



Neutral Citation: [2025] UKUT 00126 (TCC)

Case Number: UT/2024/000016

UPPER TRIBUNAL
(Tax and Chancery Chamber)

By remote video hearing

NATIONAL INSURANCE CONTRIBUTIONS – entitlement to State pension – late payment of voluntary contribution – date when entitlement to State pension commenced – appeal dismissed

Heard on: 20 February 2025
Judgment date: 14 April 2025

Before

JUDGE THOMAS SCOTT

Between

NAVIN JOSHI

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS
Respondents

Representation:

Mr Joshi appeared in person

For the Respondents: Sarah Black, Counsel, instructed by the General Counsel and Solicitor to His Majesty’s Revenue and Customs

DECISION

INTRODUCTION

1. This hearing was scheduled to be heard by a two-member panel. Following repeated issues with the remote hearing connectivity, the parties confirmed that they were content to proceed on the basis that I should hear and determine the appeal sitting alone.
2. Mr Joshi made a voluntary payment of National Insurance Contributions (“NICs”) to make up a shortfall in the number of qualifying years which he had accrued for the purpose of his entitlement to the State pension. He disagreed with HMRC over the date when his entitlement to State pension commenced following the payment of the voluntary contributions. HMRC decided that the entitlement commenced on 19 July 2017. Mr Joshi appealed against that decision to the First-tier Tribunal (Tax Chamber) (the “FTT”).
3. In a decision released on 23 October 2023 (the “Decision”), the FTT stated that at the hearing of the appeal, HMRC indicated that they would be willing to treat Mr Joshi’s entitlement to State pension as commencing on 15 May 2017. Mr Joshi argued that his entitlement commenced on the date when he reached pensionable age, which was 23 January 2017. The FTT rejected that argument and dismissed Mr Joshi’s appeal. This decision relates to Mr Joshi’s appeal against that decision.

SUMMARY OF FACTUAL BACKGROUND

4. References below in the form FTT[x] are to paragraphs of the Decision.
5. In summary:
 - (1) Mr Joshi worked in the United Kingdom from April 1971 to August 1977, when he emigrated to Canada (FTT [18]).
 - (2) On 2 November 2016, Mr Joshi made a claim to the Department for Work and Pensions (the “DWP”) for State pension. This was disallowed by the DWP on 10 January 2017 (FTT [22]).
 - (3) On 23 January 2017, Mr Joshi reached State pension age for UK purposes (FTT [21]).
 - (4) Mr Joshi submitted a form CF83 (an application to pay NICs abroad) which was dated 27 June 2017, with an earlier date of 15 May 2017 scored through. This was received by HMRC on 5 July 2017, and processed by them (FTT [23(1)-(4)]).
 - (5) On 5 April 2018, Mr Joshi’s UK agent wrote to the International Pension Centre enclosing a cheque for £821.60 (FTT [23(5)-(6)]).
 - (6) On 21 August 2018, Mr Joshi made a claim to the DWP for his State pension from 23 January 2017 (the date he reached pensionable age) (FTT [23(7)]). The DWP did not agree and determined that his entitlement to State pension commenced from 18 April 2018 (FTT [24]).
 - (7) On 9 December 2018, Mr Joshi appealed to the Social Entitlement Chamber (“SEC”) against the DWP’s decision. The SEC Tribunal confirmed the DWP’s decision on 16 January 2019. This was appealed to the Upper Tribunal of the SEC, who directed the parties to refer the issue to HMRC in order to determine the accuracy of the Appellant’s NICs records.
 - (8) In correspondence dated 17 June 2021, HMRC set out the relevant legislation and facts considered, and directed that the voluntary Class 2 NICs would be treated as paid on 19 July 2017 (FTT [26]).

(9) During the hearing before the FTT, HMRC indicated that they would be prepared to accept that Mr Joshi's entitlement to state pension commenced on 15 May 2017, being the date which was initially entered, and then crossed out, on the CF83 Form submitted by Mr Joshi (FTT[28]).

THE RELEVANT LEGISLATION

6. The amount of State pension to which an individual is entitled depends, amongst other things, on the number of qualifying years which that individual has. An individual who does not have enough qualifying years to obtain a full State pension may be able to make up gaps in their NICs record by paying voluntary contributions.

7. For the period relevant to this appeal, the position was governed by Regulation 61B of the Social Security (Contributions) Regulations 2001 (SI 2001/1004) ("Regulation 61B"), which provides, so far as relevant, as follows:

61B Voluntary Class 2 contributions: tax years 2006-07 to 2015-16: unavailability of pension statements 2013-14 to 2016-17

(1) This regulation applies to Class 2 contributions which a person ("the contributor") was entitled, but not liable, to pay in respect of one or more of the tax years 2006-07 to 2015-16 ("the relevant contribution years").

(2) Paragraph (3) applies if the contributor –

(a) was entitled to pay a Class 2 contribution in respect of one or more of the relevant contribution years;

(b) had not, before the coming into force of this regulation, paid that contribution; and

(c) will reach pensionable age on or after 6th April 2016.

(3) The contributor may pay a Class 2 contribution under this regulation, in respect of any of the relevant contribution years, within the period specified in paragraph (4).

(4) The period within which the contribution may be paid is the period beginning on 6th April 2013 and ending 5 April 2023.

(5) Notwithstanding section 12(3) of the Act, the amount of a Class 2 contribution payable under this regulation shall be –

(a) in respect of contribution years 2006-07 to 2010-11, the amount payable in relation to tax year 2012-13; or

(b) in respect of contribution years 2011-12 to 2015-16, the amount payable in the contribution year to which the payment relates.

8. The issue in this appeal relates to Regulations 4 and 6 of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001 (SI 2001/769) (the "2001 Regulations").

9. Regulation 4 of the 2001 Regulations relevantly provides as follows:

4 Treatment for the purpose of any contributory benefit of late paid contributions

(1) Subject to the provisions of regulations 4A and 5 to 6C below and regulation 61 of the Contributions Regulations (voluntary Class 2 contributions not paid within permitted period), for the purpose of entitlement to any contributory benefit, paragraphs (1B) to (9) below shall apply to contributions ("relevant contributions")—

(a) paid after the due date; . . .

(b) treated as paid after the due date under regulation 7(2) below.

...

(2) Subject to the provisions of paragraph (4) below, any relevant contribution other than one referred to in paragraph (3) below—

(a) if paid after the end of the second year—

(i) . . . following the year in which liability for that contribution arises, or

(ii) following the year in respect of which a person is entitled, but not liable, to pay the contribution,

shall be treated as not paid;

(b) if paid before the end of the said second year, shall, subject to paragraphs (7) and (8) below, be treated as paid on the date on which payment of the contribution is made.

(3) Subject to the provisions of paragraph (4) below, any relevant Class 2 contribution payable in respect of a contribution week after 5th April 1983 or any relevant Class 3 contribution payable in respect of a year after 5th April 1982—

(a) if paid after the end of the sixth year—

(i) . . . following the year in which liability for that contribution arises, or

(ii) following the year in respect of which a person is entitled, but not liable, to pay the contribution, or

(iii) following the year in respect of which the person is treated as having actually paid the contribution (as a result of section 11(5B) of the Act),

shall be treated as not paid;

(b) if paid before the end of the said sixth year, shall, subject to paragraphs (7) or (8) below, be treated as paid on the date on which payment of the contribution is made.

...

(7) Notwithstanding the provisions of paragraphs (2), (3) and (4) above, in determining whether the relevant contribution conditions are satisfied in whole or in part for the purpose of entitlement to any contributory benefit, any relevant contribution which is paid within the time specified in paragraph (2)(b), (3)(b) or, as the case may be, (4)(b) above shall be treated—

(a) for the purpose of entitlement in respect of any period before the date on which the payment of the contribution is made, as not paid; and

(b) subject to the provisions of paragraph (8) below, for the purpose of entitlement in respect of any other period, as paid on the date on which the payment of the contribution is made.

10. Regulation 6(1) of the 2001 Regulations gives HMRC a discretion in relation to contributions paid late through ignorance or error, and states as follows:

6 Treatment for the purpose of any contributory benefit of contributions under the Act paid late through ignorance or error

(1) In the case of a contribution paid by or in respect of a person after the due date, where—

(a) the contribution is paid after the time when it would, under regulation 4 or 5 above, have been treated as paid for the purpose of entitlement to contributory benefit; and

(b) it is shown to the satisfaction of an officer of the Inland Revenue that the failure to pay the contribution before that time is attributable to ignorance or error on the part of that person or the person making the payment and that that ignorance or error was not due to any failure on the part of such person to exercise due care and diligence.

an officer of the Inland Revenue may direct that, for the purposes of those regulations, the contribution shall be treated as paid on such earlier day as the officer considers appropriate in the circumstances, and those regulations shall have effect subject to any such direction.

11. The term “**due date**”, used in Regulations 4 and 6, is defined in Regulation 1(2) of the 2001 Regulations:

(2) In these Regulations, including this regulation—

...

“due date” (subject to regulation 4(11)) means, in relation to—

...

(b) any Class 2 contribution which a person is . . . entitled to pay or is treated as having actually paid as a result of section 11(5B) of the Act, the 31st January following the end of the year in respect of which it is payable;

...

THE DECISION

12. The matter which Mr Joshi appealed to the FTT was HMRC’s decision under Regulation 6(1) to exercise its discretion to treat the relevant voluntary contribution as paid on an earlier date, namely **15 May 2017**, than the date when it was actually paid (**18 April 2018**). That earlier date would then be the date from which Mr Joshi’s entitlement to the State pension would begin. Mr Joshi argued that the effect of Regulations 4 and 6, properly construed, was that his entitlement should begin on **23 January 2017**, being the date when he reached State pensionable age.

13. The FTT determined that it had jurisdiction to hear the appeal: FTT[11]-[16].

14. The FTT then set out its findings, reasoning and decision at FTT[33]-[45]:

33. The issue for determination is whether the appellant’s entitlement to the State Pension accrued from the date he attained pensionable age on 27 January 2017¹, or from the date that HMRC deemed the voluntary payment as having been made to qualify for State Pension entitlement. In the light of the relevant statutory provisions, we make the relevant findings of fact as follows to determine the appeal.

(1) As matter stood on 27 January 2017, the appellant’s NI record showed that he had made 7 years of qualifying contributions and as such, he did

¹ In fact, the correct date was 23 January 2017.

not qualify to receive the State Pension, as the statutory minimum qualifying period to be entitled to the UK State Pension is 10 years.

(2) The appellant was therefore not eligible for the State Pension as at 27 January 2017.

(3) On 15 May 2017, the appellant's application form on CF85 was first signed with the intention of making a voluntary Class 2 NI contribution to make up the shortfall to become eligible for the UK State Pension.

(4) On 5 July 2017, the application was received by HMRC.

(5) On 5 April 2018, the appellant's agent sent a cheque to make the payment of voluntary contribution as directed by IPC to make up the ten minimum qualifying years.

(6) Based on the date of 5 April 2018 when the cheque payment was sent to IPC, the DWP had advised that from 18 April 2018, State Pension would be payable to Mr Joshi.

(7) It is accepted that the voluntary contribution payment of £821.60 was 'paid before the end of the said sixth year' for purposes of reg 4 (3)(b) of the 2001 Regulations.

(8) The date of 18 April 2018 as advised by the DWP 'for the purpose of entitlement' was therefore correctly established by reference to reg 4(3)(b) of the 2001 Regulations, which provides specifically that:

[4(3)](b) if paid before the end of the said sixth year, shall, subject to paragraphs (7) or (8) below, ***be treated as paid on the date on which payment of the contribution is made.*** (Emphasis added)

(9) For the avoidance of doubt, reg 4(3)(b) is engaged because the appellant's Class 2 contribution towards qualifying for the State Pension benefit was voluntary and paid 'late' for the purposes of the relevant statute.

(10) By virtue of reg 4(3)(b) being engaged, paragraph(7) of reg 4 applies to determine the date of entitlement as specified, and as highlighted below in the wording of reg 4(7):

... in determining whether the relevant contribution conditions are satisfied in whole or in part ***for the purpose of entitlement*** to any contributory benefit, any relevant contribution which is paid within the time specified in paragraph 2(b), 3(b), [...] above ***shall be treated –***

(a) for the purpose of entitlement in respect of ***any period before the date*** on which the payment of the contribution is made, ***as not paid***; and

(b) subject to the provisions of paragraph (8) below, for the purpose of entitlement in respect of ***any other period, as paid on the date on which the payment of the contribution is made.***

(11) Applying reg 4(7)(a) to the facts of the case, we find that the period from 27 January 2017 to 18 April 2018 falls into the definition of 'any period before the date on which the payment of the contribution is made'. Consequently, for the purpose of entitlement, the period from 27 January 2017 to 18 April 2018 shall be treated as not paid.

(12) By the operation of reg 4(7)(b), and for the purpose of entitlement in respect of ‘*any other period as paid on the date on which the payment of the contribution is made*’, namely from 18 April 2018, when the appellant’s benefit entitlement commenced.

The significance of reg 4(7)(b)

34. In the present case, the determination of the date from which the pension benefit entitlement accrues is by the application of reg 4(7)(b), which means ‘the date on which the payment of the contribution is made’. We find as a fact that the voluntary payment was made by a cheque enclosed with the appellant’s agent’s letter to the IPC dated 5 April 2018, and was considered to have been processed as paid on 18 April 2018 – the date on which the payment of the contribution is made – thereby making it the date of entitlement by virtue of reg 4(7)(b).

Relevance of reg 6(1) discretionary powers

35. By the operation of reg 4(7)(b), the DWP therefore advised that the commencement date of the appellant’s pension entitlement was 18 April 2018, and that would have been the end of the matter but for the discretionary power under reg 6(1), which enables HMRC to exercise their discretion to treat an earlier date as the payment date for the purposes of the Regulations.

36. The effect of reg 6(1) is to vest HMRC with the discretion to deem an earlier date as the date of payment of the late contribution for the purpose of determining the commencement date of the benefit entitlement to which the late payment relates. For the avoidance of doubt, it is not mandatory for HMRC to exercise their discretionary power under reg 6(1) as indicated by the express statutory wording ‘may direct’ that ‘the contribution shall be treated as paid on such earlier day as the officer considers appropriate in the circumstances’.

37. In the present case, HMRC did choose to exercise their discretionary power on referral from the DWP following the Directions Notice from the SEC. The review officer had considered it appropriate to exercise the discretionary power vested on HMRC to treat the payment as having been made on 5 July 2017 when the form CF38 was received by HMRC, notwithstanding the fact that no actual payment of voluntary contribution had actually been made at that juncture in July 2017.

38. At the hearing, HMRC have indicated that the earlier date of 15 May 2017 that was scored through would be accepted as an earlier date that the CF38 were intended to be submitted, and this concession to adopt the earlier date of 15 May 2017 is confirmed in writing post-hearing.

Tribunal’s jurisdiction over reg 6(1)

39. HMRC have set out the basis whereby this Tribunal has jurisdiction over a discretionary decision by HMRC pursuant to reg 6(1) of the 2001 Regulations. When the appealable decision concerns a discretionary decision, the Tribunal should be slow to interfere with the executive body’s exercise of discretion unless it can be shown to be ‘flawed’ in the judicial review sense. The normal grounds of challenge in a judicial review action include: (a) illegality (where a decision has involved an error/errors of law or fact), (b) irrationality (*Wednesbury* unreasonableness from the Court of Appeal precedent in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1KB 223), (c) procedural impropriety, (d) fettering of discretion, and (e) proportionality.

40. We have considered the facts and the related statutory provisions in detail. We are satisfied that HMRC's exercise of discretion under reg 6(1) has gone as far as the evidence allows to treat 15 May 2017 as the earliest possible date of the contribution payment for the purposes of the 2001 Regulations to set the commencement date of entitlement. There is no evidence upon which HMRC could have exercised their discretion to deem the payment date of the voluntary contribution as 27 January 2017.

No entitlement as at pensionable age

41. The appellant's argument that the effective date of the benefit entitlement should be the date when he reached pensionable age on 27 January 2017 has no factual or statutory basis.

42. As a matter of fact, the appellant had no entitlement to the State Pension at the point in time on 27 January 2017, due to the shortfall in the number of qualifying years. When there was insufficient contribution for the claimant to qualify at the date of reaching pensionable age, the determination of the commencement date of entitlement is no longer by reference to the date a claimant reaches pensionable age.

43. The remedy for the appellant was to make a payment of voluntary contribution to make up the shortfall – but the statute does not provide for the remedy of a late payment to effect a commencement date for the entitlement by backdating it automatically to the date when the claimant reaches pensionable age, as argued by the appellant.

44. Instead, the late payment remedy brings into force the operation of Regulation 4, and the date of commencement of the benefit entitlement is set by the statute as the date of the payment of the late contribution.

45. The application of reg 4 means that the date of commencement of the appellant's entitlement should have been 18 April 2018, as originally advised by the DWP, and that decision was in accordance with reg 4. It was by HMRC's exercise of discretion under reg 6(1) that the date of commencement of the appellant's entitlement is brought forward by 11 months to 15 May 2017, and is a decision that the Tribunal is fully satisfied to uphold.

GROUND OF APPEAL

15. The FTT refused Mr Joshi permission to appeal on certain grounds, and granted permission for three grounds. In his Notice of Appeal, Mr Joshi framed the grounds in a slightly different manner to those for which the FTT granted permission. In their Response to the Notice, HMRC fairly recognised that Mr Joshi is a litigant in person, and took no issue with the way in which the grounds were framed in the Notice of Appeal. I have also taken that approach.

16. Mr Joshi appeals on the following grounds:

- (1) Ground 1: The FTT has incorrectly applied Regulation 6(1) whereby it granted HMRC the prerogative to decide when the late payment of voluntary NICs is considered as paid. Under the regulation the late payment of voluntary NICs for contributory benefit is considered as paid in time when due and in the Applicant's case the due date was his retirement date of January 23, 2017.
- (2) Ground 2: Regulation 6(1) recognizes the late payment of NICs as paid in time when due provided that the claimant can show that the late payment was due to error or ignorance on his/her part.

(3) Ground 3: The FTT also made an error in law for its failure to understand Regulation 6(1). In FTT[43] the tribunal says “but the statute does not provide for remedy of a late payment to effect a commencement date for the entitlement by backdating it automatically to the date when the claimant reaches pensionable age.” On the contrary, that is exactly what Regulation 6(1) intends to accomplish by considering the late payment of voluntary NICs as paid in time when due.

17. In his skeleton argument and oral submissions, Mr Joshi said that he was unaware of the changes made in 2016 which introduced a requirement of at least 10 years’ NICs payments for entitlement to State pension, and had mistakenly relied on the Social Security Agreement between the UK and Canada to “fill the gap” by crediting his Canadian contributions. He also criticised the unavailability of a process to apply online for the State pension, which he said caused him to delay his payments. Mr Joshi also asserted that HMRC internal guidance supported his argument.

DISCUSSION

18. I have set out the FTT’s decision on this issue (at FTT[33]-[45]) in full because I consider that it accurately, clearly and comprehensively sets out the legal position.

19. The position in relation to this appeal is clear. At the risk of repeating the analysis of the FTT:

(1) Mr Joshi did not meet the statutory minimum qualifying period to be eligible for State pension when he reached pensionable age on 23 January 2017.

(2) The voluntary contribution payment made by Mr Joshi was paid late and was “paid before the end of the...sixth year” for the purposes of Regulation 4(3)(b) of the 2001 Regulations. Regulation 4(3)(b) therefore applied to treat the payment as made on the date on which the contribution was made, which was found as a fact to be 18 April 2018.

(3) Regulation 4(7) thus applied, with the clear effect that the contribution was treated “for the purpose of entitlement” as not paid before 18 April 2018 (sub-paragraph (a)) but as paid on 18 April 2018 (sub-paragraph (b)).

(4) The effect of Regulation 4(7)(b) was that Mr Joshi’s entitlement to State pension began on 18 April 2018.

(5) That would have been the end of matter but for the discretionary powers given to HMRC by Regulation 6 of the 2001 Regulations. Regulation 6(1) gives HMRC a discretion to deem an earlier date than that established by Regulation 4(7)(b) to be treated as the date from which benefit entitlement commences. The relevant HMRC officer may decide to treat a voluntary contribution as paid “on such earlier day as the officer considers appropriate in the circumstances”.

(6) HMRC decided to exercise the discretion in Regulation 6 to deem Mr Joshi’s payment to have been made on an earlier date than the date it was paid (18 April 2018), namely 15 May 2017, being the date when the CF38 was initially completed.

(7) The FTT found that that decision was a reasonable one in all the circumstances, and I entirely agree.

20. Mr Joshi’s analysis of the statutory provisions is misconceived. They do not have the effect that the effective date of Mr Joshi’s entitlement to State pension was 23 January 2017 by virtue of his having made the late voluntary contribution. The entirely discretionary decision by HMRC to deem the contribution to have been made on 15 May 2017 was not only reasonable but arguably generous in looking back to the crossed-through date on the form.

21. Unfortunately, Mr Joshi appears to have convinced himself that because (1) various of the provisions refer to “the due date”, and (2) this must be a reference to the date when he would have been eligible for State pension if he had the minimum number of qualifying years, then either Regulation 4 and/or Regulation 6 must treat that date as the date when his entitlement began. However, that is clearly not what “due date” means under Regulation 1(2) of the 2001 Regulations, and it is clearly not what the Regulations say.

22. Mr Joshi also sought a number of remedies which this Tribunal has no jurisdiction to grant, including compensation for what he described as HMRC perverting the law and abusing its authority. Those allegations are both rash and unwarranted, and since I have dismissed the appeal I do not deal with them in this decision.

DISPOSITION

23. The appeal is dismissed.

JUDGE THOMAS SCOTT

Release date: 15 April 2025