



[2021] UKFTT 0060 (TC)

TC08045

Keywords: Married Women's Non-Payment Election and Married Women's Reduced Rate Election in respect of National Insurance, Presumption of Regularity, whether rebutted, appeal allowed in part

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2019/04169

BETWEEN

Maria J Tuner

Appellant

-and-

THE COMMISSIONERS FOR
HER MAJESTY'S REVENUE AND CUSTOMS

Respondents

**TRIBUNAL: JUDGE Heather Gething
MEMBER David Batten**

The hearing took place on 5 February 2021. With the consent of the parties, the form of the hearing was V (video) all parties attended remotely using the Tribunal video platform. A face-to-face hearing was not held because of the restrictions imposed by the Covid 19 pandemic. The documents to which I was referred were contained in a bundle of 539 pages. We were also provided with extracts from the Social Security Act 1975, and HMRC's guidance to Officers.

The hearing was open to the public.

Mrs Turner, for the Appellant

Mr Connor Fallen, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

INTRODUCTION

1. Mrs Turner appealed against a decision of HMRC made on 16 September 2016 under Section 8 of the Social Security Contributions (Transfer of Functions) Act 1999. The decision given was that:

(1) Mrs Turner was not liable to pay National Insurance Contributions (“NICs”) as a married woman in the period 19 October 1970 to 5 April 1975.

(2) Mrs Turner was liable to pay NICs at the married woman’s reduced rate of 2% in the period from 6 April 1975 until 30 April 1995.

2. Mrs Turner had previously appealed against decisions concerning the availability of pension credits and home responsibility protection credits in the Social Entitlements Chamber of the First-tier Tribunal and then to the Upper tribunal of that chamber. Mrs Turner had not realised that the issue of her liability to pay NICs could not be determined by that Chamber. This appeal ought to have preceded the appeal to the Social Entitlements Chamber as the issue of liability to pay NICs would have affected the decisions of that Chamber.

3. The issues for the Tribunal are:

(1) Whether Mrs Turner made an election not to pay NICs for the period from 19 October 1970 to 5 April 1975.

(2) Whether the Appellant was deemed to have made an election to pay NICs at the reduced rate from 6 April 1975 (and/or renewed the election) which subsisted until the election was revoked in 1995.

(3) Whether the election lapsed on 6 April 1978 as a result of Mrs Turner having no liability to pay NICs for a consecutive period of two years beginning on or after 6 April 1978 in accordance with section 101(1) Social Security Contributions Regulations 1979 (“**the 1979 Regulations**”).

4. Mrs Turner effectively appeals against the decision on the grounds that

(1) The presumption of regularity of HMRC’s records (which suggest she had made an election before 1975 and had renewed it after 1975) ought to be disregarded for a large number of reasons mentioned below.

(2) Even if she had made an election which subsisted after 1975, it would have lapsed on 6 April 1978 as she had no liability to pay national insurance contributions during the two-year period from 6 April 1978 as her weekly earnings were below the lower earnings limit.

5. HMRC contend that this Tribunal cannot disturb the findings of the Upper Tribunal of the Social and Benefits Chamber in so far as they relate to whether an election had been made but accept that this Tribunal has jurisdiction to determine whether there was a liability to NICs.

6. We heard evidence from Mrs Turner and Mrs Crawford, an officer of HMRC with knowledge of the systems deployed by the Department of Health and Social Security (“DHSS”) and of HMRC (which assumed the functions of the DHSS to administer NICs) in the period under consideration. There was a witness statement of Mr Turner, Mrs Turner’s husband in the bundle and Mrs Turner submitted a two page statement that she read to the Tribunal.

The Facts

7. We find the following facts:
- (1) Mrs Turner was born on 23 January 1950 and was allocated a national insurance number on 8 April 1965.
 - (2) Mrs Turner left school at the age of 15
 - (3) Mrs Turner married on 27 August 1970.
 - (4) Mrs Turner moved from 31 Avenue Road to Whitways Road in May 1973.
 - (5) Prior to 1975 it was a legal requirement that all Married women had to notify HMRC that they had married within 3 months of the date of the marriage.
 - (6) HMRC's records show that HMRC were aware of Mrs Turner's marriage status.
 - (7) Mrs Turner was employed in contribution year 1971/72 by Express Dairy (Northern) Limited ("*Express Dairy*") but left on 20 August 1971 following a row with a colleague. As her departure was unplanned, she did not receive the contribution card from Express Dairy to hand to her next employer. The contribution card contained a record of national insurance contributions paid by a person during the employment.
 - (8) HMRC's record confirms the contribution card was returned to HMRC by Express Dairy.
 - (9) Mrs Turner became employed by Sheffield Corporation Education Committee and left that employment in July 1972 to have her first child.
 - (10) HMRC's record shows Mrs Turner paid full rate NICs before she was married and no national insurance contributions between 1970 to 1975.
 - (11) Mrs Turner moved house in 1973, the change of address had not been provided to HMRC and in consequence Mrs Turner did not receive the guidance issued by the DHSS about the changes to national insurance contributions introduced in 1975 and the possibility of married women revoking an election not to pay NICs.
 - (12) Mrs Turner returned to work in 1975.
 - (a) Mrs Turner was employed by Mr I.L. Podmor, the returning officer (referendum). We note that the 1975 referendum took place on Thursday 5 June 1975. Mrs Turner earned £12.50 for her work for the returning officer.
 - (b) Mrs Turner was also employed by Sheffield Metropolitan District Council as a lunch-time supervisor in a primary school working 7.5 hours per week, earning £1.06 per hour or £7.95 per week. She was paid weekly. Her earnings in 1975/76 from this employment were £190. We note that this indicates that Mrs Turner worked for 24 weeks in that year and it seems likely that she started work in the autumn/winter term).
 - (c) Mrs Turner was looking after her two small children and did not undertake overtime. We note that a lunch time supervisor is a very limited role and the possibility of overtime is difficult to comprehend.
 - (13) In 1975 the NIC system was reformed. It was no longer possible for a married woman to pay no NICs. The lower and upper earnings limits were introduced. No-one paid NICs if their earnings fell below the lower earnings limit. Earnings above the lower earnings limit and below the upper earnings limit were subject to NICs at the rate of 5.5%. A married woman who had made an election before 1975 was enabled to pay

a at 2%. This was referred to as the lower rate. The weekly lower earnings limit in 1975 was £11.00 per week (£1,600 per year).

(14) HMRC's records show that Mr Podmor had deducted class 1 contributions of 5.5% (£0.70) from the earnings £12.50.

(15) HMRC's record also shows this was later reduced to 25p which is 2% of the entire £12.50. The 45p difference was regarded as too small a sum to be returned to Mrs Turner. Mrs Turner was not informed of this issue. Only sums of £5.50 or above are returned to taxpayers whose liability to pay NICs was found to be lower than the sum actually paid.

(16) Mrs Turner's earnings in the years 1975/76 to 1980/81 were as follows:

Tax year	Employer	Earnings £	Tax £	NIC £
1975/76	Mr IL Podmor Returning Officer	12.50	0.00	0.25
	Sheffield Metropolitan	190.30	0.00	0.00
1976/77	Sheffield Metropolitan	322.92	0.00	0.00
1977/78	Sheffield Metropolitan	345.55	0.00	0.00
1978/79	Sheffield Metropolitan	399.15	0.00	0.00
	Swycher & Co Ltd	465.65	0.00	0.00
1979/80	Sheffield Metropolitan	397.03	0.00	0.65
	Swycher & Co Ltd	258.31	0.00	0.00
1980/81	Sheffield Metropolitan	13.64	0.00	0.00

(17) Mrs Turner records for Sheffield Metropolitan shows the following information in 1979/80 and 1980/81.

Year	Gross pay £	Tax	Date of leaving	Employee NI
75/76	190.30	Nil		Nil
76/77	322.92	Nil		Nil
77/78	345.55	Nil		Nil
78/79	399.15 (12.86 per week)	Nil		Nil
1979/80	397.03	Nil	24/2/1980	0.65
1980/81	13.64	Nil (tax refund £4.05)	28/04	Nil

(18) The notation on the 78/79 record that Mrs Turner earned £12.86 per week confirms that she worked 31 weeks per year for Sheffield Metropolitan in that year.

(19) We note that in the 1970s there were 13 weeks' holiday a year for school children (6 weeks in the summer, two weeks at Christmas and Easter and one week for each of

the three half terms) leaving 39 weeks' term time. There were no staff training days in the 1970s.

(20) In 1979/80 Mrs Turner left her employment on 24 February which we note, according to the 1980 calendar was a Friday. WE also note that was likely to be the beginning of the half term holiday which indicates Mrs Turner worked 7 weeks in the Spring term.

(21) In 1979/80 Mrs Turner earned £397.03 and a further £13.64 which was paid in 1980/81. HMRC suggests this was a catch-up payment referable to 1979/80 employment.

(22) We note that if £13.64 is a week's salary in 1979/80, Mrs Turner worked 30 weeks in 1979/80. If she worked for the entire summer and autumn terms and 7 weeks of the spring term, some 33 weeks, her weekly earnings would have been £12.44.

HMRC's guidance where there are two employments and inconsistent treatments.

(23) Where a woman had two employments, as was the case for Mrs Turner in 1975/6, and one employer deducts NICs at the higher rate of 5.5% and the other considers the person is subject to the lower rate of 2% because of the existence or continued existence of a pre-1975 election, HMRC's guidance to its officers states that the officer must notify the taxpayer and make an investigation. We note the concern behind this instruction is clear: where there is inconsistency of this kind there is a possibility that the woman no longer wished to be bound by a pre-existing election. A married woman who wished to be bound by a pre-existing election would have applied for a certificate of exemption to provide to a new employer. The law had recently changed, and the taxpayer ought to be made aware of that change and the effect of maintaining or discontinuing an election.

(24) No such investigation was made, and Mrs Turner was not informed. Instead, the records were amended to reflect a lower amount of NICs having been deducted by Mr Podmor but the balance was not returned to Mrs Turner.

The liability to pay NICs pre 6 April 1975

(25) Before 1975 a married woman could pay NICs or make an election to be exempt under the 1948 National Insurance (Married Women) Regulations 1948. If an election was made, the married woman paid only a small contribution in respect of industrial injury under the Industrial Injuries Act. The rate of national insurance paid by married women who made an election was known as the exempt rate. A woman who made the election received a green exempt contributions rate card.

(26) A contributions card had to be handed to a new employer. A green exempt contributions card authorised the employer not to deduct Class 1 NICs from the wages to be paid to a married woman and to deduct only the small personal injury levy. The contributions card had to be handed to the employee upon termination of employment.

(27) A married woman who wished to continue with an election upon commencing a new employment had to apply to the Minister for a certificate which the married woman had to produce to her new employer. HMRC accept that without such a certificate the employer had to deduct standard rate NICs.

(28) An election could be revoked by a married woman giving notice and surrendering the certificate to the Minister at any time.

(29) HMRC say that a woman who made an election would have received a copy of "*Leaflet N11 – Married Women*" which had attached to it the necessary application form CF9.

(30) The form CF9 has a declaration on it which confirms that the person completing it knew and understood the consequences of doing so.

(31) Mrs Turner has no recollection of receiving the leaflet or completing the CF9.

Liability to make contributions from 16 April 1975

(32) The national insurance law was reformed with effect from 6 April 1975 by the Social Security Act 1975 (“SSA 1975”) and in 1979 by The Social Security (Contributions) Regulations 1979, SI 1979/591 (“the 1979 Regulations”).

(a) Section 4 SSA 1975 introduced the lower earnings limit below which no NICs were payable. The lower earnings limit was £11 per week. The Upper earnings limit above which no NICs were payable was £ £69 per week.

(b) Section 5 of SSA 1975 provides that NICs are payable at the standard rate 5.5% or the reduced rate of 2% where a married woman had made an election under section 130 (2) of the Act and had not revoked the election.

(c) Para 5 of Schedule 1 of SSA 1975 states that for the purposes of assessing liability to earnings related contributions, if sums are paid in a lump sum but the payment is referable to a number of weeks or months, the sum paid is treated as having been paid in weekly or monthly instalments.

(d) Para 91 of SI 1975/492 provided that an election may be made by a married woman by giving notice to the Secretary of State. Para 93 allowed for revocation by notifying the Secretary of State.

(e) Under the 1979 Regulations (reg 100), a woman who had elected for exemption pre 1975 and continued the election, on or before 6 April 1977 was entitled to pay reduced rate NICs of 2 per cent instead of standard class 1 contributions of 5.5% during the period in which the election has effect, no married woman was entitled to make an election after 11 May 1977, any election had to be made to the Secretary of State and an election could be revoked by serving a notice on the Secretary of State.

(f) Under Regulation 101(1)(c) of SI 1979/591 (as amended and in effect at 6 July 1979) an election that was extant on 6 April 1977 was to have effect until the earliest of a number of events, including revocation of the election and

“the end of any two consecutive years which began on or after 6 April 1978 and in which the woman has no earnings in respect of which any primary Class 1 contributions are payable in those years and in which the woman is not at any time self-employed.”

(g) The national insurance upper and lower earnings limits in the periods under consideration were as follows:

Year	Weekly Lower earnings limit	Weekly Upper Earnings Limit	Class 1 Rate %	Reduced Rate %
1975/76	£11	£69	5.5	2
1976/77	£13	£95	5.75	2
1977/78	£15	£105	5.75	2
1978/79	£17.50	£120	6.5	2
1979/80	£19.50	£135	6.5	2

(33) HMRC's records utilise a number of letters which identify the tax status of an employee. The letters so far as relevant to this decision are:

A – Class 1 contributions to be deducted

X - not liable to national insurance contributions because for example a person earns less than the lower earnings limit or is below the age of 18

B- liable to the reduced rate by virtue of being a married woman.

E- employed

HMRCs records

(34) The physical documents from which the records referred to in this decision were created, were destroyed under a government policy to destroy documents which were thought to be no longer required after 6 years.

(35) HMRC's electronic records have the initials MW/ NP2 on a form which Mrs Crawford advised the Tribunal was the notation used to indicate that a form CF9 had been received from Mrs Turner and that the election not to pay contributions was effective from 19 October 1970.

(36) Mrs Crawford accepted that it was possible Mrs Turner's marriage had been notified to HMRC by her employer in 1970 but she advised the Tribunal that the election to exempt her from NICs would have to have been signed by Mrs Turner.

(37) Mrs Crawford informed the Tribunal that in practice, if an employer had not received a contribution card (which may have permitted the employer not to deduct national insurance contributions because for example the employee was a married woman and exempt or after 1975 entitled to the lower rate of contributions), the employer was obliged to deduct primary Class 1 Contributions at the standard rate from any payment of earnings to a married woman.

(38) Mrs Crawford also informed the Tribunal that when a married woman moved employment, she would take the contribution card and give it to the new employer authorising the new employer not to deduct class 1 contributions.

(39) HMRC's records show that in 1970-72 Mrs Turner paid the following contributions in the following periods

- (a) 2 March to 18 October 1970 - 33 Class 1 contributions
- (b) 19 October 1970 to 28 February 1971 - 19 exempt rate contributions
- (c) March 1971 to March 1972 – 52 exempt contributions
- (d) 1 March 1972 to 11 July 1972 – 19 exempt contributions

Mrs Crawford noted that the exempt rate contributions indicate that an election had been made in 1970.

(40) In July 1972 Mrs Turner took maternity leave and HMRC's records show the National Insurance Card was returned to HMRC showing the 19 exempt contributions had been made in that period.

(41) Mrs Crawford advised the Tribunal a further CF9 form would have had to have been completed to obtain a new national insurance card to provide to her new employer when Mrs Turner returned to work in 1975 to allow the employer to deduct NICs at the reduced rate. Without such a card, the employer had, as a matter of law, to deduct Class 1 NICs at the standard rate.

(42) Mrs Crawford accepted that there is no record of a new CF9 being received in 1975. Mrs Crawford pointed out that the records contain no evidence that the election was cancelled.

(43) HMRC's records show a letter B after Mrs Turner's name in 1975 which Mrs Crawford said was indicative that Mrs Turner was a married woman and that an election was in place. On other occasions Mrs Turner is accorded with an X which shows she earned less than the lower earnings limit. The table below shows the use of these letters.

(44) Mrs Turner was engaged in full time employment by the Department of Employment in the Manpower Services Commission in 1980.

(45) HMRC's records include form RD18 which is a statement of Mrs Turners account and it shows the following for the years 1975/6 to 1979/80.

Contrib Year	Notes	Method of Payment	M Number	Employers name	Total Contribution value	Primary value
1975/6					25p	
C1	B	Not known		Sheffield C	0.00	
C1	B			IL Padmore	0.25	
1976/77					0.00	
C1	X	Not known		Sheffield C	0.00	
1977/78					0.00	
C1	X	Not known		Sheffield C	0.00	
1978/79					0.00	
C1	X			Sheffield C	0.00	
C1	X			Swyche	0.00	
1979/80					0.65	
C1	B	Not known		Sheffield C	0.65	
C1	X	Not known		Swyche	0.00	
1980/81						
	E			Department of	42.85	
	B			Employment	14.92	

(46) HMRC's records show that exempt rate contributions were made in the years 1970/71, 1971/72 and 1972/3, 1975/76 and 1979/80 to 1995/6.

(47) In 1995 Mrs Turner began employment with the Civil Service when the consequences of paying the reduced rate NICs were brought to her attention. With effect from 1 May 1995 colleagues arranged for the CF9 to be cancelled and Mrs Turner paid full rate primary Class 1 NICs thereafter.

(48) Mrs Turner retired and before doing so sought to purchase extra years pension entitlement but was prevented from doing so by the election she is said to have made.

(49) HMRC published a leaflet NP 34 – “New Pensions- A More Secure Future” in January 1998 and ran advertising campaigns to bring the issue to the attention of married women. HMRC point out that there is a statement in the leaflet saying, “*If you are still entitled to reduced rate contributions*” that you will not be covered by the new scheme.

The Appellant’s position

8. Mrs Turner effectively challenges the presumption of regularity concerning HMRC’s records. There are a number of concerns:

(1) Mrs Turner states that she has no recollection of informing HMRC she was a married woman. She thinks it likely this was done by her employer in 1970. She has no recollection of making an election in 1970 but recognises she was very young at the time. But she certainly did not renew the election in 1975 when she took up new employment. Mrs Crawford had indicated she would have had to have completed a new form CF9 to receive a new certificate to be able to provide the certificate to her new employer and would have had to attend a local DHSS office to do so. Mrs Turner had two very small children and would have had to attend the local office by bus which would have been impossible for her to do so. The form contains a declaration that the person understands the consequences of making the election. She could not have signed it because the consequences of doing so in 1975/6 were against her interests. In 1975/76 Mrs Turner’s earnings were below the lower earnings limit and not subject to NICs at all. There would have been no benefit at all in securing a reduced rate of NICs.

(2) Mrs Turner was first employed by Mr Podmor the Returning Officer (referendum), in June 1975. Mr Podmor deducted 70p being primary class 1 NICs from her wage of £12.50 at the standard rate of 5.5%. This confirms that Mrs Turner did not complete a new form CF9, did not receive a contributions card which upon presentation to Mr Podmor would have authorised him to deduct NICs at the reduced rate of 2%.

(3) As soon as she became aware of the effect of an election and that HMRC considered she had made an election, she took steps to revoke the election in 1995.

(4) There was an opportunity for the issue to have been brought to her attention in 1975/76 by HMRC as they were required to do in accordance with their guidance where a person has two employers in a single year and one deducts primary Class 1 Contributions at the standard rate and the other deducts reduced rate. The policy objective of this practice is clear, to protect against any unfairness. HMRC did not follow this practice. Instead HMRC corresponded with both employers and procured a situation in which reduced Mr Podmore prepared a revised return showing reduced rate deduction. Notwithstanding the lack of evidence of a new CF9 having been received. Mrs Turner considers this indicates the records do not reflect what ought to have been done in all circumstances. If the proper process had not been followed on the one occasion where there is transparency how can the tribunal be sure proper process was followed on other occasions. The presumption of regularity ought not to be adopted without question.

(5) The records show she had a liability of 65p in 1979/80. That is an impossibility given the level of earnings (as explained in paragraph 11(3) below), that she never worked over-time and there is no overtime for a person who works as a lunch time assistance in a primary school. There is only one one hour lunch break for primary school children. There is no ability to work over-time.

9. Mrs Turner believes she was given the designation X because she was a lower earner and there was no need for her to be categorised as B. She believes she was accorded B because she was married not because she made an election. She recognises she paid 2% contributions in 1980, but she assumed it was because she was earning a low wage.

10. Mrs Turner considers that the election, if one had been made, would have lapsed on 6 April 1978 because the right to reduced liability is lost if there is a period of 2 consecutive years beginning on or after 5 April 1978, in which Mrs Turner was not liable to pay Class 1 national insurance contributions (see Page 137 electronic bundle, Paragraph 17023 of HMRC Guidance). The reduced liability election is required to be cancelled by the computer automatically (see page 130 of the bundle, Para 17037 of HMRC Guidance).

(1) Mrs Turner states that her earnings were below the lower earnings limit throughout 1978/79 and 79/80. At that time the lower earnings limits were £17.50 per week and £19.50 per week respectively.

(2) The Records state that she paid 65p in 1979/80. That was impossible because she had never worked overtime but even if she had her earnings were well below the lower earnings limit.

(3) This is indicative that the record in 1979/80 was incorrect as it fails to reflect her liability. Accordingly, as she had no liability to Class 1 contributions in either of those years, the election would have lapsed with effect from 6 April 1978.:

(4)

HMRC's Position.

11. HMRC's position is that an election had to have been made by Mrs Turner in 1970 because the records show that before 1970 she paid national insurance contributions but thereafter until 1975 she paid only the Industrial Injury levy.

12. An employer must deduct Class 1 contributions unless authorised to do otherwise.

13. The records for 1975/76 to 1995 are consistent with the election having been made and revoked in 1995.

14. The system of document destruction and the creation of the modern records involved two officers, one making the new record from the old documentation and one checking the entry. No negative inference can be drawn from HMRC's inability to produce the forms of election signed by Mrs Turner.

15. HMRC accept that an election can lapse if there had been a two-year period during which there was no liability to pay national insurance contributions. HMRC point to the records which indicate that 65p was deducted by Sheffield Metropolitan in 1979/80. In consequence, as there is no two year-period in which the conditions were satisfied the election remains in existence.

16. HMRC accept that Mr Podmor had deducted Class 1 NICs at the standard rate in June 1975 and that the record was later altered to treat the deductions as lower rate contributions and that the difference between the two payments had never been returned to Mrs Turner. HMRC accept the guidance which required Mrs Turner to be contacted to ascertain her wishes had not been followed.

17. The record shows 65p Class 1 Contributions had been paid. The record is presumed to be correct. Mrs Turner must have undertaken to do over time.

18. It is not open to the Tribunal to determine whether an election had been made prior to 1975 as that issue has been determined by Social benefits Chamber.

Discussion.

19. HMRC accept that this Tribunal has jurisdiction to determine Mrs Turner's liability to pay national insurance contributions. We consider the issue for each of the periods identified by Mrs Turner.

Liability to National insurance contributions 1975/76

- (1) An employer who has not been provided with a deductions card authorising the employer to deduct lower rate NICs must deduct Class 1 primary NICS at the standard rate. That is a legal requirement and that is accepted by HMRC.
- (2) HMRC's records show that is exactly what Mr Podmore did. He deducted 70p from the £12.50 he paid Mrs Turner in June 1975. That is 5.5% of £12.50.
- (3) That confirms that Mr Podmor did not have a card authorising him to deduct only lower rate contributions. That confirms that Mrs Turner had not attended the local office to obtain a new deductions card and have not completed a new CF9.
- (4) HMRC's records do not show the receipt of the new CF9 in 1975.
- (5) The adjustment that was made to the record concerning the deductions made by Mr Podmor (reducing the deduction from 70 to 25p, did not accord with the law and regulations in place. The election had not been renewed at the date of payment by Mr Podmor.
- (6) HMRC's procedure at the time when one employer deducts Class 1 NICs at the standard rate and another in the same year deducts NICs at the reduced rate, was that the married woman concerned should be contacted to determine her intentions regarding the continuance of an election. The policy behind the procedure is easily determined. The detriment of the continuance of an election could be serious. This would be particularly evident in a case like this where the taxpayer's earnings were below the lower earnings limit. The failure resulted in an erroneous alteration of records. No further NICs would have been payable by Mrs Turner if there had been no election in place. No refund could be returned to her either owing to the practice of not returning sums below £5.50. The failures call into question the knowledge and understanding of the staff at the time and therefore the veracity of the records. These errors would in our view justify the disapplication of the presumption of regularity of the records.

Liability to National Insurance Contributions 1979/80

20. Regulation 101 (1) of the Social Security (Contributions) Regulations 1979 provide that

- “(a)any election made under [Regulation 100] shall have effect from and including 6 April 1977 ... until whichever of the following events first occurs after the date of the election namely:
- (b) the date on which the woman ceases to be married otherwise than by reason of the death of her husband;
 - (c) the end of the year in which she ceases to be a qualifying widow;
 - (d) the end of any two consecutive years which began on or after 6 April 1978 and in which the woman who made the election has no earnings in respect of which any primary class 1 contributions are payable in those years and in which that woman is not at any time self-employed.”

21. HMRC's records show that £0.65 of national insurance contributions were deducted by Sheffield Metropolitan in 1979/80. The deduction is of NICs at the reduced rate as shown by the letter B in the table at [7(46)] above.

22. In that year, Mrs Turner was employed by Sheffield Metropolitan until 22 February 1980 and was paid £397.03 in the year. Mrs Turner was paid a further £13.64 in April 1980 which HMRC recognised was likely a catch-up payment referable to 1979/80.

23. We note that 22 February 1980 was a Friday and is likely to have been the beginning of the half term. Each term in a primary school is 13 weeks long which means that Mrs Turner would have worked for 33 weeks in 1979/80 (being two terms of 13 weeks and a half term of 7 weeks).

24. By taking £397.03 and dividing by 33 that would make Mrs Turner's weekly wage £12.03. By taking £397.03 and adding £13.64, the gross earnings would be £410.67, which if divided by 33 would produce a weekly sum of £12.44. Whichever figure is chosen Mrs Turner's weekly earnings were below the lower earnings limit of £19.50 per week. (We note the general requirement that where payments are made in a lump rather than in the contribution period to which they relate, the payments are to be regarded as having been paid in the periods to which they relate save where the payment is made in another contribution year. These rules would not cause Mrs Turner's weekly earnings to exceed the lower earnings limit.)

25. HMRC consider that it is possible Mrs Turner did over time which might have caused her to exceed the lower earnings limit of £19.50 a week.

26. Mrs Turner said she never did over time as she had a young family, which we accept as a fact.

27. We note however that for Mrs Turner to be liable to 65p in lower rate NICs at 2% she would have had to have earned £32.50 above the £19.50 weekly lower earnings limit, i.e. she would have to earn £52.00 in a week. Her average weekly wage was c£12.03 or 12.44 as indicated above. Her hourly rate was therefore between £1.60 and £1.65. She worked 7.5 hours a week. She would have had to work a further 24 hours in a single week to give rise to that liability. If, the over-time was spread over more than one week that means she has to do even more overtime to reach the lower earnings limit threshold each week in which the overtime is undertaken. That would reduce her weekly rate of earnings below the estimates of £12.03 and £12.44 and even below the figure of £12.86 indicated in HMRC's records as having been the rate of pay in 1978/79.

28. We consider Mrs Turner could not have had any liability to Class 1 national insurance contributions in 1979/80. The presumption of regularity of records must be disapplied in this case. We consider that the conditions of Regulation 101(1) of the Social Security (Contributions) Regulations 1979 are satisfied throughout 1978/79 and 1979/80 with the result that the election, if it had ever been made, lapsed with effect from 6 April 1978.

29. We allow the appeal in part.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

30. 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.

**JUDGE HEATHER GETHING
TRIBUNAL JUDGE**

RELEASE DATE: 08 MARCH 2021