



**TC02153**

**Appeal number: TC/2011/03656**

*Appeal under section 8 of The Social Security Contributions (Transfer of Functions etc) Act 1999 – disputed married woman’s election – was election fraudulently made – no.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**SYLVIA BENNETT**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ALISON MCKENNA  
SONIA GABLE**

**Sitting in public at Bedford Square on 16 May 2012**

**Mrs Bennett was represented by her husband Mr Bennett**

**Lisa Storey of HMRC for the Respondents**

## DECISION

### Background

1. This matter concerns a decision made on 12 January 2011 by HMRC, under s 8  
5 of The Social Security Contributions (Transfer of Functions etc) Act 1999, to the  
effect that from 16 October 1967 until 5 April 1975 Mrs Bennett was not liable to pay  
class 1 National Insurance contributions and from 6 April 1975 to 4 April 1978 she  
was liable to pay reduced rate National Insurance contributions only.

2. Mrs Bennett now appeals against that decision. In her Notice of Appeal dated  
10 29 April 2011 she argues that

15 she was unlawfully and without her knowledge or agreement removed  
from contributing to her national insurance...by her former husband  
and former employers...Sylvia Bennett maintains that this is a breach  
of her rights and demands that HMRC produce a document with her  
signature on it clearly showing that she withdrew from the National  
Insurance contribution scheme during the time stated. She maintains  
that without such proof she is fully entitled to her full pension  
backdated to her date of retirement at 60.

3. Mrs Bennett first became aware of her reduced pension entitlement when she  
20 asked for a pension forecast. She then informed HMRC that she denied ever having  
signed the form making an election not to pay standard rate National Insurance  
contributions, and asked it to produce proof that she had signed the relevant form.  
Much of the correspondence before us was written by Mr Bennett, who has repeatedly  
25 asserted that it would be unlawful for HMRC to deny his wife a full pension in the  
absence of the actual document upon which it relies to prove she had made the  
election. He referred us to parts of the Civil Procedure Rules which govern the  
production of documentary evidence in the Courts but these, as we explained, are not  
applicable in this Tribunal by virtue of rule 15(2)(a) of The Tribunal Procedure (First-  
tier Tribunal) (Tax Chamber) rules 2009.

30 4. Mr Bennett is a lay person and unfamiliar with legal procedures so we can  
entirely understand why he has made the assertion that HMRC must produce the  
documentary evidence that his wife signed the form. However, as we explained to  
him at the hearing, it is incumbent upon the Tribunal to make findings of fact in  
relation to any disputed evidence and we must do so on the balance of probabilities.  
35 In so doing it is open to us to make our findings of fact on the basis of the evidence  
before us including, in the absence of primary evidence, on the basis of circumstantial  
evidence.

5. That is not to say of course that we start from the position that HMRC's records  
are necessarily correct. We have scrutinised them most carefully in this case because  
40 their accuracy was disputed by Mr Bennett on behalf of his wife. HMRC must satisfy  
us on the balance of probabilities that its records may be relied upon to support a  
finding that an election was made. But Mrs Bennett bears the overall burden of  
persuading us that HMRC's decision in her case was wrong, because she is the

Appellant in these proceedings. In other words, if on the basis of the evidence before us, we are not satisfied that an election was made (as shown in the records) then Mrs Bennett's appeal will succeed. If, however, we are satisfied on the basis of the evidence that an election was made, then it falls to Mrs Bennett to satisfy us on the balance of probabilities that it was made unlawfully, without her knowledge or consent, by her first husband or employer - this being the case she advanced in her grounds of appeal.

6. The Tribunal's jurisdiction in this matter is derived from s 10 of The Social Security Contributions (Transfer of Functions etc) Act 1999. It is limited to the question of whether HMRC's decision of 12 January 2011 should be varied or "stand good" i.e. whether that decision was correct.

### **The Evidence**

7. The Tribunal heard evidence from Mr Greenshields, who is an officer of HMRC and has worked in the field of National Insurance contributions since 1975. He was the officer who considered this case and made the decision of 12 January 2011 on HMRC's behalf. He told us that he is familiar with the pre-computerised records system with which this case is concerned. His evidence was that at the time when this election was made, each employee was required to present to their employer a National Insurance card upon which National Insurance "stamps" were affixed. He told us that in 1967 when Mrs Bennett returned from a period in France having been married, she would have been required to complete a form called CF9 to obtain that National Insurance card to present to her new employer. He told us that there had been no other method of obtaining the necessary card. The form CF9 was a tear off form, attached to leaflet NI 1 which was entitled "Married Women". It included on the form the option to elect to pay or not to pay flat rate National Insurance contributions as a married woman. Mr Greenshields told us that form CF9 had contained a declaration to the effect that the woman had read and understood the contents of the accompanying leaflet, which explained that the election could be revoked at any time but would otherwise remain in force.

8. We heard from Mr Greenshields that the declaration on the form required a signature by the woman concerned and referred to the enclosure of certain certificates. The form had a place on it to fill in the woman's date of birth, her surname before marriage, the date and place of marriage and also the husband's name and National Insurance number, in addition to the employer's details. The "official use" section of the form refers to the issue of a "special" or "ordinary" card upon receipt of the form. As Mr Greenshields explained to us, an election not to pay standard National Insurance contributions resulted in the issue of a "special" card which authorised the employer not to collect the full rate contributions. If the authority of a special card was not in place, the employer had a legal obligation to make the standard rate deductions from the woman's wages. Mr Greenshields explained that employers had been required to make returns to the Department, which would have sent an officer to visit the employer if the wrong rate were being deducted.

9. Mr Greenshields produced for us a standard blank form CF9 at the hearing so we could see what the form looked like, but he could not produce the original form CF9 for Mrs Bennett. His evidence was that such forms were routinely destroyed six years after completion in accordance with the Departmental Records Policy. He did, however, produce the original RF1 for Mrs Bennett. RF1 was the official record kept by the Department before its records were computerised, and recorded Mrs Bennett's National Insurance history. Mr Greenshields' evidence was that the RF1 had been held in Newcastle by the Departmental central records branch and would have been amended only when official information was sent to the branch by a local DSS office on a standard form. This form contained the first name, last name, date of birth and National Insurance number of the person whose record it was intended should be amended. There was then a system for the resulting clerical entry to be checked and verified by a senior officer and this was indicated on the form by a letter "v". Mr Greenshields told us that it had not been permissible for a person's record card to be altered other than on receipt of the information provided by the local DSS office. He said that the Department would not, for example, have accepted information provided informally by an employer or husband or have altered the RF1 card in reliance upon such information.

10. The Tribunal looked at the original RF1 record card for Mrs Bennett, a copy of which was in our bundle and which had been provided to Mr and Mrs Bennett in advance of the hearing. It was not as clear as it could have been in parts and, as Mr Bennett pointed out, it had not always been completed clearly, legibly and in block capitals, as the form itself stated was required. However, it was clearly Mrs Bennett's card, including as it did her correct name (including changes of name) date of birth and National Insurance number. It recorded that Mrs Bennett had been abroad in France from 22/10/66 to 19/9/67 and that she had been married on 21/2/67 and divorced on 4/4/78. The date of divorce had a "v" next to it with a code number and a date of entry of 26/4/78. It recorded her second marriage, to Mr Bennett, as having taken place on 22/3/79, also with a "v" next to the date.

11. In the column for the year 66/67 the RF1 recorded that 18 stamps had been issued with a note "married" in the notes column. On the year 67/68 it had an entry "MW1/NP" with a date "20/11/67" crossed out and replaced with "16/10/67". The reason for that amendment was not explained. Underneath the line for the year 69/70 was a note "MW1/NP 7 1 74" and "1104". Mr Greenshields gave evidence as to the interpretation of these entries, explaining that "MW1" meant "married woman" and "NP" meant "non paying" and that this indicated a reaffirmation of the election in 1974. He told us that "1104" was a local office code but he had not been able to trace which one it was, other than that it was a London code. The records showed correct dates of marriage, and he told us that a special card had clearly, in his view, been issued to Mrs Bennett because successive employers had deducted no (or later, reduced rate) contributions in reliance upon it. He concluded from these records that, in all the circumstances, a form CF9 had been signed and submitted, showing an election not to pay National Insurance contributions, and that the Department had acted accordingly in issuing the special card which Mrs Bennett had subsequently provided to her employers. This was the basis upon which he had reached his conclusions and made the disputed decision of 12 January 2011.

12. Mrs Bennett told us that she had been fifteen in 1958 and we could see from the RF1 form that that was when her records had commenced. The record showed her, correctly, as having been a student until July 1959 but then as having worked in the years until 1966/7. She told us (and the form correctly recorded) that she went to France in 1966, married a French national and then returned to England in 1967. She said she had then commenced work at a florists. Mr Greenshields had told us that as Mrs Bennett's RF1 record for the year 66/67 had been completed (showing the 18 stamps) this meant that the relevant card for that year must have been returned to the Department for the stamps to be counted. This also meant, he said, that she would have had to apply for a new card on her return from France, again suggesting that a CF9 had been completed because that was the only way that she could have obtained a new card. Mrs Bennett disputed this analysis of events. Her evidence was that she did not remember signing a form CF9 in 1967 or having confirmed her election in 1974, as the records state that she did. Moreover, she told us that she would never have signed the form if it had been explained to her what the implications of it were. She told us that she had always wished to be independent, especially in circumstances where her first marriage had not been successful, and repeated that she would never knowingly have signed away her pension rights.

13. The records show that Mrs Bennett transferred to some 5 different employers over the succeeding years. In each employment after her marriage until her divorce in 1978, the records show that she was treated as having made an election not to pay standard National Insurance contributions. Mrs Bennett told us that she was entirely unaware of this. She was candid in her evidence that she had not taken a great deal of interest in her employment-related documents at this time. She said that she thought she would have handed her papers to each successive employer in an envelope, unaware what they contained or that they indicated that an election not to pay standard rate contributions was in force. This means of course that if a fraudulent election had been made she would not have noticed it.

14. Mrs Bennett told us that she now thought her employer at the "Flower Boutique" (her first job after she returned from France in 1967) must have completed the form CF9, signed it and submitted it for her. She thought he would have had sufficient detail to fill in the detailed form, and/or that his wife might have asked her the relevant questions. She said, in answer to the Tribunal's questions, that she understood that she was alleging that this man had committed a fraudulent act. She said did not remember his name after all this time. She said she did not think he had been a dishonest person, just someone who liked to get things done. She thought it had been more common in the 1960s for men to sign official forms on women's behalf.

15. Mrs Bennett did not, in her evidence to us, suggest that her first husband had fraudulently completed the form. Although this had been specifically stated in her grounds of appeal, we understood this suggestion not to have been relied upon by the time of the hearing. Mrs Bennett's evidence was that she had no recollection of how she had got back into the official records system on her return from France in 1967 and therefore she thought that her then employer at the Flower Boutique had taken care of everything for her. She said she had been unaware of her National Insurance

contributions status and told us she had never compared her pay with any one else's or realised that she was making no, or later lower rate, contributions. She said, in answer to Ms Storey, that her employer might have given her the CF 9 form to sign without an explanation of what it was about, but "she liked to think not". She did not recall having had a special card at all.

16. Following the hearing, Mrs Bennett sent the Tribunal a letter dated 16 May 2012, enclosing some further information. This was that she had been the driver at the florists shop, so that her employer would have needed to obtain her name and credentials for insurance purposes. She enclosed a reference from the Flower Boutique dated 11 January 1969, confirming that she had been a Senior Florist and Driver. It was signed by "T.C.Cave". The Tribunal sought HMRC's comments on this document, which were received dated 23 May 2012. HMRC commented that, firstly, the employer would not have needed to obtain the required details about Mrs Bennett's husband to have insured her; secondly, that the form would have still had to have been signed; thirdly, the employer would have committed a fraud in signing the form for her and that, as the employer's share of National Insurance contributions remained the same regardless of the election there would have been no financial incentive for him to do so; and finally that even if the CF9 had been fraudulently signed in 1967, the records showed that Mrs Bennett reaffirmed her election in 1974 and HMRC does not accept that there could have been a second fraudulent completion and submission of the form at that time.

### **The Law**

17. In 1967, when Mrs Bennett is said to have made her election, the relevant law was the National Insurance Act 1946 and the National Insurance (Married Women) Regulations 1948 made under it, which permitted married women to elect not to make, and later to make reduced rate, National Insurance contributions.

18. The law changed by reason of s 3 of the Social Security Pensions Act 1975, which abolished reduced rate contributions for married women from 6 April 1977. However, transitional provisions provided that women in Mrs Bennett's position who had previously made an election were deemed to continue with it and so make a reduced rate of contribution unless certain events (such as a divorce) took place or they explicitly revoked the election.

19. We were referred to a number of decisions of the First-tier Tribunal and its predecessor bodies in respect of married women's elections. These included *Gutteridge v HMRC* (2006) SPC00534, *Whittaker v HMRC* (2006) and *Spraggs v HMRC* [2011] UKFTT 333 (TC) (in all of which decisions the issue for determination was whether or not an election had in fact been made) and *Register v HMRC* [2010] UKFTT 186 in which the issue to be determined was whether relevant contributions had been made. We were not referred to any cases which raised issues similar to Mrs Bennett's case and Mr Greenshields told us he was not aware of any other cases in which it was alleged that form CF9 had been fraudulently signed without the woman's knowledge or consent. The case law we were referred to does not really assist us with the findings of fact that we have to make in this case. We

note that we are not bound by other decisions of the First-tier Tribunal in any event, as they each turn on their own facts and do not set a legal precedent.

### Conclusions

20. In his submissions to the Tribunal, Mr Bennett was highly critical of the accuracy of form RF1. He suggested that HMRC's records must have been subject to a higher margin of error than Mr Greenshields had been prepared to accept, although he did not explain how that rate of error would have affected the records in this case. He pointed to some factors which he said cast doubt on the accuracy of the records, for example Mr Greenshields' evidence that he had been unable to trace the identity of the local office whose "1104" code was shown against the 1974 entry. The entries in respect of Sickness Benefit claims shown to have been made were also disputed by Mr and Mrs Bennett as Mrs Bennett did not recall having made any such claims.

21. Looking at the evidence of Mr Greenshields and the documentary evidence produced and relied upon by HMRC in the round, we find that the records may be relied upon in relation to the central issue before the Tribunal. This is a finding that, on the balance of probabilities, there was a notification by the local office to the central records branch of a completed form CF9 containing an election not to pay standard rate contributions in 1967. We accept that the election was reaffirmed in 1974 as the records indicate. We rely, in making this finding, on the fact that the dates and facts recorded in the RF1 are in key respects objectively accurate, including as they do the correct dates of marriage and divorce, and the reference to Mrs Bennett's time out of the country in France. We also accept the evidence of Mr Greenshields and rely on the fact that Mrs Bennett would have had to complete the CF9 form in order to obtain a record card after her return from France. The records are consistent with a notification of election having been received and acted upon by the Department at that time and we conclude that this was the case.

22. We also take note of the fact that successive employers' behaviour was consistent with each of them having been informed (through the receipt of Mrs Bennett's special card) of an election having been made. We reject Mr Bennett's submission that the records are inaccurate and cannot be relied upon to find on the balance of probabilities that an election was made. That does not of course prove that a form CF 9 was signed by Mrs Bennett herself and we must look to other evidence in relation to that issue.

23. As noted above, we are satisfied that in Mrs Bennett's case that an election was notified to the central records branch in 1967 and that the election was reaffirmed in 1974. It remains for us to determine whether, on the balance of probabilities, someone else signed and submitted the form and/or reaffirmed the election on her behalf. We note that Mrs Bennett's explanation for what had happened in 1967 altered during the Tribunal process and that she abandoned the explanation originally put forward in her grounds of appeal that her first husband had forged her signature, in favour of blaming her then employer. We have considerable sympathy for Mrs Bennett's position in finding herself without a full pension and having no recollection of why this was the case. We found her to be a truthful witness, but with a poor

recollection of events from 1967 and 1974. This is not surprising given the passage of time since these key events.

24. We have considered Mrs Bennett's evidence very carefully and are grateful for the arguments presented on her behalf by Mr Bennett. We have already found, on the basis of the records evidence produced by HMRC, that notification of an election was received by the Department. We accept that Mrs Bennett has no recollection of having made it and so turn to consider the alternative explanation she relies upon to explain this eventuality. In considering whether the balance of probabilities test is met, the Tribunal may have regard to the likelihood of the fact at issue. In other words, the more likely the fact, the less persuasive need be the case to justify it. To quote Lord Hoffman in *Secretary of State for the Home Department v Rehman* [2003] 1 AC 153:

...some things are inherently more likely than others. It would need more cogent evidence to satisfy one that the creature seen walking in Regent's Park was more likely than not to have been a lioness than to be satisfied to the same standard of probability that it was an Alsatian.

25. In all the circumstances of this case, we conclude that it is inherently less likely that Mrs Bennett's former employer committed a fraudulent act in signing and submitting the form without her knowledge than that Mrs Bennett signed the CF 9 form without checking what it meant or without understanding the consequences, has forgotten doing so in doing 1967 and has also forgotten having reaffirmed her election in 1974. This is our conclusion after taking into account the additional information provided by Mrs Bennett, which provides an explanation for why the employer had more of her details than might otherwise have been the case, but does not affect the inherent unlikelihood of a fraudulent act being committed by someone with no motive for doing so. We take into account in support of our conclusion Mrs Bennett's own evidence that she did not look at her own employment documents in the relevant period. If she had looked at her papers, she might have (and, we accept, probably would have) remembered, understood and revoked her election. However, we find that as she did not pay attention to the papers, she remained unaware of her status and simply forgot about the form.

26. Our conclusions lead us to dismiss Mrs Bennett's appeal. In making our findings we reiterate that we do not for one moment suggest that Mrs Bennett was untruthful in any way and we entirely accept her evidence that she has no recollection of the relevant events. However, we conclude that HMRC has satisfied us on the balance of probabilities that its records may be relied upon to show that an election was received in 1967 and confirmed in 1974. In considering whether the election may have been made fraudulently as Mrs Bennett alleges, we conclude that she has not satisfied us on the balance of probabilities of her case.

27. For all the above reasons we must dismiss this appeal and we now direct that HMRC's decision of 12 January 2011 shall stand good.

28. 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



5 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.

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**ALISON MCKENNA  
TRIBUNAL JUDGE**

**RELEASE DATE: 26 July 2012**

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