



TC05696

Appeal number: TC/2016/04048

***NATIONAL INSURANCE CONTRIBUTIONS – Married woman’s election
not to pay NICs – Whether sufficient evidence of cancellation – Yes –
Appeal allowed***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MARCIA MORRIS

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE JOHN BROOKS
SIMON BIRD**

Sitting in public at Eastgate House, Newport Road, Cardiff on 15 February 2017

The Appellant in person with Mr John Morris

Mrs Sandi Connolly, of HM Revenue and Customs, for the Respondents

DECISION

1. Mrs Marcia Morris appeals against a decision made by an officer of HM Revenue and Customs (“HMRC”), under s 8 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 on 11 May 2016, and upheld on 11 July 2016 following a review, that she was not liable to pay National Insurance Contributions (“NICs”) as a married woman in the period from 8 June 1970 to 5 April 1975 and that during the period from 6 April 1975 to 5 April 1978 she was liable to pay NICs at the married woman’s reduced rate.

2. The effect of this decision is that Mrs Morris is not entitled to a full State Retirement Pension.

Background

3. Until 1975 a married woman could, under Regulation 2 of the National Insurance (Married Women) Regulations 1948, elect not to pay NICs and, while she remained married, the election continued to have effect unless it was expressly revoked. To make an election a married woman had to complete a form CF9 which was attached to Leaflet NI1. This explained the effect of an election including how it could affect benefits such as the State Retirement Pension. To complete a CF9 a married woman was required to sign a declaration that she either did or did not wish to pay National Insurance contributions. This would then be sent to a local office of the Department of Social Security (which was then responsible for the collection of National Insurance).

4. Following the change in NICs from 6 April 1975 a woman who had made an election not to make contributions was, by virtue of Regulation 100 of the Social Security (Contributions) Regulations 1975, deemed to have made an election under Regulation 91 of those Regulations to pay NICs at a reduced rate. Although the availability of an election ceased from 6 April 1977 under s 3 of the Social Security Pensions Act 1975, a woman who had made an election before then was able to continue to pay either no or reduced rate NICs, in accordance with Regulation 102 of the Social Security (Contributions) Regulations 1979, until such time as she ceased to be married otherwise than by reason of the death of her husband. The reduced rate was automatically cancelled if there was, from 5 April 1978 two consecutive years in which a woman had no earnings on which Class 1 NICs were payable or treated as paid or had not been self-employed (Regulation 101 Social Security (Contributions) Regulations 1979).

5. Home Responsibilities Protection (“HRP”) was introduced on 6 April 1978 to provide assistance for a person receiving child benefit for a child under 16 and who was not employed for NICs purposes. However, it did not apply to a married woman who had elected to pay no or reduced rate contributions (Regulation 2 Social Security Pensions (Home Responsibilities and Miscellaneous Amendments) Regulations 1978).

6. On 20 July 2013 Mrs Morris received a letter, dated 16 July 2013, from HMRC regarding the reduced rate of State Retirement Pension that she had been awarded. Her letter of 20 July 2013 in response explained she had not been in paid employment between February 1975 and 1981 as her daughter had been born in March 1975 and her son in November 1977. However, after 1981 she had been employed and as her hours and earnings increased had paid Class 1 NICs. The letter continued to say that at all times the tax office was fully informed of her circumstances.

7. After waiting some 20 months Mrs Morris wrote again to HMRC chasing a reply to her letter of 20 July 2013. HMRC eventually responded by letter, dated 24 March 2015, which stated that, as there were no earnings recorded on her NICs record for two consecutive years after 1975-76, their records showed that her married woman's reduced rate had been cancelled on 5 April 1978.

8. Mrs Morris wrote again to HMRC, on 10 April 2015, setting out the conflicting explanations she had received regarding her reduced State Pension requesting that the matter be looked into and asking whether she could make a voluntary contribution to make up the shortfall so as to be entitled to a full pension. After a considerable delay, and a reminder from Mrs Morris on 22 February 2016, HMRC replied on 7 April 2016. The relevant parts of that (lengthy) letter explain:

“The Pension Service tell us that in order to qualify for a full basic State Pension a woman reaching pensionable aged in 2009 must ordinarily have paid, or been credited with, sufficient NICs for each of 39 years of a working life of 44 years. These are known as Qualifying Years. Her working life runs from 6 April prior to her 16th birthday and up to pension age. If she achieves less than 29 Qualifying years then her entitlement to basic State Pension is reduced accordingly.

Your NIC record shows you registered for NI at a local employment exchange office in Cinderford on 9 April 1965. A contribution card was issued to you for the 1964-65 contribution and an NI number ... was given to you. You were required to exchange your card for a new one during the first week of December each year.”

9. The letter then sets out the three classes of NICs and, in a table, the number of payments paid by or credited to Mrs Morris between 1964-65 and 1969-70 indicating that no NICs payments were paid or credited between 1970-71 and 1974-75. This amounted to six years NICs. It continues:

“A statement was sent to you on 5 January 1971 advising of the shortfall in contributions for the 1969-70 contribution year. There is nothing to show that you made good the shortfall

...

The Department's records show that you notified the Department that you married on 16 May 1970 and at that time you would have been given leaflet N11. Your NI record shows that from 8 June 1970 you exercised your right as a married woman and chose not to pay NI contributions. This choice remained in force until 5 April 1978. This is

consistent with your NI record as 27 Class 1 (employed person) contributions were paid from 1 December 1969 to 7 June 1970.

...

A married woman was free to cancel her choice not to pay NI contributions or pay at the reduced rate at any time. There is no record of you having done so and your choice remained effective until 5 April 1978. As you had not been in paid employment from 1975 your choice was cancelled by the Department to enable you to have entitlement to Home Responsibilities Protection (HRP).

HRP was introduced from 6 April 1978 to protect the rights of men and women who were prevented from going out to work because of responsibilities at home. This includes the person awarded Child Benefit. For people who reached pensionable aged before 6 April 2010, HRP does not entitle them to be credited with NICs, nor does it count towards satisfying the contribution conditions for other benefits. HRP works by reducing the number of years needed for a basic State Pension. For any tax years which are already qualifying HRP is not used because you were paid or credited with enough contributions. Your NI contribution record shows that you have entitlement to HRP from 6 April 1978 to 25 November 1993 because you had been awarded Child Benefit.”

10. After setting out, in tabular form, Mrs Morris’ NICs record between 1975-76 and 2009-10 the letter continues:

“You say that you paid 52 Class 2 NICs for 1992-93 tax year yet only 48 are recorded. I am unable to trace any further Class 2 NICs and without any evidence I am unable to update your record. As you paid an additional 4 Class 3 NICs the 1992-93 year is a qualifying year.

You also say that you are only one year short of contributions (which you dispute) and have been given several different figures that you would have to pay to make up this shortfall.

Although you were not employed between 6 April 1975 and 5 April 1978 you held a Married Woman’s Reduced Rate Election and were not entitled to pay Class 3 NICs for this period. The tax years from 1978-79 to 1982-83 are covered by HRP and there are no further years in your working life period which you would be able to pay voluntary Class 3 NICs for. You, therefore, cannot improve on the amount of Retirement Pension you currently receive.

Please carefully consider the information I have provided and let me have any comments within 30 days of the date of this letter. If I do not hear from you within that time I will assume that your NIC record is correct.”

11. In her reply of 11 April 2016 Mrs Morris, who does not accept that HMRC’s record of NICs is correct, states that, although HMRC do not have a record of it, she did, in fact cancel her married woman’s reduced NICs election on the birth of her daughter having been advised to do so by her husband’s accountants.

12. On 11 May 2016 HMRC Officer, Mrs Lesley Crawford, made the decision that Mrs Morris was not liable to NICs as a married woman in the period from 8 June 1970 to 5 April 1975 and that during the period from 6 April 1975 to 5 April 1978 she was liable to pay NICs at the married woman's reduced rate. This decision was upheld on 11 July 2016 following a review. On 26 July 2016 Mrs Morris appealed to the Tribunal.

13. It is accepted that if, as she says, Mrs Morris did cancel her married woman's reduced rate election in 1975 she would be entitled to pay class 3 NICs for the period between 6 April 1975 and 5 April 1978 and (if she did so) be entitled to receive a full State Retirement Pension.

Issue

14. As is apparent from these circumstances, the issue for us to determine is whether Mrs Morris cancelled her married woman's reduced contributions election in 1975.

Discussion

15. The following facts were not disputed:

(1) On 8 June 1970 that Mrs Morris exercised her right as a married woman under Regulation 2 of the National Insurance (Married Women) Regulations 1948 and elected not to pay NICs;

(2) On 6 April 1975 she was, by virtue of Regulation 100 of the Social Security (Contributions) Regulations 1975, deemed to have made an election under Regulation 91 of those Regulations to pay National Insurance Contributions at a reduced rate – the married woman's reduced rate;

(3) HMRC have no record of any cancellation by Mrs Morris of her married woman's reduced rate election; and

(4) Mrs Morris has no documentary evidence that she cancelled her married woman's reduced rate election.

16. We heard from Mrs Morris and Mr John Morris both of whom were cross examined by Mrs Connolly. Mrs Lesley Crawford, the officer who made the decision against which Mrs Morris has appealed, also gave oral evidence to explain how Mrs Morris's pension had been calculated and confirm that HMRC had no record that her married woman's reduced rate election had been cancelled.

17. Mrs Morris told us that she worked for Harris Motors as a bookkeeper until January 1975 and had left before the birth of her daughter in March that year. She explained that her husband was self-employed and that she had gone with him to his accountants, Raymond Wright & Co, in Street, Somerset shortly after the birth of their daughter, she thought that it was around April 1975 but could not be certain. They were advised that as Mrs Morris did not intend to go back to work she should cancel

her married woman's reduced rate election by going to the relevant office and completing the necessary forms.

18. Shortly after receiving this advice from the accountant, Mr and Mrs Morris went to the Social Security Office in Bridgwater, Somerset (they then lived just outside the town) where she completed the paperwork she had been given to cancel the election and returned it to a member of staff. Mrs Morris did not recall receiving any document confirming that the election had been cancelled.

19. Mr Morris, who was working as an agricultural engineering subcontractor at the time, told us that in addition to his year end accounts, which were made up to 5 April each year, he had gone with Mrs Morris to his accountants in 1975 to seek advice following the birth of their daughter and Mrs Morris ceasing employment. He recalls that they were advised to cancel the married woman's reduced rate election. On that advice, they attended the local Social Security Office in Bridgwater taking their baby daughter who lost a shoe, a baby bootie, with them. However, he has no recollection of a tear off strip or other form or document being given to Mrs Morris when she handed in her completed form cancelling her married woman's reduced rate election.

20. Although Mrs Morris did not mention the lost baby bootie it was clear from her reaction when Mr Morris mentioned it that she did recall the incident and subsequently confirmed that this was the case.

21. Perhaps not surprisingly, as it was over 40 years ago, the recollection of Mr and Mrs Morris of their visit to the Social Security Office in Bridgwater in 1975 was somewhat hazy. However, we consider them to be credible and truthful witnesses and have no reason to doubt their account of what happened especially in the light of the reaction of Mrs Morris when Mr Morris remembered the lost baby bootie.

22. In a case such as this, Regulation 10 of the Social Security Contributions (Decisions and Appeals) Regulations 1999 provides:

If ... 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.

23. The long established effect of such a provision is that the onus lies on the appellant, here Mrs Morris, to satisfy the Tribunal upon sufficient evidence that the decision appealed against was erroneous (eg *T Haythornwaite & Sons v Kelly (HM Inspector of Taxes)* (1927) 11 TC 657).

24. Although HMRC do not have a record of the cancellation of married woman's reduced rate election and notwithstanding the lack of documentary evidence we consider, having heard from Mr and Mrs Morris that, on balance, there is sufficient evidence that HMRC's decision was erroneous. In particular, we find that Mrs Morris did cancel her married woman's reduced rate election in 1975. Accordingly, she is entitled to pay class 3 NICs for the period between 6 April 1975 and 5 April 1978 and, provided she does so, would be entitled to receive a full State Retirement Pension.

25. Accordingly, we allow her appeal.

26. By way of postscript we note that Mrs Morris complains that HMRC and previous Departments dealing with her NICs have, to use her words, “failed in their duty of care” to maintain her records. She says that had they not done so when she first raised the issue of her NICs in 2013 it would not have been necessary for her to bring this appeal as she could have made additional payments and received a full pension. While we sympathise with her and are somewhat surprised that it took HMRC over 20 months to respond to one letter and more than 10 months for another, as we pointed out at the hearing, this Tribunal does not have the jurisdiction to supervise the conduct of HMRC. This is clear from the decision, which is binding on the Tribunal, of the Tax and Chancery Chamber of the Upper Tribunal in *HMRC v Hok Ltd* [2012] UKUT 363 (TC).

Appeal rights

27. 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.

**JOHN BROOKS
TRIBUNAL JUDGE**

RELEASE DATE: 21 FEBRUARY 2017