



Neutral Citation: [2026] UKFTT 00720 (TC)

Case Number: TC 09884

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Taylor House, London

Appeal reference: TC/2025/00207

National Insurance contributions – Class 2 – late payment – ignorance or error – due care and diligence – reliance on professional advisers – deficiency notices – State Pension entitlement

**Heard on: 19 January 2026
Judgment date: 14 May 2026**

Before

**TRIBUNAL JUDGE GERAINT WILLIAMS
MICHAEL BELL**

Between

MARK GADSDEN

Appellant

and

**THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS
Respondents**

Representation:

For the Appellant: Ben Elliott, of counsel, instructed by Mr Nicholas Hadfield

For the Respondents: Sarah Black, of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. This is an appeal by Mr Mark Gadsden (“the Appellant”) against a decision of the Commissioners for His Majesty’s Revenue and Customs (“HMRC”) dated 10 January 2024, made under s8 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 and upheld on review by a conclusion letter dated 26 November 2024. By that decision, HMRC refused to permit the Appellant to make Class 2 National Insurance contributions out of time in respect of the period from 26 April 1981 to 5 April 2014 such that those contributions could be treated as paid for the purposes of contributory benefits, in particular entitlement to the State Pension.

2. The appeal concerns the operation of Regulation 6 of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001. That provision allows a contribution paid after the statutory time limit to be treated as paid for contributory benefit purposes where the failure to pay in time was attributable to the contributor’s ignorance or error and where that ignorance or error was not due to any failure on the contributor’s part to exercise due care and diligence.

3. There is a substantial measure of common ground between the parties. It is not disputed that the Appellant has been self-employed since April 1981, that he was in principle liable to pay Class 2 contributions throughout the relevant period and that he did not in fact pay those contributions within the prescribed time limits. It is also common ground that the Appellant consistently filed annual tax returns, paid income tax and paid Class 4 National Insurance contributions throughout his working life. HMRC do not allege any deliberate failure or intention to avoid contributions.

4. HMRC further accept that the Appellant’s failure to pay Class 2 contributions was attributable to ignorance or error on his part. In particular, HMRC accept that the Appellant did not appreciate, at the relevant times, that Class 2 contributions were required separately from Class 4 contributions, or that Class 4 contributions did not confer entitlement to contributory benefits.

5. The appeal therefore turns on a single issue. The question for the Tribunal is whether the Appellant’s ignorance or error was not due to any failure on his part to exercise due care and diligence within the meaning of the regulations. If that question is answered in the Appellant’s favour, HMRC have power to direct that the late-paid contributions be treated as paid for benefit purposes. If it is not, the statutory time limits apply and the appeal must fail.

6. In addressing that issue, the Tribunal is required to consider the Appellant’s conduct over the relevant period in the light of all the circumstances, including his engagement of professional advisers, his knowledge of the National Insurance scheme, any information or correspondence sent to him by HMRC or its predecessors and the steps he did or did not take to satisfy himself that his National Insurance position was in order.

EVIDENCE

7. The Tribunal had before it a hearing bundle together with an authorities bundle and a supplementary authorities bundle. The documentary evidence included the notice of appeal, the Appellant’s grounds of appeal and details of dispute, HMRC’s statement of case, the notice of decision dated 10 January 2024 and the review conclusion dated 26 November 2024. The bundle also contained extensive correspondence between HMRC and the Appellant and his accountants from February 2020 onwards, self-assessment returns and statements of account, extracts from the Appellant’s National Insurance record, exemplars of historic deficiency notices and explanatory material relied upon by HMRC, internal HMRC

call notes and correspondence with National Insurance specialists, and material relating to the historic administration and collection of Class 2 National Insurance contributions.

8. The Tribunal also had witness statements from the Appellant, Mr Nicholas Hadfield and HHJ Philip Shurrock on behalf of the Appellant and from Ms Lesley Crawford on behalf of HMRC. All witnesses, bar HHJ Shurrock, gave oral evidence and were cross-examined. HHJ Shurrock's witness statement was not challenged by HMRC. In that statement, HHJ Shurrock attested to the Appellant's integrity, professionalism and conscientious approach to compliance with legal and professional obligations. The statement was adduced to support the Appellant's evidence that he acted honestly and responsibly in delegating his financial affairs to professional advisers and would have complied with any obligation of which he was aware.

The Appellant's evidence

9. The Appellant gave oral evidence broadly consistent with his written statement. He explained his professional background, including his commencement of self-employment in the early 1980s as a barrister practising in criminal law and his consistent engagement of accountants throughout his career to deal with his tax and National Insurance affairs. He emphasised his lack of specialist knowledge of tax and National Insurance law and his belief that, by filing tax returns and paying income tax and Class 4 contributions, he was complying with his obligations.

10. The Appellant was careful to distinguish between matters of recollection and matters inferred from general practice. He accepted that his recollection of events in the 1980s was limited but gave clear evidence as to his consistent approach over many years, namely that official correspondence relating to tax or National Insurance would be passed to his accountant for action. He stated that this was the very reason he employed professional advisers and rejected the suggestion that he should have independently checked his National Insurance record.

11. The Appellant had no recollection of receiving deficiency notices. He accepted in cross-examination that he could not exclude the possibility that such notices were received but explained that if they were, they would have been passed on with other correspondence. He also explained why documents of the type relied upon by HMRC would not, to him as a lay person, have conveyed that he had failed to meet a separate obligation to pay Class 2 contributions, still less that his State Pension entitlement was at risk.

12. The Appellant was questioned at length about periods in the 1970s and early 1980s when he had signed on as unemployed. He explained that this was done in order to obtain temporary work, that he was unaware at the time that signing on amounted to making a claim for unemployment benefit, that no benefit was paid and that the process did not inform him of the structure of the National Insurance system or of any future obligation arising if he became self-employed. He did not accept that those experiences gave him any understanding relevant to the Class 2 issue.

13. The Appellant described the circumstances in which the Class 2 issue came to light following HMRC's amendments to later self-assessment returns and his immediate attempts, through his accountant, to resolve the position. He confirmed that had he been aware at the time that Class 2 contributions were required, he would have paid them given the modest amounts involved and that he remained willing to do so.

Mr Hadfield's evidence

14. Mr Nicholas Hadfield, a chartered accountant with N J Hadfield Chartered Accountants, gave evidence explaining his firm's professional relationship with the

Appellant, the work undertaken and the manner in which self-assessment returns were prepared and submitted. He confirmed that the firm assumed that the Appellant's National Insurance position had been dealt with historically and accepted that neither he nor his predecessor had identified the absence of Class 2 contributions when the firm took over responsibility for the Appellant's affairs.

15. In cross-examination, Mr Hadfield was frank in accepting responsibility for not addressing the Class 2 position earlier. He explained that, in practice, Class 2 contributions were historically dealt with outside the self-assessment workflow for clients such as barristers and that he had failed to ask the critical question when taking on the Appellant as a new client. He also accepted that, when Class 2 contributions appeared in later self-assessment years in relatively small amounts, he did not appreciate their wider significance and did not raise the issue with the Appellant at the time.

16. Mr Hadfield explained HMRC "customer service messages" and the automated processes by which data could be drawn into self-assessment software. He did not believe that certain communications relied upon by HMRC were sent directly to the Appellant and explained how he himself had not seen or appreciated their significance when they were generated. He disclosed candidly that one relevant document had been misfiled and that this only came to light when the issue was subsequently identified. His evidence supported the Appellant's account of reliance on professional advice, while also exposing how Class 2 issues had not been addressed in practice.

HMRC's evidence

17. HMRC relied on the witness statement and oral evidence of Ms Lesley Crawford, an experienced HMRC officer with specialist knowledge of National Insurance contributions. In her statement she described the historic administration of Class 2 contributions, including the separation between tax and National Insurance systems prior to 1999, the requirement for self-employed individuals to register separately for Class 2 contributions, and the contents of HMRC records relating to the Appellant's National Insurance history, including the recording of deficiency notices.

18. In oral evidence, Ms Crawford made clear that her evidence was based on HMRC records, training and standard practice rather than personal involvement in events during the relevant period. In cross-examination she accepted significant limitations in her knowledge of historic matters. In particular, she accepted that she could not say what the content of any deficiency notice issued in the 1980s would have been, how many such notices would ordinarily have been issued, why records showed notices over eight consecutive years or who had entered the relevant data into historic systems. She accepted that the issue of notices over such a period would be unusual, although she did not rule it out and that historic records were dependent on manual input and could contain errors.

19. Ms Crawford also accepted that she could not give direct evidence that any deficiency notice had been received by the Appellant or that such a notice would have explained the separate obligation to pay Class 2 contributions. She accepted that, if notices did not refer expressly to that obligation, they would not in themselves undermine a case that a contributor had exercised due care and diligence. Her evidence assisted the Tribunal in understanding HMRC processes and the basis upon which HMRC relied on its records, while also identifying the limits of what could be established from them.

FINDINGS OF FACT

20. We make the findings of fact set out below on the balance of probabilities. In doing so, we have had regard to all of the documentary evidence, the witness statements and the oral evidence.

21. The Appellant was born in the mid-1950s. He completed his academic education in the 1970s and undertook vocational training prior to being called to the Bar in 1980. He is an intelligent and well-educated individual. He did not receive any specialist training in tax or social security law as part of his education or professional training.

22. In the period immediately before and shortly after qualification, the Appellant undertook temporary employment while seeking more permanent work. During this period, and in particular in the mid-to-late 1970s and around 1980, the Appellant signed on as unemployed for the purpose of obtaining work. We find that he did so in order to be placed on the list of persons available for work and to access job opportunities. We accept his evidence that he did not appreciate at the time that signing on amounted to making a formal claim for unemployment benefit and that no benefit was paid to him.

23. We further find that those periods of signing on did not impart to the Appellant any understanding of the structure of the National Insurance system nor of any future obligations that might arise if he later became self-employed. In particular, we find that those experiences did not give him any appreciation of the existence of different classes of National Insurance contributions or of the requirement for separate registration for Class 2 contributions.

24. The Appellant commenced self-employment in the early 1980s as a barrister practising primarily in criminal law. The vast majority of his professional work, in excess of 90%, has been government-funded criminal prosecution work on behalf of the Crown Prosecution Service, with the balance largely comprising government-funded defence work under legal aid. His practice has been specific to England and Wales. We find that he has never worked abroad save for representing soldiers serving with the British Army of the Rhine at courts-martial hearings on a limited number of occasions in the 1980s.

25. At the time the Appellant commenced self-employment, the National Insurance regime for the self-employed was already complex and fragmented, with different classes of contribution administered by different government departments. We find that this complexity formed part of the factual background against which the Appellant's understanding and conduct must be assessed.

26. Upon commencing self-employment, the Appellant registered for income tax purposes and began filing annual tax returns. We find that he took steps he regarded as necessary to ensure compliance with his obligations as a self-employed person. From the outset, he engaged a professional accountant, Mr John M Gould, to advise him and to deal with all aspects of his tax affairs, save for VAT, where Mr Gadsden explained in evidence that he registered himself for VAT and assumed responsibility for the submission of his periodic VAT returns.

27. We accept the Appellant's evidence that he instructed Mr Gould broadly to deal with his tax affairs as a self-employed barrister and reasonably believed that this engagement encompassed all registrations and compliance steps required by reason of that status. We find that the Appellant did not distinguish in his own mind between income tax obligations and National Insurance obligations and believed that his professional adviser would address both.

28. Throughout the period of Mr Gould's involvement, the Appellant filed annual tax returns and paid income tax and Class 4 National Insurance contributions as assessed. We find that those payments were substantial, consistent and timely. There is no dispute that the Appellant fully complied with his income tax and Class 4 National Insurance obligations during this period.

29. During the same period, the Appellant did not register for or pay Class 2 National Insurance contributions. We find that this failure was not deliberate. Rather, it arose because

the Appellant was unaware that Class 2 contributions existed as a separate requirement and did not understand that payment of Class 4 contributions did not of itself confer entitlement to contributory benefits such as the State Pension.

30. We accept the Appellant's evidence that he believed his National Insurance obligations were being met through the payment of Class 4 contributions, which appeared as part of his annual tax liabilities. We find that this belief persisted for many years and was never corrected by any clear or effective communication drawn to his attention.

31. HMRC's records show entries indicating that deficiency notices, said by HMRC to be Class 1 deficiency notices, were generated in respect of a number of consecutive years during the 1980s. No copies of any such notices are available and there is no direct evidence of their content, wording or explanatory material. The Appellant has no recollection of receiving such notices.

32. We consider it unlikely that all correspondence addressed to the Appellant during this period would have gone astray, particularly given his evidence as to the reliability of the postal arrangements at his address. However, in the absence of contemporaneous documents or evidence of dispatch, we are not satisfied that we can safely infer that any such notices were sent to, or received by, the Appellant, as distinct from entries appearing on HMRC systems.

33. In reaching that conclusion, we take into account the evidence of Ms Crawford, which was based on HMRC records and general practice rather than personal knowledge. She was unable to say what the content of any deficiency notice issued in the 1980s would have been, how many such notices would ordinarily have been issued or why the records showed notices over a number of consecutive years. She accepted that the issue of notices over such a period would be unusual and that the historic records depended upon manual input and could contain errors. We find that her evidence does not enable us to draw any reliable inference as to the content or communication of any notice in this case.

34. Nor is there sufficient evidence to establish that notices issued at the material time were in materially similar terms to the exemplars relied upon by HMRC.

35. In any event, even if deficiency notices were sent and received, we find that notices of the general nature described by HMRC were not demands for payment and did not clearly explain the requirement for a self-employed earner to register separately for and pay Class 2 National Insurance contributions, or the consequences of failing to do so for State Pension entitlement. In those circumstances, such notices would not, even if received, have been sufficient to alert a lay person who had entrusted his affairs to professional advisers that further steps were required, nor to displace an honest and reasonable belief that his obligations were being met.

36. The Appellant regarded his State Pension as an important and integral component of his retirement planning. We accept his evidence that he assumed, on the basis of his long working life, his payment of tax and National Insurance contributions and his reliance on professional advisers, that he was accruing entitlement to a full State Pension. Until the events of 2020, he had no reason to suspect that this assumption was incorrect.

37. In 2004, Mr Gould retired. The Appellant transferred his affairs to N J Hadfield Chartered Accountants. We find that this transfer was carried out in an orderly manner and that the Appellant continued to rely on professional advice in the same way as before.

38. When Mr Hadfield's firm took over the Appellant's affairs, we find that they assumed that the Appellant's National Insurance position had been regularised historically. Mr

Hadfield did not focus on Class 2 National Insurance contributions and did not ask the critical question of whether the Appellant was registered for Class 2 contributions at that time.

39. Mr Hadfield's candid evidence was that this omission arose because Class 2 contributions were historically administered outside the self-assessment workflow for clients such as barristers and were not typically addressed within his firm's processes.

40. From 2004 onwards, the Appellant continued to file annual self-assessment tax returns prepared by Mr Hadfield's firm and to pay income tax and Class 4 National Insurance contributions. We find that he remained engaged with the process, discussed returns with his accountant and paid the amounts advised to be due.

41. In the mid-2010s, changes were made to the collection of Class 2 National Insurance contributions, which became incorporated into the self-assessment system. From the 2015/16 tax year onwards, amounts in respect of Class 2 contributions appeared in the Appellant's self-assessment returns.

42. We accept that neither the Appellant nor Mr Hadfield appreciated at that time that the appearance of Class 2 contributions within self-assessment revealed a longstanding absence of registration and payment. Mr Hadfield accepted that he did not appreciate the wider significance of these entries and that the relatively small amounts involved did not prompt further enquiry.

43. HMRC subsequently amended the Appellant's self-assessment returns for the tax years 2015/16, 2016/17, 2017/18 and 2018/19 so as to remove Class 2 National Insurance liabilities, on the basis that HMRC's systems showed the Appellant as not registered for Class 2 contributions. The amounts paid were treated as overpayments.

44. Those amendments resulted in correspondence between HMRC and the Appellant's accountants in early 2020. It was through this correspondence that the absence of historical Class 2 contributions for earlier years was first clearly identified.

45. This was the first occasion on which the Appellant became aware that a separate obligation to pay Class 2 contributions had existed and that his National Insurance record was deficient for contributory benefit purposes.

46. Upon becoming aware of the issue, the Appellant acted promptly and responsibly. Through his accountant, he queried HMRC's amendments, sought to regularise his position, arranged for available credits to be reallocated and made voluntary Class 3 contributions where permitted.

47. We accept the Appellant's evidence that, had he been aware at the relevant times that Class 2 contributions were required, he would have paid them. We find that evidence to be credible, particularly given the modest amounts involved when compared with the substantial sums he paid by way of income tax and Class 4 National Insurance contributions.

48. HMRC accepted that the Appellant's failure to pay Class 2 contributions was attributable to ignorance or error. HMRC nevertheless concluded that this ignorance or error was due to a failure on the Appellant's part to exercise due care and diligence, relying in particular on the length of time over which Class 2 contributions were not paid and on HMRC's records of deficiency notices.

RELEVANT LEGISLATION

49. During the period relevant to this appeal, liability to pay Class 2 National Insurance contributions arose under section 7 of the Social Security Act 1975 and, following consolidation, section 11(1) of the Social Security Contributions and Benefits Act 1992. Those provisions imposed liability on every self-employed earner over the age of 16 and

below pensionable age to pay a weekly Class 2 National Insurance contribution at the rate applicable for the relevant year. It is common ground that the Appellant was self-employed throughout the relevant period and was in principle liable to pay Class 2 contributions.

50. Throughout much of the relevant period, the administration and collection of National Insurance contributions were divided between different government departments. Class 4 National Insurance contributions were administered and collected together with income tax by the Inland Revenue, whereas Class 2 National Insurance contributions were administered separately, initially by the Department of Health and Social Security and subsequently by the Department of Social Security. As a result, a self-employed individual was required to register separately for income tax purposes and National Insurance purposes and to make different types of National Insurance payment to different bodies.

51. After April 1975, Class 2 contributions could be paid either by means of contribution stamps or by direct debit. From April 1993, the stamp system was abolished and Class 2 contributions were instead billed periodically. These arrangements operated separately from the income tax and Class 4 National Insurance system and did not form part of the annual tax return process.

52. In 1999, responsibility for the collection of Class 2 National Insurance contributions was transferred to the Inland Revenue by the Social Security Contributions (Transfer of Functions, etc.) Act 1999. Although that transfer brought Class 2 contributions within the responsibility of a single department, Class 2 contributions continued to be collected separately from income tax and Class 4 National Insurance contributions for many years thereafter.

53. Further reform took place from the 2015/16 tax year, when the collection of Class 2 National Insurance contributions was integrated into the self-assessment system alongside income tax and Class 4 National Insurance contributions. That reform was intended to simplify a system which had been recognised as confusing for self-employed contributors. Subsequent legislative changes between 2022 and 2024 resulted in the obligation to pay Class 2 National Insurance contributions being abolished, with self-employed earners above the relevant profits threshold treated as having paid Class 2 contributions. Those later reforms do not apply to the years with which this appeal is concerned, but they form part of the legislative background.

54. Statutory time limits apply to the payment of Class 2 National Insurance contributions if they are to count for the purposes of contributory benefit entitlement. Regulation 4 of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001 sets out those limits and provides, in broad terms, that Class 2 contributions paid after the end of the sixth tax year following that in which they were due are to be treated as not paid for benefit purposes.

55. Regulation 6 of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001 provides an exception to the operation of those time limits. It confers a discretion on HMRC to direct that a late-paid contribution is to be treated as paid for contributory benefit purposes where it is shown that the failure to pay the contribution in time was attributable to ignorance or error on the part of the contributor, and that such ignorance or error was not due to any failure on the contributor's part to exercise due care and diligence.

56. HMRC's decision in this case was made pursuant to section 8(1)(m) of the Social Security Contributions (Transfer of Functions, etc.) Act 1999. The decisions which may be made under that provision are prescribed by regulation 155A of the Social Security (Contributions) Regulations 2001 and include decisions as to whether a failure to pay a Class

2 contribution by the due date was due to ignorance or error and, if so, whether that ignorance or error was due to a failure to exercise due care and diligence. Regulation 65 of the Social Security (Contributions) Regulations 2001 makes provision for the calculation of Class 2 contributions paid late where such payment is permitted.

CASE LAW RELIED UPON BY THE PARTIES

57. The parties relied upon the following case law:

- (1) *Walsh v Secretary of State for Social Security* (unreported, 1994) (“*Walsh*”)
- (2) *Adojutelegan v Derek Clark (Officer of the Board)* [2004] SPC 430 (“*Adojutelegan*”)
- (3) *Revenue and Customs Commissioners v Thompson* [2005] EWHC 3388 (Ch)
- (4) *Revenue and Customs Commissioners v Kearney* [2010] EWCA Civ 288; [2010] STC 1137 (“*Kearney*”)
- (5) *Schonfield v HMRC* [2013] UKFTT 244 (TC) (“*Schonfield*”)
- (6) *Murphy v HMRC* [2014] UKFTT 734 (TC) (“*Murphy*”)
- (7) *Prizeflex Limited v HMRC* [2016] UKUT 0436 (TCC) (“*Prizeflex*”)
- (8) *Thomas v HMRC* [2016] UKFTT 0735 (TC) (“*Thomas*”)
- (9) *Arens v HMRC* [2017] UKFTT 79 (TC) (“*Arens*”)
- (10) *Chilvers v HMRC* [2018] UKFTT 517 (TC) (“*Chilvers*”)
- (11) *Lyons v HMRC* [2021] UKFTT 121 (TC)

58. *Murphy* does not establish any principle beyond the application of *Schonfield* to materially similar facts and adds no further analytical guidance. *Walsh* is unreported and is relied upon only insofar as its reasoning is adopted and explained in later authorities, in particular *Kearney*.

59. From the case law we derive the following principles:

- (1) The burden lies on the contributor to establish that late payment was due to ignorance or error and that such ignorance or error was not caused by any failure to exercise due care and diligence. (*Kearney* at [25]–[26])
- (2) The statutory test assumes that contributors will, in general, be expected to take some steps to inform themselves of their obligations. Doing nothing will ordinarily be insufficient, although what is required depends on the circumstances. (*Kearney* at [29]; *Adojutelegan* at [10]);
- (3) There is no absolute rule that knowledge of the existence of the National Insurance scheme necessarily requires a contributor to make independent enquiries in every case. (*Kearney* at [36])
- (4) The assessment of due care and diligence is holistic and fact-sensitive. All relevant circumstances must be balanced together in an evaluative judgment. (*Kearney* at [34])
- (5) Appointment of professional advisers and reasonable reliance upon them is a relevant and potentially significant factor, though not determinative and not an automatic answer to the statutory test. (*Schonfield* at [66]–[68]; *Arens* at [59])

(6) Cases involving deficiency notices turn on their specific factual context, including whether notices were received, their content and whether they reasonably prompted enquiry. (*Arens* at [59]–[62]; *Chilvers* at [43]–[44])

(7) Complexity or unfamiliarity in the structure of the National Insurance regime may be relevant to determining whether ignorance was genuine rather than culpable. (*Thomas* at [40])

(8) Where a Tribunal has made an evaluative judgment applying these principles to the facts found, the Upper Tribunal should not interfere merely because it might have reached a different conclusion. (*Prizeflex* at [67])

(9) The concepts of “due care” and “diligence” are distinct. Lack of care involves lack of concern, whereas lack of diligence involves a failure to apply oneself. What is required in any given case depends on the circumstances and characteristics of the contributor. (*Kearney* at [27])

(10) A contributor’s conduct once the failure is discovered may be relevant as corroborative evidence of whether the earlier ignorance or error was genuine, although it is not determinative of due care and diligence at the earlier time. (*Arens* at [63]; *Chilvers* at [51]–[52])

SUBMISSIONS

The Appellant’s Submissions

60. The Appellant exercised due care and diligence throughout the relevant period. From the outset of his self-employment in the early 1980s he took the responsible and reasonable step of appointing professional accountants to deal with his tax affairs and he relied on that professional advice consistently over many years. That reliance on competent advisers, engaged expressly for the purpose of compliance, constitutes the taking of reasonable steps for the purposes of the statutory test.

61. The Appellant paid income tax and substantial Class 4 National Insurance contributions year after year and he was unaware of the distinction between Class 2 and Class 4 contributions or that payment of Class 4 contributions did not give rise to contributory benefit entitlement. The historic structure of the National Insurance system for the self-employed was complex and confusing and this confusion has been recognised both in case law and by HMRC itself, as demonstrated by later reforms and the abolition of Class 2 contributions.

62. In relation to deficiency notices, HMRC have failed to prove that any such notices were sent or received or what their content was. The examples relied upon by HMRC were not from the relevant period and were insufficiently clear to alert a lay taxpayer to a separate obligation to register for and pay Class 2 contributions. In any event, any such correspondence would have been passed on to his accountant, which itself represents the exercise of due care and diligence.

63. The Appellant relies on a line of First-tier Tribunal authorities, including *Schonfield*, *Murphy*, *Thomas* and *Arens*, which demonstrate that where a taxpayer seeks professional advice and reasonably relies upon it, due care and diligence will ordinarily be established. This is a case where the Appellant he did everything that could reasonably be expected of him and that the statutory discretion should therefore be exercised in his favour.

HMRC’s submissions

64. HMRC submit that the appeal should be dismissed because, although they accept that the Appellant’s failure to pay Class 2 National Insurance contributions was due to ignorance or error, the Appellant has failed to establish that such ignorance or error was not caused by a

failure on his part to exercise due care and diligence. The burden rests on the Appellant to show that lack of due care and diligence was not the cause and that the statutory exception permitting late contributions to be treated as paid is narrow. Reliance is placed on the principles set out by the Court of Appeal in *Kearney* and that, viewed over the long period during which Class 2 contributions were not paid, the Appellant took insufficient positive steps to ensure that his National Insurance obligations were being met.

65. HMRC accept that the Appellant appointed accountants but that reliance on advisers is not determinative and cannot absolve a contributor of personal responsibility. Class 2 National Insurance was historically administered separately from income tax and that engagement of an accountant for tax purposes does not necessarily encompass National Insurance registration.

66. HMRC records indicate that deficiency notices were generated over a number of years. Taken at face value, these records suggest that the Appellant was told that his contribution record was incomplete and that reasonable diligence would have required enquiry in response. HMRC also rely on the length of time over which Class 2 contributions were not paid, the Appellant's general awareness of the importance of National Insurance for pension purposes and his education and professional background.

67. The Tribunal should not simply follow First-tier Tribunal authorities relied upon by the Appellant but should apply the statutory test to the facts of this case. Here, the Appellant took no active steps beyond appointing advisers and that, over a prolonged period, this amounted to insufficient care and diligence. Therefore the statutory conditions for late payment to be treated as paid are not satisfied.

BURDEN OF PROOF

68. The burden of proof rests on the Appellant. That proposition is settled by the decision of the Court of Appeal in *Kearney* at [24]–[27]. Arden LJ explained that the statutory question is a focused one, namely whether lack of due care and diligence can be eliminated as a cause of the contributor's ignorance. The Tribunal must therefore evaluate all relevant circumstances and determine whether, looking at matters as they stood at the relevant times, the Appellant can properly be said to have acted with the requisite level of care and diligence.

DISCUSSION

69. We turn to determine whether the Appellant's failure to pay Class 2 National Insurance contributions within the statutory time limits was due to ignorance or error which was not caused by any failure on his part to exercise due care and diligence. In doing so, we apply the principles derived from the authorities, in particular the fact-sensitive and evaluative approach mandated by *Kearney*, to the findings of fact set out above. We address in turn the matters relied upon by HMRC as said to demonstrate a lack of due care and diligence and explain, by reference to the evidence and our findings, why those matters do not displace the Appellant's case.

The Appellant's conduct and reliance on professional advisers

70. The evidence establishes that the Appellant appointed a professional accountant at the outset of his self employment and thereafter maintained professional representation continuously. That evidence derives from the Appellant's own witness statement and oral evidence and from Mr Hadfield's witness statement and oral evidence. It was not materially challenged by HMRC. We have found that the Appellant's engagement with his advisers was genuine and ongoing. He did not delegate matters and disengage entirely. He reviewed returns, discussed liabilities and paid what he was advised to pay.

71. We have attached particular weight to the fact that the Appellant's reliance on advisers was neither sporadic nor reactive. It was an established and deliberate course of conduct. This is not a case where an adviser was consulted once or where advice was ignored or selectively followed. The Appellant reasonably believed that registration and compliance obligations were being dealt with as part of the professional engagement.

72. That pattern of conduct closely mirrors the factual matrices in *Schonfield* and *Murphy*. In *Schonfield*, the Tribunal found at [66]–[70] that the appellant exercised due care and diligence by appointing an accountant to deal with all matters arising from self employment and that, having done so, it was unlikely and unnecessary for him to research National Insurance matters himself. In *Murphy*, the Tribunal simply followed *Schonfield*.

73. We are, of course, aware that the Tribunal decisions are not binding upon us. However, they are persuasive and form part of a consistent line of First-tier Tribunal reasoning. In *Arens*, the Tribunal stated at [59] that while a contributor cannot entirely absolve himself of responsibility, placing affairs in the hands of an appropriate adviser may demonstrate the relevant level of diligence. We consider that principle to be directly applicable here.

74. HMRC submitted that those cases are distinguishable because, in the present appeal, deficiency notices were issued. We have addressed that submission separately below. At this stage, we note that the case law confirms that reasonable reliance on professional advisers is capable, depending on the facts, of satisfying the statutory test. In our judgment, the Appellant's conduct falls within that principle.

Knowledge of the National Insurance scheme

75. HMRC placed reliance on the Appellant's acceptance that he understood, at a general level, that National Insurance contributions were linked to benefit entitlement. That factual acceptance is not in dispute. The question is what follows from it.

76. In *Kearney*, Arden LJ addressed the role of knowledge at [36]. She stated that there cannot logically be an absolute rule that, if a contributor has knowledge of the existence of some aspect of the National Insurance scheme, he can never show that he exercised due care and diligence unless he made further enquiries. What matters is the degree of knowledge, its source and the surrounding circumstances.

77. The Appellant's evidence, which we accepted, was that he did not understand the distinction between Class 2 and Class 4 contributions or that payment of Class 4 contributions did not give a State Pension entitlement. We are satisfied that ignorance of that distinction was genuine. It was not implausible or artificial. Indeed, we accept the Appellant's submission that this confusion was widespread.

78. That conclusion is reinforced by *Thomas* where the Tribunal observed at [40] that paying two classes of National Insurance contribution under different collection methods was an "*unfamiliar concept*" and that confusion about the effect of Class 4 contributions was understandable. The Tribunal in *Thomas* also noted that the complexity of the system was later acknowledged by government in reforming the collection of Class 2 contributions. We consider that point to be of direct relevance.

79. We therefore reject HMRC's submission that the Appellant's general knowledge of National Insurance necessarily imposed a duty to make specific enquiries notwithstanding his reliance on advisers. Viewed realistically, a contributor in the Appellant's position, who was paying substantial Class 4 contributions annually and who had entrusted his affairs to accountants, could reasonably believe that his National Insurance position was in order.

Deficiency notices

80. HMRC placed considerable reliance on the Appellant's National Insurance record which indicates that deficiency notices were issued in respect of certain years in the 1980s. We accept that the record shows such entries. However, we must assess the evidential weight of those entries and their significance in relation to due care and diligence.

81. No copy of any actual notice sent to the Appellant is available. The Tribunal was shown exemplar notices but these do not establish precisely what the Appellant would have received, how clearly any obligation was explained or how prominently any warning was expressed. Ms Crawford accepted in her oral evidence that she could not say what wording was used in individual notices and that consecutive issuance of notices over many years would have been unusual.

82. We accept the Appellant's evidence that he has no recollection of receiving such notices. While that does not prove non-receipt, it is consistent with the passage of time and limits the weight that can be placed on the alleged notices as effective prompts to action.

83. More importantly, even if some notices were received, we do not accept HMRC's submission that this necessarily demonstrates a failure to exercise due care and diligence. The Appellant's unchallenged evidence was that official correspondence relating to tax or National Insurance would have been passed to his accountant. That was precisely the function of engaging professional advisers. As confirmed in *Schonfield* and *Arens*, passing correspondence to an adviser is not indicative of neglect. It may instead be the sensible course for a non-specialist.

84. HMRC submitted that a reasonable person would at least have read the notices and queried repeated communications. In our view, that submission involves an element of hindsight. There is no evidence that the deficiency notices clearly and unambiguously explained that the Appellant's State Pension entitlement was at risk notwithstanding payment of Class 4 contributions and professional engagement. Nor is there evidence that the deficiency notices would have alerted a reasonable person that advisers had failed entirely to address National Insurance matters.

85. We have concluded that the deficiency notices, even if issued and received, do not carry sufficient weight to displace the Appellant's case that he exercised due care and diligence through reliance on professional advice.

Duration of non-payment

86. HMRC also relied on the length of time over which Class 2 contributions were not paid. Duration is plainly relevant. However, as Arden LJ noted in *Kearney* at [35], the decision maker must look at the circumstances as they stood at the time. A long-standing error may persist because it is hidden rather than because it is ignored.

87. In this case, we accept the Appellant's submission that the duration of the failure is explained by the structure of the system, the separation of administrative responsibilities prior to 1999 and the absence of any clear trigger that would have prompted suspicion. We do not accept that duration alone demonstrates lack of diligence.

Conduct once the issue was identified

88. Once the issue came to light in 2020, the Appellant acted promptly and responsibly. The correspondence demonstrates that he queried HMRC's amendments, sought to pay Class 2 contributions, accepted reallocations of credits and pursued review and appeal procedures. While not determinative, that conduct is consistent with his assertion that the earlier failure resulted from ignorance rather than indifference.

Overall evaluative conclusion

89. Taking all matters together and applying the multifactorial approach mandated by *Kearney* to the facts before us, we are satisfied that the Appellant has discharged the burden of proof. He took positive and reasonable steps at the outset by appointing professional advisers, remained engaged with his affairs, paid substantial National Insurance contributions of another class and had no sufficiently obvious reason to distrust the advice he was receiving or to believe that a separate obligation had been overlooked.

90. This is not a case of doing nothing. It is a case of doing something which, on the authorities, can amount to due care and diligence. We have concluded that the Appellant's ignorance or error was not due to any failure on his part to exercise due care and diligence within the meaning of regulation 6.

91. Having found that the conditions in regulation 6 of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001 are satisfied, we consider whether any factor would justify the discretion not being exercised in the Appellant's favour. On the facts as found, and for the reasons set out above, we see no such factor.

DECISION

92. The appeal is allowed. The statutory conditions in regulation 6 of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001 are satisfied and HMRC should accordingly treat the relevant Class 2 contributions as paid for contributory benefit purposes.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

93. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**Release date:
14 May 2026**