdiction of the Tribunal does not extend to determining whether the Appellant should have received more than 29 credits in this year in respect of unemployment/disability, or whether this year should count as a qualifying year. The Tribunal's jurisdiction is confined to determining whether the Appellant paid any further NI contributions in this year, and there is no suggestion that he did. The Appellant acknowledges that he left employment in 1990 due to being involved in a car accident and was then on sickness and disability benefits for many years.

59. The fifth period that does not count as qualifying years is the period from 1998-99 to 2013-14 inclusive. Again, the Appellant makes no positive claim to have been working or paying NI contributions in this period. Again, for the reasons above, it is not for the Tribunal to determine whether the Appellant should have received other NI credits during this period.

60. The Tribunal therefore finds that no variation to the challenged HMRC decision is required as a result of the Tribunal's findings in relation to the third issue in dispute.

61. The Appellant apparently disputes the finding that he was abroad from 5 December 2004. This is not a matter falling within the scope of s 8(1)(e) of the Transfer Act, and is therefore not within the Tribunal's jurisdiction in this appeal.

62. The Tribunal makes the following concluding comment. It is noted that the 29 July 2008 HMRC letter stated that the Appellant now had 31 qualifying years to 5 April 2006. However, the witness statement of Officer Crawford states that the Appellant has 15 qualifying years prior to 6 April 1975, and the list at the bottom of page 54 of the hearing bundle indicates that the Appellant has 13 qualifying years from 6 April 1975, making a total of only 28 qualifying years. This Tribunal hopes that this apparent discrepancy can be resolved by those responsible.

Conclusion

63. For the reasons above, the appeal is allowed in part, to the extent that the schedule to the 21 October 2013 HMRC decision is amended as follows:

(1) Contribution year 1958-59 shall be added, with 3 Class 1 contributions paid.

(2) Contribution year 1959-60 shall be amended, to indicate 52 Class 1 contributions paid.

(3) Tax year 1981-82 shall be amended, to indicate contributions of £538.91.

(4) Tax year 1982-83 shall be amended, to indicate contributions of £1,488.24.

64. 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.

DR CHRISTOPHER STAKER
TRIBUNAL JUDGE

RELEASE DATE: 13 JULY 2016