



TC06555

Appeal number: TC/2017/03305

*National Insurance Contributions – married woman’s contributions –
disputed elections – impact of transitional rules in 1977 – sexist and
discriminatory rules*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Elizabeth Harwood

Appellant

- and -

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

**TRIBUNAL: JUDGE Rachel Short
Ms Elizabeth Bridge (Member)**

**Sitting in public at The Court House, Heavitree Road, Exeter on 5 February
2018**

Mrs Harwood the Appellant in person

**Mrs Gill Carwardine, instructed by the General Counsel and Solicitor to HM
Revenue and Customs, for the Respondents**

DECISION

1. This is an appeal by Mrs Harwood against HMRC's decision letter dated 8
5 February 2017 stating that for national insurance purposes Mrs Harwood was not
liable to pay Class 1 National Insurance Contributions as a married woman from 22
February 1971 until 5 April 1975 and that Mrs Harwood was liable to pay Class 1
National Insurance Contributions at the married woman's reduced rate from 6 April
1975 until 5 April 1984.

10 2. Mrs Harwood disputes that this is a correct reflection of her national insurance
contributions for the relevant periods from 1971 until 1984.

3. Mrs Harwood's MP wrote to HMRC on her behalf on 2 December 2015
concerning Mrs Harwood's national insurance contributions. HMRC wrote to Mrs
Harwood on 29 December 2015 saying that they were unable to provide a copy of the
15 form CF9 which they said she had originally submitted.

4. HMRC issued a letter on 18 January 2017 stating their view that Mrs Harwood
had elected to pay the exempt married woman's rate of Class 1 National Insurance
("NI") contributions from 22 February 1971 and the married woman's reduced rate of
Class 1 NI contributions from 6 April 1975 to 4 April 1984.

20 5. HMRC issued a formal decision letter on 8 February 2017, referring to events
detailed in Mrs Harwood's NI records which supported their view that the election to
pay the exempt married woman's rate of Class 1 NI contributions had been made in
February 1971. This letter included details of the Class 1 NI contributions which they
had recorded for Mrs Harwood from 1966 to 1984, being (i) contributions at the
25 standard rate from 1952 until 1966 (ii) no contributions or credits from 1966 until
1973 and (iii) reduced rate contributions from 1975 until 1984.

6. At Mrs Harwood's request HMRC undertook a review and confirmed their
conclusions to Mrs Harwood on 7 April 2017.

7. Mrs Harwood appealed to this Tribunal on 18 April 2017.

30 **Preliminary matters**

8. Mrs Harwood represented herself before us and had clearly spent much time
and effort in preparing her materials. Mrs Harwood had previously entered into
correspondence with the Minister for Work and Pensions and her local MP in respect
of this matter.

35 9. Mrs Harwood provided very extensive submissions and evidence to us at the
hearing on 5 February 2018, with the result that we did not have the opportunity to
hear from Mrs Carwardine for HMRC at all. Mrs Carwardine suggested, and Mrs
Harwood agreed, that she should make her submissions in writing. Those submissions

were received on 29 March 2018. Mrs Harwood responded to HMRC's submissions on 7 February 2018 and 16 April 2018.

10. Mrs Harwood also made additional representations, at the Tribunal's request, on the application of equality laws and human rights laws to her case. These were received on 10 May 2018 and HMRC responded on 4 June 2018.

Agreed facts

11. Mrs Harwood started work and entered the UK National Insurance Scheme in April 1952. From April 1952 until October 1964 Mrs Harwood was treated as an employee and paid or was credited with Class1 NI contributions.
12. Mrs Harwood left the UK in 1965 and got married while in the USA in July 1965.
13. Mrs Harwood returned to the UK in January 1967.
14. Mrs Harwood returned to work after having a daughter on 22 February 1971.
15. Mrs Harwood worked for a number of different employers:
- (1) South Western Electricity Board February 1971 – 30 April 1971
 - (2) Garden Investments Limited 1971-72
 - (3) Torbay District Council 1974 – 30 September 1976
 - (4) Devon County Council 1976-1 July 1979
 - (5) Chessington Computer Centre and Another July 1979-8 November 1981
 - (6) DHSS November 1981 - 7 December 1981
 - (7) 1982-1984 YWCA Headquarters, London
 - (8) 1984 – 1985 Torbay Borough Council
16. Mrs Harwood's husband died in June 1977.
17. Mrs Harwood re-married in April 1980.

The law

Regulation 2 National Insurance (Married Woman) Regulations 1948

18. 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.

Procedure

19. 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. 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”).

20. 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.

21. 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 ordinary card).

Social Security Act 1975

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

23. 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.

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

25. 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.

26. *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.

27. 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.

28. Section 130(2) states 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.

29. *Social Security (Contributions) Regulations 1975 (1975/492)*, regulation 91(1) provided that a married woman could make an election so that the liability to primary Class 1 contributions should be at the reduced rate.

5 30. 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.

31. 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.

10 32. 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.

Procedure

15 33. 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.

20 34. The process for continuing with existing election was through the employer receiving a "tear-off portion" from the woman's 1974-5 NI contribution card. These were gradually exchanged for certificates of election (CF380) between May 1979 and April 1980.

25 35. Unless an employer held a CF380 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.

Changes to the law in 1977 - Social Security Pensions Act 1975

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

30 37. 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.

35 38. 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;

5

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

40. 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.

15 41. 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.

20 42. Regulation 102 states “*where but for the former regulation 91 ceasing to have effect on 6th 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.*”

Procedure

25 43. 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.

44. If a woman was widowed before 6 April 1978, she could retain her right to pay reduced rate contributions by completing form CF9A.

30 **Authorities**

45. We were referred to these decisions:

Whittaker v Revenue & Customs Commissioners [2006] STC (SCD) 271

Gutteridge v Revenue and Customs Commissioners [2006] STC (SCD) 315

Evidence seen

35 46. We saw copies of

- 5 (1) Mrs Harwood’s RF1 for the period from 1951 to 1975, including HMRC’s manuscript annotations for the years in dispute – “*MW/NP 22/2/71*”, suggesting that Mrs Harwood made a married woman’s election on 22 February 1971 and their annotation for the previous period “*NW3/NP 2/7/65*”, suggesting that Mrs Harwood was not making any married woman’s contributions at this time.
- (2) Computer extract from Mrs Harwood’s national insurance account.
- (3) HMRC’s RD18 for Mrs Harwood – Statement of account, from 1975 to 1984.
- 10 (4) Mrs Harwood’s Tax Deduction Cards from the 1975-6 to the 1984-5 tax years.
- (5) Copy of HMRC leaflets;
- (a) NI 1 (Married Women)
- (b) NP 34 (January 1978)
- (c) NI 51 (Widows 1977)
- 15 (6) Correspondence between the parties from 26 July 2016, including
- (a) HMRC’s review letter of 7 April 2017
- (b) Mrs Harwood’s letters to HMRC of 26 July 2016, August 2016 [undated] 24 January 2017 and 16 February 2017.
- 20 (7) Mrs Harwood’s pension statement from the Pension Service dated 18 February 2017 showing “Basic state pension £73.30, Pre 1997 additional State Pension £2.29, Graduated Retirement Benefit £1.20”
- (8) Correspondence between Mrs Harwood and Department for Work and Pensions from May 2011 – July 2016.
- (9) Daily Mail article 11 December 2013.

25

Points in issue between the parties

47. The questions under appeal are (i) Whether Mrs Harwood was not liable to pay Class 1 National Insurance Contributions as a married woman from 22 February 1971 to 5 April 1975 and (ii) Whether Mrs Harwood was liable to pay Class 1 National Insurance Contributions at the married woman’s reduced rate from 6 April 1975 to 5 April 1984.

30

Mrs Harwood’s arguments

48. Mrs Harwood’s arguments are that (i) The evidence provided by HMRC about her national insurance contributions is wrong (ii) her contribution history is a mess because her first husband died in June 1977 at the time when the UK’s national insurance rules were being radically overhauled (iii) in determining her pension payments the contributions which she has actually made have been ignored and decisions have been made based on her marital status (iv) the UK contribution rules

35

are sexist and discriminatory; she has always worked, did not want to depend on her second husband and would not have had these issues if she had stayed at home and claimed non-contributory benefits.

49. Mrs Harwood clearly felt strongly that she had been dealt with poorly by the UK's social security system, both in respect of the decisions which had been made about her pension entitlement and the way in which she had been treated when she asked for information to help with her case.

50. Mrs Harwood is now elderly but nevertheless managed to present her case for over five hours at the Tribunal hearing in Exeter.

10 **HMRC's records of her national insurance contributions**

51. Mrs Harwood said that the only certificate of any kind which she had ever produced to the DHSS was her husband's death certificate in June 1977. In particular she did not complete a CF1 on her return to work in February 1971 or an NI1 in 1977 (to opt out of the new NI rules).

52. She was working in the USA when she got married and did not return to the UK until December 1966. She did not see an NI1 form or ever complete a CF9 (election not to pay contributions) as HMRC say she did. In fact, the version of the form which was in place in 1970 did not require an applicant to sign the form at all if she wanted to stay on full national insurance contributions.

53. Mrs Harwood was adamant that she did not complete any form of certificate for her first UK employer in February 1971 saying in her response to HMRC:

"I was not asked to fill in any form concerning special arrangements for married women I merely filled in the normal application form for the job which asked if you were married or single and paid whatever tax and NI I was required to pay"

54. In her [undated] letter of August 2016 Mrs Harwood says

"While it is true that I would have first come on the radar of a government department for NI purposes as a married woman in February 1971..... it is not true that I notified the department of my choice, because there was no choice. All married women of that era who had to or chose to work, paid 60% of the flat rate. That was mandatory"

55. Mrs Harwood was also clear that she was making full National Insurance contributions in 1974-5. She could not explain why HMRC's records (the RF1) stated that she was making reduced contributions as a married woman at that time.

56. In Mrs Harwood's notes for HMRC provided at the Tribunal Mrs Harwood states:

(1) She went to the DHSS in 1977 after her husband's death to claim various widow's benefits all of which were awarded because his contributions were up to date.

5 (2) She did not complete a NI1 at this date, but she did make a claim on the basis of her deceased husband's contributions and received widow's benefits.

(3) Contributions were credited from the date of his death until 1977-1978 when the rules set out in HMRC's form N1 51 came into play.

(4) For the 1976-7 tax year she paid SERPS, meaning that she had been paying full rate contributions, as shown on her pension statement.

10 (5) She was paying reduced liability from the 1976-7 tax year because she had qualified on her late husband's contributions.

(6) She was caught between the two systems because her husband died in 1977 and had never chosen to get a reduced rate pension.

15 57. In Mrs Harwood's view HMRC had made an error when they moved over to their new system in 1975.

58. She had never produced a reduced rate certificate to any of her employers because she had never had a certificate.

20 59. She could not explain why she was only taken out of reduced married women's contributions in 1984. She did not revoke any election at this time and if any change was made, it was done by HMRC not her

What happened as a result of her husband's death in 1977

25 60. Mrs Harwood said she had never made a positive election to pay the reduced married woman's rate, this had been deemed to apply to her at the time when her husband died (as set out in leaflet N51) and she had not had the opportunity to opt out of this. Because she had been a "newly widowed woman" in 1977 she had been caught out by the system.

61. At the time when her husband died, reduced liability applied to her and that choice continued to apply. Mrs Harwood said "*I had reduced liability because my husband died, not because of any choice which I made*"

30 62. The fact that her husband died in June 1977 meant that as a widow she was on a "special regime" which meant that she had credits from her husband's complete national insurance record. She had never been credited with these.

35 63. As far as she was aware she had always paid the full National Insurance rate, of what she recalled being about 3.5%. She was not in a position where she could choose not to pay lower rate contributions because she was credited with her husband's contributions.

64. HMRC have deemed her to want to continue on the lower rate contributions, but this was not a choice which Mrs Harwood made.

65. Mrs Harwood accepts that she did not sign a form at the time of the 1977 reconstruction. She says that you had to sign a form to opt into the new system sometime between April 1975 and April 1978, but she did not do this. Mrs Harwood provided two explanations for why she did not sign this form (i) because she was
5 waiting to hear that all her husband's affairs were in order after his death and this was not confirmed until November 1978, when it was too late to opt into the new system and (ii) she did not need to opt into the new system and pay flat rate contributions in 1977 because she knew she could rely on her deceased husband's contributions.

Failure to take account of her contributions

10 66. Mrs Harwood said that she had made full contributions for the years from 1952 when she started work until she got married but these had not been taken account of in her pension payments.

67. Her first husband had also made full contributions and she was supposed to have a credit for these but this had been ignored after his death.

15 68. When she got married for a second time in 1980 she was not financially dependent on her second husband and was still working but despite this her pension payments were based partly on his contributions, which was not what she wanted.

Sexist and discriminatory rules

20 69. Mrs Harwood's view is that the UK rules assumed that she was dependent on her second husband, which she was not because he had a first wife and family to support. Decisions about her pension had been made on the basis of her marital status and not on the basis of the contributions which she had made. In her words, she has been "*financially and emotionally mugged by the system*". A woman who had been a non-working housewife since her marriage would have got exactly the same benefits
25 if her husband had died, whereas as she had actually paid income tax and national insurance throughout the period while she was working.

70. She had worked when she was married, when her husband was ill and after he had died but this had not been taken into account. If she had not worked, or if her husband had died later, these issues would not have arisen.

30 71. She had been the subject of maladministration by HMRC and the Department for Work and Pensions ("DWP") who had not treated her with fairness, dignity or respect. Mrs Harwood says that she has been very unfairly treated by both departments and as a lay person has found it impossible to counter false assertions made. HMRC have continued to provide misinformation and have not remedied her
35 situation, so her claim should be considered under the Equalities Act 2010 and the Human Rights Act 1998.

HMRC's arguments

72. HMRC say that following her marriage on 2 July 1965, Mrs Harwood notified the local National Insurance Office of her change in circumstances. In line with local

office procedures at the time, Mrs Harwood would have been given leaflet NI1 outlining the options available to her as a married woman. The leaflet NI1 contained an application form at the back (CF9) which enabled a married woman to elect not to pay NI contributions.

5 73. That Mrs Harwood must have completed form CF9 as her RF1 (being her permanent NI record) is noted to that effect. It shows that she elected not to pay contributions from 22 February 1971, (being annotated “MW1/NP/22/2/71”). That election would have been carried forward automatically from 6 April 1975, meaning that she continued to be liable to pay NI at the reduced, married woman’s rate.

10 74. As a woman who was widowed before April 1978, Mrs Harwood would have retained her right to pay reduced NI contributions. HMRC gave two explanations for how this would have been achieved, (i) in initial correspondence they suggested that this would be by completing form CF9A, (ii) later they said that Mrs Harwood automatically retained her right to pay reduced rate NI contributions because she was
15 awarded widow’s benefits.

75. Mrs Harwood’s records show that she did continue to pay reduced rate NI from 6 April 1975 until she revoked her election in April 1984.

Procedure

20 76. HMRC explained how the procedure would have worked in Mrs Harwood’s case: Her original application would have been processed by a local office who retained the original CF9 for six years, however the details from the CF9 were transcribed on to another form and sent to a central Records Branch in Newcastle upon Tyne. The transcription of the form for Records Branch was verified by a second officer and the whole process was subject to regular management checks.
25 Records Branch then noted the permanent record.

77. HMRC note that a married woman’s election did not affect the amount the employer paid, as such there was no financial advantage to the employer if the woman elected not to pay;

30 78. Furthermore, later entries on Mrs Harwood’s record (pre and post 1975) are consistent with her choice not to pay contributions (pre 1975) and to pay reduced rate contributions (post 1975).

HMRC’s records

35 79. In response to Mrs Harwood contention that the absence of original documents bearing her signature means HMRC are unable to provide evidence of their contentions, HMRC say that:

80. Although the original documents have long been destroyed, HMRC contends that the permanent record, RF1 (pre 1975) and computerised records (post 1975) are reliable evidence of Mrs Harwood’s election not to pay contributions in 1971 and the

retention of this choice after April 1975. This is because the recording of NI contributions was thoroughly audited.

5 81. The form CF9 (the form on which a married woman elected not to pay and which would have borne Mrs Harwood's signature) was retained at the local office for six years, after which it was destroyed in line with the department's retention of records policy. However, at the time the election was made, the local office informed the central Records Branch in Newcastle upon Tyne and the RF1 was noted with the date from which the election was effective.

10 82. A special card was used to record the exempt rate contributions and each time the card expired, the employer was responsible for returning it to the local office whereupon it was sent to the Records Branch and matched to a person's record sheet. The clerk checked the card against the record.

15 (a) If the contributions were paid at the correct rate the card was accepted and retained for two years before being destroyed, and

(b) If the contributions were paid at the wrong rate they were not accepted and the card was returned to the local office for investigation.

20 83. In April 1975, when records were computerised, information from the 1974-75 exempt rate card was used to insert details of the election onto the computer system providing continuity of information.

25 84. After 1975, contributions were recorded, along with PAYE tax, on deduction cards (DCs). Payment of both income tax and NI was submitted to the then Inland Revenue. At the end of each tax year, employers surrendered the DCs to the local Collector of Taxes who forwarded the documents to Records Branch for microfilming. Details of the amounts of NI paid were input and the computer matched the contributions to the person's account. Compatibility checks were carried out by computer program to ensure that the contributions paid were consistent with the person's liability.

30 85. The end of year returns submitted by Mrs Harwood's employers show that reduced rate contributions were deducted in accordance with her election; this practice could not have been adopted without an authority to do so being handed to the various employers.

35 86. Of significance here is that each of the various departments responsible for recording information was rigorously audited, minimising the scope for an election to be recorded incorrectly. In line with this, HMRC contends that it is highly unlikely that an election would have been recorded where none was made.

Original documents

40 87. HMRC point out that they are unable to retain original documents for an indefinite period of time. Documents, such as form CF9, are destroyed after six years. In accordance with this policy, it is not possible to produce any documents bearing

Mrs Harwood's signature. This procedure was not undertaken with the intention of destroying evidence.

88. Case law supports this view in respect of regarding the destruction of form CF9:

89. In *Whittaker v Revenue and Customs Commissioners* the Special Commissioner (at para 30) said:

"The Respondents were unable to produce the originating documents (the elections CF9 signed by the Appellant...which generated the entry on the Appellants RF1 (NI Account). The originating documents were destroyed in accordance with the Respondents 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 Appellants RF1 (NI account) were accurate, in particular the independent checking by supervisors of entries..."

90. Similarly, in *Gutteridge v Revenue and Customs Commissioners* at para 150, the Special Commissioner said:

"I accept the Respondents' evidence that the CF9s were routinely destroyed after 6 years in accordance with the government policy on document retention.....I do not find that these documents were destroyed with any improper motive."

At paragraph 152 he said:

"...I do not conclude that the absence of the CF9 is evidence that it was not signed by Mrs Gutteridge."

91. HMRC contends that the absence of the original form CF9, bearing Mrs Harwood's signature, is not evidence that the document had not been signed.

92. During the hearing, Mrs Harwood said that if she had paid the lower rate (of contributions) then she could not have got the earnings related element of pension. HMRC contend that this is not correct. The documents reflect that until 5 April 1984 Mrs Harwood had the married woman's reduced rate election in place. The documents also reflect that she paid at "B" contribution rate, or the non-contracted out rate, and this is consistent with her having made the election as maintained throughout by HMRC. The position changed from 1984-85 as the "A" rate is shown thereafter and this is consistent with the HMRC argument

Burden of Proof

93. The burden of proof lies with Mrs Harwood to show she did not elect to pay exempt rate contributions from 22 February 1971. HMRC acknowledge the difficulty

for Mrs Harwood in establishing a negative, particularly in respect of events which took place so long ago. However, HMRC contend that the documentary evidence produced to the Tribunal clearly demonstrates that an election was made by the Appellant.

5 94. HMRC further contend that Mrs Harwood's case rests entirely on her
recollection of events, whereby HMRC's evidence is based on the process involved in
making an election and the checks undertaken to ensure that individual records are
correct. HMRC contends that, based on the evidence (including Mrs Harwood's
10 record sheet and employer returns), it is more likely that Mrs Harwood made an
election in 1971 than it is that HMRC made an error by mistakenly recording the
election.

95. In conclusion, HMRC say that the notation on Mrs Harwood's NI record is
HMRC's evidence that the above events happened. The fact that form CF9 has since
15 been destroyed and that HMRC cannot produce it is not evidence that the election was
not made or that the National Insurance Office took incorrect action at the time.

96. An important point to note is that HMRC retained the RF1 on which all details
concerning Mrs Harwood's NI payments were noted. This includes her annual
contributions both paid and credited, personal details and her married woman's
election, all of which were noted at the time they were paid or made.

20 97. This, when considered alongside the records from Mrs Harwood's employers,
supports the fact that contributions were deducted correctly at the reduced rate. While
HMRC accepts that there is scope for an error to be made within any process, the
HMRC view is that it is more likely Mrs Harwood was aware she was paying exempt
(and later, reduced) rate contributions but did not challenge or query it.

25 98. HMRC concludes that their records are correct and that Mrs Harwood elected
not to pay contributions from 22 December 1971.

Sexist and discriminatory rules

30 99. HMRC accept that Mrs Harwood has the right to be treated with fairness,
dignity and respect but say that HMRC have applied the legislation correctly in Mrs
Harwood's case and acted in line with departmental guidelines. If Mrs Harwood
wishes to make a complaint about HMRC's behaviour this should be done through
HMRC's complaints procedure and is not something which can be considered as part
of this appeal.

35

Findings of fact

100. On the basis of the evidence seen and heard we make the following findings of
fact:

(1) Mrs Harwood worked for a number of different employers, including the DSS, from 1971 until 1984. All of those employers treated her for national insurance purposes as a married woman paying National Insurance at a reduced rate.

5 (2) Mrs Harwood could not have signed an N1 or a CF9 immediately after her marriage in 1966 because she was residing in the USA.

(3) Mrs Harwood's NI records record that she elected to pay the married woman's reduced rate NI contribution on 22 February 1971.

(4) Mrs Harwood started to pay higher rate contributions in 1984.

10

Decision

101. The burden of proof in this case is on Mrs Harwood to demonstrate that she did not elect to pay exempt married women's NI contributions from 22 February 1971 until April 1977 and that she was not liable to pay married woman's reduced rate contributions from April 1977 until April 1984.

15

102. Mrs Harwood's explanation of (i) the rates of National Insurance which she was paying from 1971 until her husband died in 1977 and (ii) the basis on which she paid National Insurance for the years after his death were not always easy to follow. She referred us extensively to the relevant leaflets to support her case, but could not explain what forms she had filled in for any of her employers or what exactly she considered to have been missed from her records kept by HMRC. She had no explanation for the discrepancy between what she said she had paid in National Insurance contributions and what HMRC's records described.

20

103. Mrs Harwood's comments were detailed and heartfelt, but not entirely coherent and rather short of specific facts in response to the Tribunal's questions and questions from HMRC. She could not provide a consistent response to explain whether she was or was not paying full rate contributions in the 1978-9 tax year saying "she was entitled to the lower rate but was paying the full rate at this time".

25

104. Mrs Harwood relied extensively on various statements made in HMRC leaflets about the married woman's national insurance contributions. Aside from questions about whether these were an accurate reflection of the leaflets that were in circulation at the relevant time, these leaflets cannot necessarily be taken as a wholly accurate reflection of the relevant law in what is admittedly a complex area.

30

105. We also accept that some of HMRC and DWP's correspondence was confusing and did not accurately reflect what had actually gone on in Mrs Harwood's case, suggesting for example that she had made an election at the time of her marriage in July 1966, which she clearly could not have done since she was living in the USA at that time.

35

106. In our view Mrs Harwood's contentions can be reduced the five separate issues:

- (1) she did not in fact make an election to pay reduced contributions when she started work in February 1971
- (2) she did not make an election to pay reduced contributions after her husband died in 1977, she was on reduced contributions because her widow's benefits were derived from her late husband's contributions
- (3) when the system changed in 1978 she was not given the choice of electing to make full contributions, because her husband had died in 1977
- (4) she did not elect to make full contributions in 1984 and
- (5) the system is discriminatory and sexist because it assumes that she will be dependent on her husband.

107. Taking each of these in turn:

(i) The period from February 1971 until Mrs Harwood's husband's death in June 1977.

108. Mrs Harwood's evidence was that she did not complete the relevant forms which would have meant that she was entitled to pay the lower, married woman's rate of national insurance in February 1971. We accept that it cannot be correct that she completed these forms at the time when she was married in 1966 in the USA. So the relevant question is whether she completed these forms when she went back to work in the UK in February 1971.

109. HMRC's records record her as having made that election on the date when she returned to work having had her daughter.

110. It is unfortunate, but not surprising, that HMRC are not able to produce the actual form which would have been signed by Mrs Harwood in making that election, leaving us to determine whether we should prefer Mrs Harwood's direct personal evidence as against HMRC's sources, the annotated RF1.

111. We have concluded that HMRC's records are to be preferred in this case, notwithstanding the fact that there is a risk in all record keeping systems that errors are made. We have come to this conclusion because:

(1) Although Mrs Harwood raised questions about the accuracy of HMRC's records in a number of respects, in fact, from the evidence which we heard, the facts and dates recorded in Mrs Harwood's RF1 do correlate with the relevant facts which she told us; the date of her marriage, the fact that she was out of the country and so not making NI contributions at the time of her marriage and the date when she returned to work.

(2) HMRC had been correctly notified by someone that Mrs Harwood was back in employment. The only alleged inaccuracy in HMRC's records relates to the making of the married woman's election at that time. In our view it is harder to explain why HMRC should make a partial error and record only one

incorrect piece of information about Mrs Harwood than if her whole record for this period had been incorrect. Mrs Harwood has told us that she did not notify HMRC that she was married, so HMRC would not have had any reason to assume that Mrs Harwood would have made the married woman's election at this time unless someone else had told them that fact. Mrs Harwood's arguments lead to the conclusion that an HMRC record keeper made a completely random entry on that part of her record when he recorded the first part of her record as "MW1/NP. It is hard to imagine how this could have occurred, particularly given the record checking process to which Mrs Carwardine referred.

(3) There are other facts which support HMRC's arguments; Mrs Harwood's employers (of which there were four between 1971 and her husband's death 1977) would have been able to deduct the exempt married woman's NI contributions only on the basis of information provided in the form of Mrs Harwood's NI card and Mrs Harwood's weekly pay would have been paid subject to that reduction accordingly. In other words, the error made by HMRC was compounded by Mrs Harwood's employers and reflected in her weekly pay, without the error being picked up. Mrs Harwood's evidence can only mean that she failed to notice that her pay had only been reduced by the exempt married woman's NI contribution rather than the standard, much higher, contribution rate and that neither she, nor any of her employers questioned this.

112. For these reasons we have concluded that it is more likely than not that HMRC's RF1 correctly records Mrs Harwood's election for 1971.

(ii) The impact of Mrs Harwood's husband's death in 1977 and the transition to the new regime in 1978

113. Mrs Harwood's arguments about what happened in 1977 centre on the changes which were being made to the whole National Insurance system in 1977 and the fact that there was a special regime for women who had been widowed during the transition period in 1977.

114. Again Mrs Harwood's clear evidence was that she did not make a positive election to retain the right to pay the married woman's reduced rate after her husband's death. Rather she says, she was not able to make that election for two reasons; firstly because it took some time to sort out her husband's social security position after his death and by the time it was done it was too late to elect out of the married woman's reduce rate and also because she was receiving benefits as a result of her husband's death and so could not elect to pay full rate contributions.

115. Mrs Harwood also says that at least for the 1977-78 tax year she was making full national insurance contributions because of the credits which were paid as a result of her husband's death.

116. Mrs Harwood referred us to several HMRC leaflets, some of which had been provided by HMRC and some of which had not, to persuade us that her record had been wrongly marked as someone who had chosen not to pay full NI contributions.

117. HMRC started by arguing that Mrs Harwood must have made another positive election to retain the reduced woman's NI contributions when the rules changes in 1977. On the basis of the law to which we were referred, our view is that HMRC are wrong about this and that this has unfortunately led to some of the confusion in this case.

118. The transition Regulations at 102 of the 1979 Regulations and 100 of the 1973 Regulations read together indicate to us that, just as she says, someone in Mrs Harwood's situation would not have been required to fill in any forms or make any kind of election in 1977 after the death of her husband; her existing election (the one recorded in 1971) would have been automatically carried forward.

119. Mrs Harwood was adamant that she did not complete this form and that she would have had no reason to be making higher rate contributions since at this stage she was relying on her deceased husband's national insurance record. We agree.

120. Mrs Harwood is right that if her husband had died slightly later, she would have been able to take advantage of a new approach. Unfortunately, due to the date of her husband's death, Mrs Harwood was deemed to wish to continue with her lower rate contributions unless she took some positive action (completing form CF9A) which she did not take.

121. Despite our sympathy for Mrs Harwood, it remains the case that Mrs Harwood did not make the election which would have been necessary to remove the assumption that her election to pay the reduced rate married woman's national insurance contributions should continue.

122. The core of Mrs Harwood's argument for this period, as for the previous period, is that she was forced to pay the reduced married woman's NI contributions. This appears to us to be neither the case in law nor in practice. In this period and in the pre 1977 period that was an option for Mrs Harwood to elect to pay the standard rate NI contributions. Mrs Harwood might say, with some justification, that the system tended to assume that married woman would not make that election, but it was not, as she suggests "mandatory" for married women to pay NI contributions at the exempt or reduced rate.

123. As for the previous period, we would refer to the number of employers which Mrs Harwood had during this period (including the DHSS) and their consistent application of the married woman's reduced national insurance contributions to her pay as an indication that Mrs Harwood should have been aware that she was not making full rate contributions during this period and which could have spurred her into taking action to remedy the situation. However there is no evidence that any such action was taken.

124. Mrs Harwood does tell us that at this time she was working in order to support her daughter as a single parent. This suggests to us that she would have had little financial incentive at that time to increase her outgoings by choosing to pay higher NI contributions.

125. For these reasons we have concluded that Mrs Harwood did not take any positive action to opt out of paying NI at the reduced married woman's rate for this period and that HMRC's records of her contributions for this period are correct.

(iii) Mrs Harwood's change in contributions in 1984

5 126. Finally, Mrs Harwood also alleges that she did not take any positive action to elect out of the married woman's national insurance charge in 1984. This is not specifically relevant to the matters which are under appeal, there is no dispute that full national insurance contributions were paid from that date. Mrs Harwood raises the issue as we understand it only to emphasise another example of HMRC changing her
10 level of national insurance contributions with no reference to her.

127. HMRC refer to the records which they have of Mrs Harwood making this election in 1984 and this anomaly seems to be explained by the fact that at this stage the law allowed HMRC to assume that Mrs Harwood's election had come to an end.

(iv) The sexist and discriminatory aspects of the NI system

15 128. Mrs Harwood's submissions of 13 April 2018 conclude by saying "*I also believe that HMRC are riding roughshod over equality laws by continuing not to take action to remedy what has happened to me. Also I wonder about human rights laws and my right to be married without suffering financial penalty. And the fact that to add insult to injury my husband was handed the married man's tax allowance and
20 retained it when it was abolished because he was born before 1935*"

129. At the heart of much of Mrs Harwood's complaint is a view that the national insurance system as it operated in the 1970s was sexist and discriminatory. It assumed that women were reliant on their husbands. In determining Mrs Harwood's pension contributions by reference to both of her husbands' national insurance contributions
25 and ignoring her many years of work, the system discriminates against married women who have worked but whose contributions are ignored. She lost any of the contributions which she had made when she got married for a second time.

130. It is undoubtedly the case that seen through the lens of twenty first century equal pay and diversity legislation, the operation of the national insurance code forty
30 years ago is based on assumptions about earning power which are no longer acceptable.

131. However, even within the restrictive code at that time, at no stage was it impossible for a married woman to accumulate her own national insurance contributions if she chose to, by opting in or out of the relevant rules. Some positive
35 action was required by a woman to do that, but it only entailed completing a form and of course, actually paying the higher rate of contributions.

132. In considering arguments concerning inequality and unfairness, the remit of this Tribunal is limited to "unfairness" which relates to a tax appeal. This Tribunal does not have a wider function to consider general unfairness or discrimination in the
40 actions of public bodies such as HMRC or the DWP, which would usually be

considered in the administrative courts as a judicial review application. Mrs Harwood refers to both the Equalities Act of 2010 and the Human Rights Act of 1998 but does not specify precisely what her grounds of appeal are under this legislation.

5 133. In any event, both of these pieces of legislation contain time limits within which claims need to be brought; any claim relating to decisions and policies of HMRC which were applied to Mrs Harwood in the 1970s are now many years out of time and would require special concessions and very strong arguments in order to be considered now.

10 134. Mrs Harwood has not persuaded the Tribunal that her claims under this legislation are within the scope of this Tribunal and not time barred.

135. Any issues with how Mrs Harwood's case has been recently handled by HMRC should be referred to HMRC's complaints team and are outside the scope of this Tribunal.

Conclusion

15 136. Mrs Harwood's appeal is dismissed and HMRC's decision of 8 February 2017 that Mrs Harwood was not liable to pay Class 1 National Insurance Contributions from 22 February 1971 until 5 April 1975 as a married woman and that Mrs Harwood was liable to pay Class 1 National Insurance Contributions at the married woman's reduced rate from 6 April 1975 until 5 April 1984 is confirmed.

20 137. 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
25 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

30 **RACHEL SHORT**
TRIBUNAL JUDGE

RELEASE DATE: 22 JUNE 2018