[2015] UKFTT 0679 (TC)

TC04796

Appeal number: TC/2015/3341

NATIONAL INSURANCE – whether taxpayer entitled to make late contributions for certain periods – whether failure to pay was due to failure to exercise due care and diligence

FIRST-TIER TRIBUNAL
TAX CHAMBER

Mr ALISTAIR HINTON **Appellant**

- and -

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

TRIBUNAL: Judge Peter Kempster
Mr William Silsby

Sitting in public at Centre City Tower, Birmingham on 9 December 2015

The Appellant in person

Mrs Lesley Crawford (HMRC Appeals Unit) for the Respondents

DECISION

1. The Appellant ("Mr Hinton") appeals against a decision by the Respondents ("HMRC") dated 10 November 2015 (replacing an earlier disputed decision) determining his liability and entitlement to pay National Insurance contributions ("NIC") for the periods (i) 18 September 1969 to 14 July 1972; and (ii) 8 April 1984 to 25 October 2014. The specific points in dispute are described at [13-14] below.

Facts

2. Mr Hinton is a self-employed composer, musician and archivist. He was born on 6 October 1950.

3. Mr Hinton undertook some paid employment while he was a school pupil and then a student at the Royal College of Music. His NIC contributions record sheet records this and also notes that no NIC was paid as he was a full time student from 1 April 1966 to 14 July 1972. This includes the first period under dispute: 18 September 1969 to 14 July 1972. The contributions record sheet also records that he claimed some benefits in 1967, 1968 and 1973.

4. Mr Hinton commenced self-employment around 1977 – the exact date is not material to this appeal. Some Class 1 NIC were paid after that date (indicating that Mr Hinton also had some employment or employments) but no Class 2 NIC (ie contributions due from self-employed taxpayers). For some periods (eg 15 October 1977 to 8 April 1978, and 28 September 1980 to 10 April 1982) a claim for small earnings exception ("SEE") was made by Mr Hinton – ie his self-employed earnings were below the threshold for Class 2 liability.

5. HMRC's records state that Mr Hinton ceased self-employment on 10 April 1982. It is not clear what was the origin of that information; it appears it may have been recorded when a new contributions card was sent to Mr Hinton but the card was not stamped or submitted – ie it was assumed that he was no longer in self-employment. Mr Hinton states he never informed HMRC or DHSS that he ceased self-employment – his career continued throughout. We make a finding of fact that Mr Hinton was self-employed continuously from before 1984 to (at least) October 2014.

6. Mr Hinton paid Class 2 NIC for the contribution years 1982-83 and 1983-84. Understandably, given that this was so long ago, Mr Hinton does not recall the exact circumstances – he may have visited the local DHSS office to make the payments.

7. Mr Hinton has not paid any Class 2 NIC since the contribution year 1983-84. This is the second period under dispute: 8 April 1984 to 25 October 2014.

8. HMRC's records show that the relevant government department (the department with responsibility for NIC administration changed several times over the relevant years) sent to Mr Hinton "deficiency notices" alerting him to his non-payment of NIC in respect of the contribution years 1984-85 to 1988-89 inclusive. Those deficiency

notices were posted to the address (in Weston-super-Mare) held on record by HMRC and were not returned undelivered. HMRC's records state that the Weston-super-Mare address was notified to them on 29 November 1981 as a change of address, and that the previous address (not specified) was notified to them in tax year 1976-77 – with no other notifications. Mr Hinton states he did not receive those deficiency notices; he had moved from the Weston-super-Mare address in 1982 and although he set up the usual Royal Mail redirection service for a limited period, he assumes the deficiency notices arrived long after he had moved; he recalls that he did advise both HMRC (then Inland Revenue) and DHSS of his change of address; he had been receiving and submitting tax returns and paying income tax, so HMRC's records must contain his correct address details somewhere. For HMRC, Mrs Crawford stated that it was not until around 1996 that (on a regional pilot basis) taxpayers' tax and NIC records were collated, and this was not generalised until some years later; therefore, information including addresses held by HMRC (Inland Revenue) would not have been routinely shared with the DHSS (and its predecessors and successors). We make a finding of fact that Mr Hinton was not aware of the deficiency notices.

9. In early 2015, as he was approaching state pension age, Mr Hinton requested a pension forecast and became aware that his contributions record was inadequate. He requested to pay NIC to enhance his record, and thus his entitlement to state retirement pension. That request resulted in the disputed decision which is the subject of this appeal.

Law

10. There have been numerous legislative provisions in force over the 45 year period covered by the appeal. We list the most important below and then summarise our understanding of the provisions relevant to the matters in dispute in this appeal.

(1) National Insurance (Contributions) Regulations 1948

(2) National Insurance (Contributions) Regulations 1969

(3) Social Security Act 1975

(4) Social Security Contributions and Benefits Act 1992

(5) Social Security (Credits) Regulations 1975

(6) Social Security (Contributions) Regulations 1979

(7) Social Security (Contributions) Amendment Regulations 1993

(8) Social Security (Contributions) Regulations 2001

(9) Social Security (Crediting and Treatment of Contributions and National Insurance Numbers) Regulations 2001

11. In relation to the period 18 September 1969 to 14 July 1972 (see in particular reg 7 National Insurance (Contributions) Regulations 1948 and reg 10 National Insurance (Contributions) Regulations 1969):

(1) A full time student was excepted from NIC liability.

(2) A full time student was eligible to make voluntary Class 3 contributions. The deadline for such a claim was the end of the sixth contribution year following the contribution year in which the full time employment ended.

12. In relation to the period 8 April 1984 to 25 October 2014:

(1) To count towards a taxpayer's contributions record, Class 2 NIC must be paid before the end of the sixth tax year following that in which they were due (see in particular reg 4 Social Security (Crediting and Treatment of Contributions and National Insurance Numbers) Regulations 2001 and predecessor legislation).

(2) NIC paid outside the above time limit may only be treated as having been paid on an earlier date if it can be shown to the satisfaction of HMRC that the failure to pay within the prescribed period (i) is attributable to ignorance or error on the part of the taxpayer; and (ii) the ignorance or error was not due to any failure on the taxpayer's part to exercise due care and diligence (see in particular reg 6 Social Security (Crediting and Treatment of Contributions and National Insurance Numbers) Regulations 2001 and predecessor legislation).

(3) A claim for SEE (renamed the small income exemption) could be backdated up to 13 weeks before the claim was notified (see in particular reg 44 Social Security (Contributions) Regulations 2001 and predecessor legislation).

Matters in Dispute

13. In relation to the period 18 September 1969 to 14 July 1972:

(1) Whether Mr Hinton could belatedly make an SEE claim (and so be credited for this period).

(2) Whether Mr Hinton could belatedly pay voluntary Class 3 NIC.

14. In relation to the period 8 April 1984 to 25 October 2014:

(1) Whether Mr Hinton's SEE claim could be backdated on a discretionary basis to periods earlier than 25 October 2014.

(2) Whether any Class 2 NIC which might now be paid by Mr Hinton in relation to the period 8 April 1984 to 5 April 2008 could be credited to his contributions record.

(3) Whether Mr Hinton could belatedly pay voluntary Class 3 NIC in relation to the period 8 April 1984 to 5 April 2008.

(4) Whether the "auto credits" credited to Mr Hinton's contributions record by HMRC for tax years 2011-12 to 2014-15 and subsequently cancelled by HMRC should be restored, either as of right or on a discretionary basis.

Respondents' case

15. For HMRC Mrs Crawford submitted as follows.

Period 18 September 1969 to 14 July 1972

16. HMRC contend that Mr Hinton was not liable for NIC in the period 18 September 1969 to 14 July 1972 by reason of being a full time student. That exemption was not limited to persons under 18 years of age. Because of that exemption, there was no possibility of being able to make an SEE claim (which anyway would now be out of time).

17. HMRC contend that Mr Hinton is out of time to pay voluntary Class 3 NIC. HMRC accept that Mr Hinton's failure to pay voluntary Class 3 NIC was due to his ignorance or error, but HMRC contend such ignorance or error was due to his failure to exercise due care and diligence. If Mr Hinton had been minded to pay Class 3 NIC then information (including the time limits) would have been readily available on enquiry. His failure to make appropriate enquires constituted a failure to exercise due care and diligence – see *Walsh v Secretary of State* (High Court, 28 March 1994, unreported), *Adojutelegan v Clark* [2004] STC (SCD) 524 (SpC430), and *Rose v HMRC* [2007] STC (SCD) 129 (SpC574) .

Period 8 April 1984 to 25 October 2014.

18. HMRC contend that Mr Hinton was liable for Class 2 NIC in the period 8 April 1984 to 25 October 2014.

19. HMRC accept that they are now out of time to assess the period up to 5 April 2008. Mr Hinton wishes to pay this liability – or at least, wishes to explore the possibility of making this payment. HMRC accept that Mr Hinton's failure to pay was due to his ignorance or error, but HMRC contend such ignorance or error was due to his failure to exercise due care and diligence. Mr Hinton was clearly aware that self-employed taxpayers were liable for Class 2 NIC: he had registered as self-employed back in 1977; he had made a number of SEE claims; he had paid Class 2 NIC for 1982-83 and 1983-84; and deficiency notices for a number of years had been sent to Mr Hinton (deficiency notices for later periods had not been sent because the earlier ones had received no reply). Mr Hinton claimed he thought his submission of self-assessment tax returns and payment of income tax and Class 4 NIC was sufficient; in *Walsh* the High Court had not accepted that as being the exercise of due care and diligence. Further, the notes supplied with the tax returns contained information concerning the requirement to pay Class 2 NIC; HMRC had in early 2001 and summer 2005 run publicity campaigns (including advertisements in the press and on local radio stations) to alert taxpayers of the need to register their liability for Class 2 NIC and that failure to register may result in penalties. Accordingly, Mr Hinton was not eligible to make a late payment of Class 2 NIC for the period 8 April 1984 to 5 April 2008. For the same reasons, Mr Hinton was not eligible to make a late payment of voluntary Class 3 NIC for the period.

20. HMRC have assessed Mr Hinton for Class 2 NIC for the period 6 April 2008 to 25 October 2014. The 25 October 2014 date recognises that HMRC have accepted an SEE claim by Mr Hinton and have backdated this for the maximum 13 weeks permitted by the legislation. There was no power for HMRC to backdate SEE beyond the 13 week limit – the information apparently given to Mr Hinton ina telephone

conversation with HMRC suggesting a three year period may have been a reference to the possibility of a SEE being granted to apply for three years forward, but otherwise was incorrect. HMRC did have a discretion to waive NIC where a taxpayer could show (for example by appropriate accounting information – which had been requested from Mr Hinton) that his earnings were below the threshold, however Mr Hinton had not yet pursued this possibility as he had stated that he wished to see first the outcome of his appeal. Mr Hinton had not paid any of the assessments; again he had stated that he wished to see first the outcome of his appeal.

21. The position on the "auto credits" was that when Mr Hinton reached the age of 60 the NIC computer system credited his record automatically because it was assumed that he was not self-employed at that time (because Mr Hinton had failed to pay any Class 2 NIC for many years). That was incorrect and the position had been rectified when the correct position was known. There was no basis for recrediting something which was a mistake arising from Mr Hinton's failure to pay his Class 2 NIC liabilities.

Appellant's case

22. Mr Hinton submitted as follows.

Period 18 September 1969 to 14 July 1972

23. A student should be able to make an SEE claim in just the same way as a non-student taxpayer. If the time limit for such a claim had expired then a late claim should be accepted in these circumstances.

24. As a young school and later music college student, he would have been unaware of the possibility of making voluntary Class 3 contributions. He had exercised all the due care and diligence that should be expected of a student of his then age.

Period 8 April 1984 to 25 October 2014.

25. He had diligently submitted tax returns and paid his income tax and Class 4 NIC. He had assumed that all his tax and NIC affairs were properly up to date. There was nothing complicated about his tax affairs and so he did not use an accountant. Also because his tax affairs were simple, he would not have read the notes supplied with the tax returns. If he had had any cause to suspect a problem then he would have contacted HMRC promptly to understand and rectify the position; as it was, he thought everything was fine and so there was nothing to put him on enquiry. He would not have noticed the publicity campaigns described by Mrs Crawford. He felt that in all the circumstances he had behaved responsibly and with due care and diligence.

26. When he had first enquired about his contributions record he had been told that an SEE was possible for three years, which was contradicted by the 13 week rule. It should be backdated accordingly.

27. It was unfair that the "auto credits" that had already been credited to his account should be removed, given the uncertainty surrounding his situation, and they should be reinstated.

28. He had not yet paid the amounts assessed by HMRC because he wished to understand the outcome of the current appeal and also explore the possibility of a waiver mentioned by HMRC. He would need to research whether, in terms of pension entitlement, for any particular year it was more beneficial for him to pay or to request a waiver.

Consideration and Conclusions

29. The matters for determination are as summarised at [13-14] above.

Period 18 September 1969 to 14 July 1972

Whether Mr Hinton could belatedly make an SEE claim (and so be credited for this period).

30. We agree with HMRC that the existence of the statutory exception granted to full time students precludes any SEE claim. The effect of the student exception is that there are no NIC-able earnings and so the threshold is irrelevant. There is no unfairness here because the ability of a student to maintain a contributions history is preserved by the availability of voluntary Class 3 NIC, which is the next matter for determination.

Whether Mr Hinton could belatedly pay voluntary Class 3 NIC.

31. HMRC accept, and we agree, that Mr Hinton's failure to pay voluntary Class 3 NIC within the statutory time limits was due to his ignorance or error. The question for us to determine is whether such ignorance or error was due to Mr Hinton's failure to exercise due care and diligence.

32. The leading authority in this area is the Court of Appeal decision in *RCC v Kearney* [2010] STC 1137. The Court (at [9]) asked itself the same question as we have posed above:

> "There are thus two conditions to entitlement to make late payment of contributions. The first condition is that the failure to pay was attributable to ignorance or error. The second condition is that that ignorance was not due to his failure to exercise due care and diligence. It is accepted that the non-payment was due to ignorance. However, the Revenue's view is that that ignorance was due to a failure to exercise due care and diligence."

33. Arden LJ examined that question thus:

> "[25] As already stated, this appeal is only concerned with the question whether Mr Kearney's ignorance was 'not due to any failure on his part

to exercise due care and diligence'. The burden of proof on this issue is clearly on the contributor. By the 'statutory question', I mean the question that has to be asked in order to determine whether or not the second condition is satisfied.

[26] To identify the nature of the statutory question, it is necessary to analyse the second condition. The subject of the enquiry under the second condition is ignorance of the need or right to make NICs. The statutory question is not, however, directed at determining what the cause of the ignorance was in the abstract. It is a much more focused question. The applicant has to satisfy the Revenue that that ignorance was not caused by his own lack of due care or diligence. So the statutory question is thus whether lack of due care and diligence by him can be eliminated as a cause. ...

[27] The next question is what care and diligence mean in this context. They are not the same concept. As Mr Nawbatt [HMRC counsel] submits, lack of care means lack of concern, whereas diligence means a failure to apply oneself to the issue. I agree with the judge [in the court below] and with Owen J in *Walsh v Secretary of State for Social Security* (28 March 1994, unreported) who made a similar observation, that it is not possible to define all the circumstances that will meet the second condition. In part what is due care and diligence in any set of circumstances will depend on the obligations of the person being considered.

[28] Mr Kearney submits that a failure to exercise due care and diligence should be found only where the failure is gross enough to become a matter of concern. I do not accept this submission. Mr Kearney's test lacks that degree of certainty which is required for a legal test. It does not tell us how a gross failure is recognised. Moreover, it is a basic principle of justice that like cases must be decided in a like manner and so we have to identify the correct approach to determining the presence or absence of due care and diligence.

[29] In my judgment, the statutory question assumes that there is at least in general a duty to make some enquiries and in appropriate circumstances to follow them up. I agree with the judge that those enquiries need not necessarily be made of the NICO [ie the government department responsible for NIC]. The enquiries might be sufficiently made if they were made of the employer or trade union."

34. Arden LJ continued:

"[34] In my judgment, … the correct approach, … is to treat all relevant circumstances as factors which have to be balanced together to reach an assessment or evaluation on a case-by-case basis as to whether due care and diligence was exercised and, if not, whether the failure was the cause of the contributor's ignorance of his obligation to pay contributions when he was bound or entitled to pay them. …

[35] Like the judge, I do not think it is possible to produce a definitive list of relevant factors. However, they would include the contributor's age and any relevant physical disability or incapacitation. Thus Mr

> Nawbatt accepted that a 19-year-old student might be in a stronger position to show that he had exercised due care and diligence when he took no action to pay contributions than an older person already in employment. Moreover, a person may have known about the NIC scheme and gone abroad, leaving, like the Good Samaritan with the innkeeper, a sum of money with another person, whom he thought reliable. He may have instructed that person to make payments of NICs. If that person fails to pay NICs on time, the contributor may be able to show that his ignorance of the failure to pay was not due to lack of due care or diligence. In some circumstances, therefore, doing nothing in terms of contacting the NICO may (as the judge accepted) not be fatal. However, as I see it, a person need not be induced to take no action by a positive misrepresentation. To take an obvious example, a person may be incapacitated by illness during the relevant period. A person may also have language difficulties which may require to be taken into account.
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> [36] Knowledge of the NIC scheme is also likely to be a very important factor, but it may have to be established what the source of his knowledge was and generally the degree of knowledge. Moreover, there cannot logically be an absolute rule that, if the contributor has knowledge of the existence of some aspect of the NIC scheme, he can never show that he exercised due care and diligence unless he made further enquiries about his rights or obligations. It must, as the judge recognised, all depend on the circumstances. Nonetheless, it will be an unusual case in which a person is able to show that, while he made no contributions even after learning the basic features of the NIC scheme, he nonetheless exercised due care and diligence.
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> …
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> [47] … I consider that the question of Mr Kearney's knowledge of the NIC scheme, and his degree of that knowledge, were relevant factors for the purpose of determining whether his ignorance was the result of a lack of due care and diligence. …"

35. Allowing the taxpayer's appeal, Arden LJ commented:

> **"[54]** For the reasons given above, I would allow this appeal and reinstate the decision of the commissioners. I would observe that the result in this case should not be thought to reduce the importance of the duties imposed on those who are liable to pay NICs or who have the option to do so. Ignorance is not an excuse save in limited circumstances. It is a person's own responsibility to pay NICs, and, if he or she fails to do so at the right time, he or she may lose the chance to pay them later on the basis of ignorance at the appropriate time of the need to pay. The facts of this case are unusual, and, while of course this judgment deals only with this appeal, I would observe that facts like these may not often occur."

36. Per *Kearney* (at [47]) the taxpayer's knowledge of the NIC scheme and his degree of that knowledge, are relevant factors for the purpose of determining whether his ignorance was as a result of a lack of due care and diligence. In reference to Arden LJ's statement (at [54]) that Mr Kearney's facts were unusual, Mr Kearney had

spent most of his life working outside the UK in the colonial government service; he had a very short stay in the UK in 1948 when he was only 19 years old and when "the NIC scheme was a novel and unfamiliar concept" - see *Kearney* at [52]. There was a 1948 Colonial Office "circular telegram" about NIC contributions that the local authorities were supposed to bring to the attention of staff but, it was found as a fact, Mr Kearney was not made aware of the contents - see *Kearney* at [4-6].

37. Mr Hinton's facts are materially different. By the time of the first period under consideration the NIC scheme was a well established part of life; the system of employees having a card that was regularly stamped would have been well understood. We were provided with a specimen card for the year 1968-69 which states in the Notes, "Special contribution provisions apply in certain circumstances of which the following are examples - … Full-time education or training (Leaflets NI 30 and NI 25) … Leaflets and further information about these or any other circumstances which may affect your insurance position can be obtained at the local office of the Ministry of Social Security." Thus an employee (including a full time student undertaking vacation or casual work) would have been aware – or at least had the means of making themselves aware – of the availability of leaflets and other information on the special provisions applicable to full time students. Per *Kearney* (at [29]) there is a general duty to make some enquiries and in appropriate circumstances to follow them up; those enquiries need not necessarily be made of HMRC (or its predecessors) and might be sufficiently made of an employer. That was the position of Mr Hinton in 1969-72. Had he exercised due care and diligence he would have read the notes on his card and made some enquiries about the special provisions. As Mr Hinton explained to us, and we accept, he failed to do anything because as a student aged 19-22 he would have had no interest in NIC matters and no inclination or means to fund voluntary contributions. In *Rose* Special Commissioner Williams stated (at [49]):

> "Had Dr Rose known that further payment of Class 3 contributions within the time limited would have completed his contribution record, and that otherwise he would not receive a full state pension, I accept that he would have considered paying them. But that is to use the benefit of hindsight now he is 65. His actions at that time cannot be tested by reference to the effect of them now. He can now see the downside of non-payment."

38. We conclude that lack of due care and diligence by Mr Hinton in the relevant period cannot be eliminated as a cause of his ignorance (see *Kearney* at [26]) and thus that Mr Hinton is not entitled to make late Class 3 NIC contributions for this first period.

Period 8 April 1984 to 25 October 2014.

Whether Mr Hinton's SEE claim could be backdated on a discretionary basis to periods earlier than 25 October 2014.

39. We agree with HMRC that the statutory 13 week backdating cannot be extended. We note Mrs Crawford's comments concerning a possible waiver being

granted by HMRC on a discretionary basis for years where they were satisfied that earnings were below the threshold; we note that matter is still under discussion between the parties but we consider that, as a non-statutory discretion, it is outside the jurisdiction of this Tribunal.

Whether any Class 2 NIC which might now be paid by Mr Hinton in relation to the period 8 April 1984 to 5 April 2008 could be credited to his contributions record.

40. Again, HMRC accept, and we agree, that Mr Hinton's failure to pay Class 2 NIC within the statutory time limits was due to his ignorance or error. The question for us to determine is whether such ignorance or error was due to Mr Hinton's failure to exercise due care and diligence.

41. In *Kearney* Arden LJ stated:

> "[30] In many situations a contributor has a legal duty, backed up by a criminal sanction, to make contributions. That is not so in Mr Kearney's case as he was working abroad. When it comes to performing one's duty, the general principle of English law is that ignorance of the law is no defence. What [the late payment regulation] achieves in a case where a contributor is under a duty to make contributions is a way of performing the duty out of time and it provides a set of conditions in which the contributor is excused from the consequences of his ignorance of his legal duty. This is an exceptional course, and the onus will be on him to bring himself within the conditions."

42. Mr Hinton was under a legal duty to pay Class 2 NIC in the relevant period.

43. Arden LJ also stated (at [36] already quoted):

> "… it will be an unusual case in which a person is able to show that, while he made no contributions even after learning the basic features of the NIC scheme, he nonetheless exercised due care and diligence."

44. In the relevant period Mr Hinton was aware of the basic features of NIC. He had registered as self-employed. He made SEE claims for the periods 15 October 1977 to 8 April 1978, and 28 September 1980 to 10 April 1982. He paid Class 2 NIC for 1982-83 and 1983-84. He also had available to him the information on Class 2 NIC obligations contained in the tax return accompanying notes, whether or not he chose to read them.

45. In the (unreported) case of *Walsh* Owen J addressed the argument that payment of Class 4 NIC and no enquiry from HMRC constituted due diligence, and he dismissed it:

> "[Mr Walsh] says "In those circumstances, and with my knowledge, I was entitled to rely upon the fact that I was not chased up. It encouraged me in my error. When I realised that I was paying Class 4 contributions, I thought that this must be all that was required of me. …" To that it is said that Mr Walsh had no right to make that

> assumption. It was easy enough to ask. … he should have enquired … and he would have done if he had been exercising due diligence."

46. In *Adojutelegan v Clark* Special Commissioner Avery Jones referred to that passage from *Walsh* and concluded (at [7]): "Exercising due diligence involves the positive step of making enquiries." He went on to say:

> "9. The question for me is whether the Appellant has satisfied me that her failure to pay Contributions, which it is accepted was attributable to her ignorance, was not due to any failure on her part to exercise due care and diligence. I do not accept Mr Adojutelegan's argument that an ignorant person cannot be expected to exercise due diligence in relation to that of which they are ignorant any more than an illiterate person cannot exercise due diligence in reading properly. It depends on what one is ignorant about. If she had never heard of National Insurance I would readily agree that it could not be said that she had failed to exercise due care and diligence if she had made no inquiries about it. However, she was not ignorant about the existence of the National Insurance Scheme and must have known the basic principle that benefits were in some way related to contributions. She had some dealings with National Insurance while she was in the United Kingdom, although her employer would have done all the work in deducting Contributions. She did know enough to make a married woman's election not to pay contributions on two occasions, and to make various claims to benefits.
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> 10. I follow the principle in *Walsh* that she should have made some enquiries. I entirely accept Mr Adojutelegan's point that the facts here are not comparable to that case as she was living abroad and so it was harder for her to make enquiries. But it was not impossible. Although she was in Nigeria she could have made enquiries by post, and I presume that her son was in the United Kingdom and she could have asked him to make enquiries on her behalf. Doing nothing is not the exercise of due care and diligence. Had she made an enquiry she would have been told that there was a six-year time limit for paying Contributions. Her ignorance of this was due to her failure to make enquiries, which is a failure to exercise due care and diligence."

47. We respectfully agree with the conclusions expressed in *Adojutelegan* and *Walsh*. We conclude that lack of due care and diligence by Mr Hinton in the relevant period cannot be eliminated as a cause of his ignorance (see *Kearney* at [26]) and thus that Mr Hinton is not entitled to make late Class 2 NIC contributions for this second period.

Whether Mr Hinton could belatedly pay voluntary Class 3 NIC in relation to the period 8 April 1984 to 5 April 2008.

48. This raises the same "due care and diligence" point as discussed at [40-47] above and, for the same reasons, we reach the same conclusion.

Whether the "auto credits" credited to Mr Hinton's contributions record by HMRC for tax years 2011-12 to 2014-15 and subsequently cancelled by HMRC should be restored, either as of right or on a discretionary basis.

49. We agree with HMRC that there is no basis on which the credits should be restored. The only reason they were entered on Mr Hinton's record in the first place is because he had not made any Class 2 contributions for 30 years and so was assumed not to be self-employed. They were correctly removed once the true position was disclosed by Mr Hinton.

50. It follows from the above conclusions that, for the reasons given, we find against Mr Hinton on each of the points in dispute.

Decision

51. The appeal is DISMISSED.

52. 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.

Peter Kempster
TRIBUNAL JUDGE
RELEASE DATE: