



[2019] UKFTT 649 (TC)

**TC07424**

*Class 1 National Insurance contributions – married woman’s reduced rate – evidence of election – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2019/ 00306**

**BETWEEN**

**NORA EASTWOOD**

**Appellant**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE RACHEL SHORT  
SUSAN STOTT (MEMBER)**

**Sitting in public at City Exchange, 11 Albion Street, Leeds on 11 October 2019**

**Mrs Eastwood the Appellant in person**

**Mr Wilby litigator of HM Revenue and Customs’ Solicitor’s Office, for the Respondents**

## **DECISION**

### **INTRODUCTION**

1. This is an appeal by the Appellant, Mrs Eastwood against HMRC's Notice of Decision of 22 January 2019 that Mrs Eastwood was liable to pay Class 1 National Insurance Contributions (“NIs”) at the married woman's reduced rate from 6 April 1975 to 5 April 1988.
2. The result of that Notice of Decision is that Mrs Eastwood is eligible for a smaller amount of state pension than would otherwise be the case.

### **SUMMARY**

3. Eligibility to pay reduced rate NIs for the periods in dispute depended upon a married woman completing and submitting a form (the CF9) to the local employment office and, as part of the same process, providing a certificate (the CF308A) setting out her NI obligations to her employer.
4. HMRC say that their records (the RF1) and the records of Mrs Eastwood's employers during this period demonstrate that she completed a CF9, made a reduced rate election and paid NIs at the reduced rate.
5. Mrs Eastwood says that she did not complete a CF9 during this period, that she was not employed by anyone until the 1976-7 tax year and that she paid small NIs because she was only employed part-time, not because she had made the married woman's election.
6. The onus of proof would usually be with Mrs Eastwood to demonstrate that she did not make the reduced rate election at this time, but HMRC have accepted the onus of proof in this case in recognition of the fact that Mrs Eastwood must otherwise prove a negative; that she did not sign a CF9 and make the reduced rate election.
7. To succeed HMRC need to demonstrate that it is more likely than not that Mrs Eastwood did complete a CF9 and make the married woman's reduced rate election which was effective for the periods in dispute.

### **PRELIMINARY MATTERS**

#### **Late appeal**

8. Mrs Eastwood's appeal notice of 14 January 2019 stated that she was not sure whether her appeal was made in time. To be in time Mrs Eastwood must have appealed against HMRC's decision and to the Tribunal in time.
9. Mrs Eastwood responded to HMRC's formal decision letter of 11 September 2018 on 16 November 2018, outside the stated 30 day time limit. At the Tribunal HMRC confirmed that they had no objections to the granting of an extension of time for Mrs Eastwood's appeal against HMRC's decision. The Tribunal has proceeded on the basis that her appeal to HMRC was made in time.
10. Mrs Eastwood did not request and was not offered a statutory review of HMRC's decision and therefore there is no time limit within which her appeal must be made to the Tribunal. In fact Mrs Eastwood's appeal to the Tribunal was made before HMRC carried out their statutory review on 22 January 2019. Mrs Eastwood's appeal to this Tribunal was not made late.

## **Burden of proof**

11. Where the burden of proof lies in circumstances such as this in which Mrs Eastwood is obliged to prove a negative; that she did not sign the CF9, is not completely clear. HMRC have stated (in their statement of case dated 22 March 2019) that they accept the onus of proof to demonstrate to the civil standard that Mrs Eastwood did sign and submit the CF9 reduced liability election. This is in line with Judge Hellier's explanation of the position in the *Gutteridge* decision at paragraphs 92 – 101 and in particular at 98 - 99:

“In this case one party is asserting that a document was signed and the other not. Were this a civil case then it seems to me that the burden would be on the Respondents to show that it had been signed..... it seems to me that in reality the civil law approach and the approach deriving from regulation 10 lead to much the same result. If the Respondents advanced no evidence that the form had been signed the tribunal would, if it found Mrs Gutteridge's evidence cogent, be likely to hold for her. But once the Respondents advance evidence, the tribunal's duty is to weigh the evidence of the parties”

## **THE LAW**

12. The relevant legislation is set out in:

### ***1. Regulation 2 National Insurance (Married Woman) Regulations 1948***

National Insurance (Married Women) Regulations 1948 S1 1948/1470, regulation 2(1)(a) provided that a woman may elect not to be, and thereafter ...shall not be, liable to pay contributions under the [National Insurance Act 1946] in respect of any employment as an employed person for any period during which she is married.

### ***2. Procedure***

In order to make that election, when a woman got married she was obliged to notify her local NI office and would be given a leaflet (NI1) “National Insurance for Married Women” outlining the consequences of making a married woman's election for reduced rate NI contributions. If a woman wished to make the election for reduced NI contributions she signed the attached form, CF9 on the basis that she had read the information in the leaflet and made an informed choice, completing either declaration A “full liability” or B “reduced liability”. That choice would be recorded on the woman's contribution record (the RF1) to indicate a married woman who had elected not to pay standard contributions (the annotation being “MW1/NP”).

Even if a married woman made this election she was still liable to pay a small payment known as the “exempt rate stamp” towards industrial injuries compensation, amounting to a few pence per week.

A married woman's employer was obliged to deduct standard rate NI from her wages until he received the married woman's stamp card (or a label to affix to her contribution card).

3. ***The National Insurance Act 1965*** consolidated earlier NI Acts (between 1946 and 1964).

Section 102 gave power to the Minister to make regulations for exempting a woman, if she so elected, from liability to pay contributions... as an insured person for any period during which she was married.

4. ***The National Insurance (Married Women) Regulations 1973*** were made under this power.

Regulation 2(1)(a) provided that a woman may elect not to be and thereafter (subject of the provisions of paragraph (2) of this regulation) shall not be, liable to pay contributions under the [National Insurance Act 1965] in respect of any employment as an employed person for any period during which she is married.

5. ***The Social Security Act 1975,***

Section 5(2) provided that a married woman or widow shall be liable to contribute at the reduced rate if she has elected in accordance with regulations under section 130(2) of this Act, to contribute at that rate and has not revoked her election.

Section 130(1) (of that Act) permitted the Secretary of State to make regulations modifying specific provisions of the Act (namely Part I) in their application to women who are or have been married.

Section 130(2) stated that regulations under this section shall provide (subject to any prescribed conditions and exceptions) for enabling a married woman or widow to elect that in any tax year that her liability in respect of primary Class 1 contributions shall be a liability to contribute at the reduced, instead of the standard rate.

6. ***Social Security (Contributions) Regulations 1975 (1975/492), regulation 91(1)***

This regulation provided that a married woman could make an election so that the liability to primary Class 1 contributions should be at the reduced rate.

Regulation 92 provided that an election made in one year was to continue until revoked on the termination of her marriage and Regulation 93 provided that the election could be revoked by written notice.

Regulation 100 provided that where there was currently an election under regulation 2(1)(a) of the [1973 Regulations] ...then that woman shall be deemed to have made an election under regulation 91 of the 1975 Regulations.

7. ***Section 130(2) of the Social Security Act 1975 was repealed by section 65(3) and Schedule 5 of the Social Security and Pensions Act 1975*** with effect from 6 April 1977 as prescribed by The Social Security Pensions Act (Commencement No. 3) order 1975.

As a result of this legislation, the NI law and procedures changed radically from April 1975. The married woman's choice to pay reduced contributions was abolished from 11 May 1977, but, women who had elected to pay the reduced rate contribution before that date, were allowed to retain that choice unless they chose to revoke it.

## **8. Procedure**

The process for making an election was through the employer receiving a “tear-off portion” from the woman’s NI card (the CF380A). These were gradually exchanged for certificates of election between May 1979 and April 1980.

Unless an employer held a CF380A he was bound to deduct full rate contributions from a female employee and if a married woman had made a valid election, she could only pay NI at the reduced rate.

## **9. Changes to the law in 1977 - Social Security Pensions Act 1975**

Section 3 of this Act provided: The provisions of the principal Act whereby primary Class 1 contributions may be paid at a reduced rate...shall cease to have effect.

“As respects any woman who is married or a widow when subsection (1) above comes into force regulations shall provide –

- (a) for enabling her to elect that her liability in respect of primary Class 1 contributions shall be a liability to contribute at such reduced rate as may be prescribed and for enabling her to revoke any such election”.

“Regulations under subsection (2) above may -

- (a) provide for the making or revocation of any election under the regulations to be subject to prescribed exceptions and conditions;

- (b) provide for treating an election made or revoked for the purpose of any provision of the regulations as made or revoked also for the purpose of any other provision of the regulations;

- (c) provide for treating an election made in accordance with regulations under section 130(2) of the principal Act as made for the purpose of regulations under this section...”

## **10. The Social Security (Contribution) Regulations 1979 (SI 1979/591) (the 1979 Regulations) were made under that Act.**

Regulation 100 permitted a woman who was married on 6 April 1977 to elect to pay reduced rate contributions but provided that no further elections could be made after 11 May 1977.

Regulation 101 provided that an election made under Regulation 100 would cease to have effect at the end of the second consecutive year after 6 April 1978 in which the woman was not earning.

Regulation 102 states – “where but for the former regulation 91 ceasing to have effect on 6<sup>th</sup> April 1977 (being the date on which section 130(2) of the [Social Security] Act (married women and widows) was repealed) an election made

under that regulation before that date would have continued to have effect on [6 April 1977], that election shall be treated as made under regulation 100 of these Regulations”.

### ***11. Procedure***

Until 1978, an election to pay reduced rates was continued until a woman chose to revoke it. After April 1978 if a married woman did not pay class 1 contributions for two years, her election automatically lapsed.

13. We were also referred to the following case authorities:

- (1) *Daphne Carol Gutteridge v HMRC* SPC 00534
- (2) *Sandra Lesley Whittaker v HMRC* SPC00528

### **EVIDENCE SEEN AND HEARD**

14. We were provided with a witness statement from Lesley Crawford an officer of HMRC dated 16 July 2019 and we heard oral evidence from Mrs Crawford.

- (1) We saw correspondence between the parties from 8 April 2013 to 30 March 2019.
- (2) Correspondence between Mrs Eastwood, her MP Mr Jarvis and HMRC.
- (3) We saw HMRC's records of Mrs Eastwood's NI contributions, being Mrs Eastwood's RF1 which included:
  - (a) Mrs Eastwood notification of her marriage on 15 August 1970
  - (b) For the 1971-2 tax year notification MW1/P 12/06/72
  - (c) For the 1975-6 tax year notification MW1/NP 6475
- (4) Mrs Eastwood's NI statement of account RD18 issued on 31 August 2018 setting out Mrs Eastwood's NI contributions for the tax years from 1976-77 to 2017-18 and the name of her employers during that period.
- (5) Mrs Eastwood's employers' P11 tax deduction cards for the periods 1976-77 to 1985-6 showing the employee's NI deducted by her employer for each of the years from 1976-77 to 1985-6, Mrs Eastwood's NI number and her designated NI code or "table letter" which is recorded a "B" in each year other than in year 1976-77 when her employer (Barnsley Canister Company) records it as "2".
- (6) For the two tax periods 1983-4 and 1984-5 Mrs Eastwood is recorded as making no NI contributions. For all other periods her NI contributions are made at a rate of between 2% and 3% of her total annual earnings.
- (7) Mrs Eastwood's computerised account details from April 1975 (RD19)
- (8) Mrs Eastwood's contract of employment with Barnsley Canister Company dated 23 January 1977 and including Mrs Eastwood's NI number.
- (9) Copy of leaflet NI dated April 1976 attaching form CF9 "Married Woman's Contribution Choice", including

- (a) The declaration on the second page in which a woman had to tick either A – full liability and the year in which the liability was to start or B – reduced liability and the year in which the reduced liability was to start. If option B was ticked, the woman would also tick the box to receive a certificate of reduced liability – the CF308A.
- (b) It is made clear that if a woman has a contribution card but has ticked choice B, that card should be surrendered when reduced liability payments are to start.
- (c) As part of completing the form on page 2 a choice is also given about which tax year the election should take effect from. On the 1976 form which we saw the choices were for the election to start in 1975, 1976 or 1977.

## **Evidence heard**

### ***Evidence from Mrs Eastwood***

15. Mrs Eastwood was clear that she had never seen or signed a CF9. She had not seen a copy of form CF9 until it was sent to her by HMRC. She was not aware that she had made reduced rate contributions until she made enquiries about her NI record when she asked for a pensions forecast in 2013.

16. She stressed that although HMRC were maintaining that she had signed a CF9 they could not produce a copy of that document or even confirm the date when it was signed. HMRC had originally suggested that her CF9 was signed by her in April 1975 but had subsequently changed their mind and said that it had been signed later but backdated to April 1975. Mrs Eastwood said categorically that she would not have signed a CF9 in 1975 as at that time she was off work on maternity leave having given birth to her daughter on 21 January 1974.

17. Mrs Eastwood told us that she got married in 1970 and stopped working in October 1973. She gave birth to her daughter in January 1974 and went back to work on 15 November 1976 for Barnsley Canisters Company Limited (“Barnsley”). She signed her contract with that company in January 1977. This role was a part time role. She was paid weekly in cash. She said that at the start of the role she just turned up for work on a Monday morning. She was certain that she did not follow any particular procedures or hand over any documents before she started work.

18. She changed jobs in November 1983 and went to work for Bass Yorkshire Limited (“Bass”) where she also worked part time earning £21 per week. She was adamant that she did not hand over any documents to Bass at the start of this new role. She took this job because her husband was on strike and she needed the money. Bass paid her wages directly into her bank account on a weekly basis. At the end of her time working at Bass she discovered that she had holiday pay due to her.

19. Mrs Eastwood confirmed that she was aware of the existence of the reduced married woman's rate but did not have any reason to make an election or to seek out the forms and send them to her employer.

20. Mrs Eastwood provided details of her recent dealings with the Department for Work and Pensions and HMRC including errors which had been made in sending her form CF411 concerning child benefits in July 2018 when she was already retired and informing her in May

2019 that her pension had been increased because her husband had died when he was in fact still alive.

21. In Mrs Eastwood's view the reason why HMRC have not been able to provide a copy of the CF9 signed by her is because she did not sign one and they never had a CF9 from her in the first place.

### ***Evidence from Mrs Crawford***

22. Mrs Crawford's witness statement of 16 July 2019 was formally adopted. Mrs Crawford detailed the usual process for completing a CF9 and how this would be recorded by HMRC and explained what HMRC thought had happened in Mrs Eastwood's case by reference to their records.

23. On marriage a taxpayer would usually register the marriage at a local employment office and at that time she would be given the leaflet (the NI) including form CF9 with an explanation of the married woman's reduced rate election. When completed, that form would be returned to the local employment office and the taxpayer would be given a "certificate" to hand to her employer confirming that a reduced rate election had been made. That "certificate" was originally a tear-off portion of the CF9 but later became a separate, reduced rate certificate, called a CF380A.

24. If a CF9 leaflet was not provided by a local employment office, they could be picked up in other places, such as local libraries or from employers.

25. An employer was obliged to surrender an employee's expired contribution card at the end of each year to the local employment office. The card would be sent to the central records branch where it was matched to the employee's NI number and her employment record, the RF1, and the amount of NI payments copied from the employer's contribution card onto the RF1.

26. On receipt of these returns HMRC would cross-check to make sure that reduced rate contributions had not been applied to women for whom they had not got a record of a CF9 reduced rate election having been submitted. If there was a conflict between HMRC's records and an employer's records, an investigation would be carried out.

27. Whether or not a woman had completed a CF9 reduced rate election, on starting a new employment an NI contribution card would have to be given to the employer. This would be retained by an employer until it was full or until the employee left. If an employee left the card would be given to the employee to pass to their new employer.

28. Mrs Crawford pointed out that there was no advantage to an employer if they applied the reduced rate of Class 1 NI; it made no difference to how much the employer had to pay to HMRC. Equally, if an employer had no information about an employee's NI position, or if a reduced rate certificate had not been provided, an employer was legally obliged to deduct NI at the full rate.

29. Mrs Crawford explained that HMRC records (the RF1) showed Mrs Eastwood's marriage was notified to HMRC in August 1970 but there was no suggestion that a reduced rate election had been made at that time. Mrs Eastwood's RF1 showed that she had elected to pay NI at the full rate, supported by her contribution card for 1972 and her RF1 marked "MW1/P".

30. At the time when Mrs Eastwood went on maternity leave she would have surrendered her contribution card and would have had to complete a new CF9 when she went back to work in November 1976, giving details of her insurance number and indicating whether she wanted



to pay full or reduced class 1 NI payments. Depending on the choice she made, she would either have received a new contribution card or a certificate of reduced liability (the CF380A) to hand to her new employer.

31. Mrs Crawford took us through the employment records from Mrs Eastwood's employers for the periods from 1976-7 to 1983-4 pointing out that for each of those periods the employer had marked the records "B" (or 2) and NI had been paid at the 2% rate on Mrs Eastwood's earnings.

32. There were two years for which no NI had been deducted at all (1983-4 and 1984-5 while Mrs Eastwood was working for Bass) because she was below the earnings threshold for paying any NI.

33. Mrs Crawford explained that because Mrs Eastwood left employment with Bass in October 1985 and did not work for two years after that, her reduced rate election lapsed on 5 April 1988.

34. Mrs Crawford could not explain why Mrs Eastwood's RF1 recorded her having made a CF9 election in April 1975 at a time when Mrs Eastwood was not even in work. She suggested that the records had been backdated to April 1975 but could not explain why.

#### **MRS EASTWOOD'S ARGUMENTS**

35. Mrs Eastwood was adamant that she had never seen or signed a CF9. Someone at HMRC had made a mistake and her records had been wrongly marked

36. HMRC had demonstrated recently that they could make serious mistakes; in not knowing that she had children (in correspondence during August 2018) and in explaining that they had increased her pension because her husband was dead (in their telephone conversation of May 2019)

37. She would not have signed a CF9 in April 1975 because she was not working at this date, she did not return to work until she started work for Barnsley in November 1976. She had not intended to go back to work at this date but had to because her husband was already doing two jobs.

38. HMRC should be able to produce the original CF9 and demonstrate when it was signed. In her case HMRC could not even provide the correct date when the CF9 was signed.

#### **HMRC'S ARGUMENTS**

39. HMRC referred to previous Tribunal decisions in particular the decision in *Whittaker* to support their position that their failure to provide a copy of Mrs Eastwood's CF9 as a result of that document having been destroyed in accordance with their standard document retention policy, should not give rise to any adverse implications:

"The originating documents were destroyed in accordance with the Respondent's Record management policy. I draw no adverse inference from the destruction of these documents as it was not done with the intention of destroying evidence.... I am satisfied that the Respondents had procedures in place to ensure that the entries recorded on the Appellant's RF1 (NI Account) were accurate, in particular the independent checking by supervisors of entries" *Whittaker* at [30]

40. The failure of HMRC to produce an original CF9 could not be taken as an indication that a CF9 had not actually been signed. In the absence of this primary evidence, other evidence, the RF1, had to be taken account of.

41. Mr Wilby stressed that HMCR's records were independent of the employer records provided by Mrs Eastwood's employers and that there would have been an investigation if there had been a conflict between HMRC's records and the employers' records.

42. The fact that Mrs Eastwood's recollections did not match HMRC's records did not mean that HMRC's records could not be relied upon.

## **DISCUSSION**

### ***Findings of Fact***

43. On the basis of the evidence seen and heard the Tribunal finds as a fact that:

(1) Mrs Eastwood had been employed after her marriage in 1971-2 during which time she is recorded as having elected to pay full Class 1 NI contributions.

(2) Mrs Eastwood was not employed during the 1974-5 tax year.

(3) Mrs Eastwood's first employer after she returned from maternity leave in November 1976, Barnsley, was provided with information about Mrs Eastwood including her NI number.

(4) Mrs Eastwood's two employers, Barnsley and Bass both applied the married woman's reduced rate of NI contributions to the wages they paid to Mrs Eastwood from November 1976 until October 1985 when she left her employment with Bass.

(5) Mrs Eastwood was not employed from October 1985 until April 1988.

(6) In 1976 the normal process for providing NI information to a new employer was for the employee to complete a CF9 and provide the relevant part to the new employer.

### ***Level of evidence required***

#### ***The absence of the CF9***

44. It is HMRC's failure to produce this which has led to Mrs Eastwood's conclusion that HMRC have made a mistake.

45. We understand the frustration of a taxpayer in Mrs Eastwood's position who has been left without the very document on which HMRC's case, and the denial to her of significant pension benefits, depends.

46. Previous cases have suggested that no negative inference can be derived from HMRC's failure to produce original documents which have been destroyed in line with HMRC's standard document retention policy.

47. HMRC suggested that, in the absence of a CF9 signed by Mrs Eastwood, the RF1 should be accepted as evidence of the signature of the CF9. In our view since the RF1 is only secondary evidence of a signed and dated CF9 it cannot be automatically accepted as evidence that the

original document did exist. Further supporting evidence is required if we are to conclude that the RF1 is accurate in this case.

### *The RF1*

48. Mrs Eastwood suggested that rather than supporting the existence of the CF9, the RF1 revealed further inaccuracies, including referring to a date of signature which could not possibly be correct, which HMRC could not fully explain before the Tribunal. That cast further doubt on the assertions made by HMRC about their standard of record keeping and the likelihood of those records accurately reflecting what she had actually done (or not done) in 1976.

49. In our view the existence of one apparent error on Mrs Eastwood's RF1 does not automatically lead to the conclusion that other entries are incorrect. All other details on Mrs Eastwood's RF1 appeared to be correct, including the date of registration of her marriage and her choice not to pay the married woman's reduced rate NI contributions in 1972.

### *Is there other evidence that Mrs Eastwood signed a CF9?*

50. In our view some other evidence of Mrs Eastwood having signed a CF9 to make a reduced rate election before she started work at Barnsley does exist; the employers' records from Barnsley and Bass.

51. On the basis of the evidence provided by Mrs Crawford, which was not challenged by Mrs Eastwood, we have concluded that these provide a source of additional evidence, because they show what Mrs Eastwood's employers believed her NI status to be on the basis of information in the form of the certificate or contribution card which should have been given to the employer by an employee on commencement of her employment.

52. We accept HMRC's point (supported by the legislation) that if no information was provided by an employee to an employer they were legally obliged to deduct Class 1 NIs at the standard rate.

53. Mrs Eastwood's new employer Barnsley did not deduct Class 1 NI at the standard rate. Therefore they could only have applied a reduced rate on the basis of information provided to them by somebody. Mrs Eastwood says that she had no recollection of providing any such information, but from the employer records which we saw we have concluded that she must have provided some information to her employers:

1. Both of her employers quote her correct NI number on their end of year returns.
2. More significantly, Bass' end of year return for the year when Mrs Eastwood had worked for both Barnsley and Bass (1983-4) provided a cumulative total of earnings from both employments, which could only have come from Mrs Eastwood.
3. We would also expect that, if nothing else, Mrs Eastwood would have provided her P45 to her new employer when she changed jobs. If this had not been done she would have been put onto an emergency tax code and temporary NI number,

which Bass did not do.

54. We accepted Mrs Crawford's evidence of the processes which were in place at this time to check the accuracy of information provided from employers about the correct Class 1 NI status of employees, in particular that HMRC would raise queries if a reduced rate of Class 1 NI was applied when HMRC did not hold evidence of a CF9 reduced liability election having been made and vice-versa, that an employer was legally obliged to apply the full rate of NI unless they had received information from the employee that a reduced rate should be implied.

55. We have wondered whether it is possible that an error made by HMRC when they recorded the CF9 reduced liability election being made in 1975 was simply replicated in the NI certificates which Mrs Eastwood provided to both of her employers and also in their subsequent records without Mrs Eastwood realising this. HMRC's records and those of Mrs Eastwood's employers would have matched, but would both have been wrong.

56. On the basis of the explanation of the process described by HMRC, the sample CF9 forms which we saw and Mrs Eastwood's particular circumstances, this does not seem likely.

57. We know that Mrs Eastwood had elected to pay full rate liability in 1971-2 and would therefore have previously had a contribution card, not a certificate of reduced liability. Mrs Crawford told us that this contribution card would have been handed back when Mrs Eastwood left her job to go on maternity leave.

58. We know that Mrs Eastwood should have completed a new CF9 when she returned to work after her maternity leave in November 1976. As part of that process she would have had to fill in the details on the form and provide the relevant part of it to her employer, the certificate of reduced liability (CF380A) or, if she had elected to make full contributions, a contribution card.

59. We know, from the employer end of year returns, that Barnsley had Mrs Eastwood's NI number. It does not seem credible to us that Barnsley could have obtained this information about their new employee from anyone other than Mrs Eastwood or that Barnsley would have applied the reduced rate of NI unless they had also received the CF380A from Mrs Eastwood.

60. On the basis of the evidence which we saw, it was Mrs Eastwood, not HMRC who was obliged to complete the CF9 and hand the relevant part of the form to her employer. If that is correct, it is hard to see how, even if HMRC's records were incorrect, that error could have been replicated in the information provided to her employer.

61. We do not think it is reasonable to assume that Mrs Eastwood would have checked and confirmed that the correct rate of Class 1 NI had been applied to her earnings on a weekly or even annual basis, but we do think it is unlikely that either when she first provided information to Barnsley, and/or when she changed employer to Bass, that neither she nor her employer checked the basis on which Class 1 NI payments were being made.

62. The failure of either her employers or Mrs Eastwood to raise queries about any potential discrepancies in her Class 1 NI status at the time supports rather than casts doubt on the reliability of HMRC's records.

63. The fact that Mrs Eastwood had previous experience of completing a CF9 in 1971 also seems to us to make it less likely that there was some confusion at the time when Mrs Eastwood returned to work in 1976, since what she was given to provide to her employer in 1976 would have been different from what she was given in 1971. We would have thought that this may have been enough to raise questions in Mrs Eastwood's mind about whether the correct information was being given.

64. For these reasons, in our view the information provided by Barnsley about Mrs Eastwood's NI status when she returned from maternity leave can be treated as additional evidence of the fact that she made a CF9 reduced liability election at that time and the later end of year returns provided by Barnsley and Bass support the fact that a reduced rate election was made when Mrs Eastwood returned to work.

*Is there other evidence that Mrs Eastwood did not sign a CF9?*

65. Mrs Eastwood's position was consistent and adamant; she had not signed a CF9 at any time and in particular could not have signed a CF9 in 1975 because she was not at work. Without casting any doubt on Mrs Eastwood's honest belief that no such form was signed, we have to accept that anyone's recollections of forms which were signed more than forty years earlier may not be completely reliable. As was said in the *Gutteridge* case:

“It is a steep hill that a taxpayer needs to climb to show that her recollection of events 35 years ago is more likely to be correct than a written record..... where it is found that the likely rate of error is very small” *Gutteridge* at [196]

66. So, we have to ask whether there is other evidence which supports Mrs Eastwood's recollection. Mrs Eastwood pointed to the errors made by HMRC as the main reason to reject HMRC's written records in favour of her recollections.

67. We accept the general point that no record system is perfect and that HMRC have made errors in this case. HMRC seem to have recorded Mrs Eastwood signing a CF9 earlier than she could possibly have signed it. HMRC have, more recently, demonstrated that they are capable of issuing correspondence which does not reflect facts which they should have been aware of and taken care to check (including whether a spouse is alive or dead).

68. As far as the “backdating” of the CF9 reduced rate election is concerned, our view is that this does not by itself suggest that no CF9 was ever signed. While Mrs Crawford could not fully explain the reason for this backdating, it does seem at least plausible to us that this was done as part of the “rebasings” of information at the time when HMRC were introducing their new computerised records in 1975. This is supported by the choice given in the version of the CF9 which we saw about the year in which an election should be treated as starting.

69. For this reason we do not accept that the apparent error in the date when Mrs Eastwood submitted her CF9 is enough to show that all subsequent entries are incorrect.

70. As for more recent errors by HMRC, it is true that evidence of errors may indicate that a system is prone to error, but it cannot demonstrate that a particular error has been made at a particular time. The recent errors made by HMRC referred to by Mrs Eastwood occurred many years after the time when Mrs Eastwood was working for Barnsley and Bass. In the intervening years HMRC's systems and resources have changed significantly (and not necessarily for the better).

71. If HMRC's evidence contained some anomalies, so did Mrs Eastwood's. Mrs Eastwood firmly insisted that she had not provided any forms to either of her employers, but in our view this is unlikely to have been true. We know from the employer records which we saw that they had information about Mrs Eastwood's NI number and, in the case of Bass, had information about her previous employment (during the 1983-4 tax year).

72. We think it is unlikely that this information would have been provided by anyone other than Mrs Eastwood and that it is likely that it was provided as part of the CF9 which Mrs Eastwood would have been expected to provide when she started work.

73. Both of her employers were large organisations who we would expect to have had payroll systems which would have required standard information in order to produce the payslips which were provided to Mrs Eastwood. If, as she says, no information had been provided to them they would have provided her with a temporary NI number and been obliged to deduct NI at the standard rate.

74. Accepting Mrs Eastwood's assertion that no information was provided to them means accepting that either they fabricated this information or were provided it by someone other than Mrs Eastwood. Mrs Eastwood argument suggests that they were provided with inaccurate information by HMRC, but on the evidence of Mrs Crawford, which we have accepted, that is simply not the way the process worked. Mrs Eastwood did not give us any explanation for why, in her case, the information held by her employers may have come from HMRC rather than from her.

#### **CONCLUSION AND DECISION**

75. In order to convince the Tribunal that their Notice of Decision of 22 January 2019 about Mrs Eastwood's pension rights is correct, HMRC need to persuade us that it is more likely than not that Mrs Eastwood made an election to pay NI at the reduced married woman's rate which was effective for the periods from 1975-6 to 1987-8.

76. We have concluded that it is more likely than not that Mrs Eastwood did make such an election.

77. Our conclusion should not be taken to suggest that we think that Mrs Eastwood's recollections of what she did in the 1970's are not honestly held, but only that given the passage of time, written records which confirm that a CF9 reduced liability election was signed are likely to be more reliable than those recollections.

#### **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

78. 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.

**RACHEL SHORT  
TRIBUNAL JUDGE**

**RELEASE DATE: 28 OCTOBER 2019**