

R(P) 1/08

Mr D Williams
Commissioner
4 February 2008

CP/3593/2006

Contributions – record-keeping and decision-making about graduated retirement contributions – whether responsibility of Secretary of State or Revenue – requirement for tribunal to consider evidence of contributions

The claimant was awarded state retirement pension including 10p per week graduated retirement benefit (GRB) on the basis of 1 unit of contributions under the pre-1975 GRB scheme. The claimant asserted she had paid more than this and produced her own records to the Pension Service. The Pension Service confirmed the amount and she appealed. The tribunal dismissed the appeal on the basis that decisions about what types of contribution had been paid and how many had been paid were reserved to officers of HM Revenue and Customs (HMRC) and could not be considered by the Secretary of State or social security appeal tribunal. The claimant appealed to the Commissioner. Before the Commissioner the claimant alleged errors and omissions in the contribution record, and asked the Commissioner to decide on that basis that the record was unreliable. It was common ground before the Commissioner that the formal responsibility for all official record-keeping and decision-making about graduated retirement contributions, credits and benefits rested with the Secretary of State for Work and Pensions, though much of the practical record-keeping and decision-making was carried out by HMRC.

Held, allowing the appeal but confirming the Secretary of State's decision, that:

1. any decision about GRB must be a decision of the Secretary of State even if taken by HMRC as its agent and all decisions about entitlement to GRB are subject to appeal to the social security tribunals (paragraphs 25 to 28);
2. when considering a disputed contribution record no adverse inference is to be drawn from the routine destruction of forms on which the individual records were based (*Rose v HMRC* [2006] UKSPC SPC00574, also reported at [2007] STC (SCD) 129 cited) and a single inaccurate or missing record does not compromise the reliability of the other records (paragraphs 31 to 35);
3. a tribunal must be provided with copies of all the actual relevant records, not just assertions of their contents, and must be aware of the record-keeping procedures when evaluating what the individual records show in evidence (paragraph 35);
4. there cannot be an appeal against the records themselves, if accurate; any challenge as to whether contributions were correctly paid should have been made at the time they were paid and recorded (paragraphs 35 and 38);
5. although the tribunal had erred in law in deciding that it had no jurisdiction, on the facts of the present case the records showed that some contributions had been paid in error and then refunded; on that basis the amount of GRB awarded was correct, although the Pension Service's initial responses to the claimant's queries had been inaccurate and misleading (paragraphs 42 to 56).

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I allow the appeal. For the reasons below, the decision of the tribunal is wrong in law. I therefore set aside its decision. With the agreement of all parties, I replace that decision with the decision that the tribunal should have taken. This is:

Appeal dismissed. The appellant is entitled to a weekly amount of graduated retirement benefit of 10p from and including 17 October 2005.

2. The claimant and appellant, Mrs McGough, is appealing with my permission against a decision of the Leeds tribunal on 27 July 2006 under reference U/44/224/2006/00388.

3. The tribunal decided that it had no jurisdiction to consider Mrs McGough's appeal. That is wrong. It is the reason why (with the agreement of all parties) I set the tribunal decision aside. As a result, the tribunal had not considered any of the issues of fact or law that arose in the appeal. I took a provisional decision setting aside the tribunal decision and giving my reasons on 28 February 2007. I also issued directions to the parties and retained the appeal to take the final decision myself.

4. This is my final decision. For the avoidance of doubt, it fully replaces my provisional decision in the appeal and confirms that the tribunal decision is wrong in law. One of the reasons for the tribunal's error was that it made a mistake about which government department was responsible for determining Mrs McGough's state pension entitlement. That mistake led to it taking the view that it could not hear the appeal against the decision that she challenged. The parties to the tribunal decision were Mrs McGough and the Secretary of State for Work and Pensions (SSWP). The tribunal considered that the decision had been made by the Commissioners of Her Majesty's Revenue and Customs (HMRC) and that as a result it had no jurisdiction over the appeal.

5. Those points raised issues of concern not only to Mrs McGough but to state retirement pensioners generally. As the record showed considerable confusion about the position, I issued a provisional decision setting aside the tribunal decision. I also directed the parties to produce full evidence about the issues in dispute.

The parties

6. It was clear from the parties' submissions in reply that there should be an oral hearing of the appeal and that HMRC should be heard at the hearing. HMRC was therefore joined as a party. An oral hearing was held at the Leeds tribunal centre on 13 December 2007. Mrs McGough attended the hearing and gave evidence in support of her appeal. She was represented by her husband, who drew on his own past experience handling pensions in the public service to assist the hearing. The Secretary of State for Work and Pensions was represented by Miss Gillian Jackson of counsel, instructed by the Solicitor to the Department for Work and Pensions. HMRC was represented by Miss Main Thompson of the Office of the Solicitor to HMRC. I am grateful to all concerned in that, while presenting their cases robustly, they also cooperated in ensuring that all relevant questions were considered thoroughly at the hearing.

Names of the parties

7. Appeals against decisions by SSWP about state retirement pension appeals are normally heard in public by social security tribunals but are not published. Appeals from those tribunals to Social Security Commissioners are normally heard in public but published anonymously. Appeals against decisions by HMRC about state retirement pensions are heard in public by the Special and General Commissioners of Income Tax. Decisions of General Commissioners are not published. Decisions of Special Commissioners are normally published in full. These inconsistencies appear to be a matter of practice only. As I note below, there is no difference in the nature of the law or in the nature of the records that fall in some cases to be decided by one of these tribunals and in other cases by another. In this

decision I refer to decisions taken in both social security and the tax tribunal jurisdictions. This appeal was heard in public with all parties present. All parties agreed that I should follow the convention of the tax tribunals, and not the social security tribunals, in not anonymising my decision.

The evidence

8. Miss Main Thompson presented a witness to give evidence about both Mrs McGough's graduated retirement benefit record and about such records generally. Mrs Angela Scott gave that evidence. She and Mrs McGough gave evidence under oath or affirmation. Both Mrs McGough and HMRC also produced documentary evidence about Mrs McGough's graduated retirement benefit contributions and about the information and instructions issued by the various government departments that have, from time to time, been responsible for maintaining the records relevant to Mrs McGough's claim.

The provisional decision in this appeal

9. HMRC was not a party to the proceedings when I took the provisional decision. I therefore neither invited its representations nor directly heard its evidence when I took that decision. I now confirm the decision but replace the provisional reasons given in it by this decision. This decision repeats any relevant parts of that decision reconsidered in the light of the representations and evidence of all parties at the hearing. It is my decision fully determining the appeal.

REASONS FOR THE DECISION

The facts

10. Mrs McGough reached state pensionable age on 13 October 2005. She claimed state retirement pension some months before that. Officials calculated her pension entitlement as £42.82 a week from the week of her birthday. She appealed against that decision on two grounds: that she had not been told of her right to pay voluntary Class 3 National Insurance contributions (NI contributions) to maximise her entitlement and that her graduated retirement benefit (GRB) was too low.

11. In response, the Pension Service checked her contribution record with HMRC. It then invited her to pay additional Class 3 contributions. She has done so. That issue is no longer in dispute. Had it been in dispute, it would have been a matter to be determined by the Special or General Commissioners of Income Tax on appeal from a formal decision by HMRC. It would not have been a decision of the Secretary of State for Work and Pensions or for appeal to the social security tribunals. For a discussion of the relevant law see the recent decision of Patten J in *Commissioners for HM Revenue and Customs v Mayor* [2007] EWHC 3147 (Ch). This was heard by Patten J on 19 June 2007 on appeal from the General Commissioners.

12. The one issue that remained in dispute was the question of Mrs McGough's entitlement to GRB. The Pension Service told her that her entitlement was 10p a week as "according to our records, you paid for one unit only". She was invited to advise the Pension Service if she had any records showing she paid more graduated contributions.

13. As I commented at the hearing, Mr and Mrs McGough are exceptional record-keepers. In response to that letter Mrs McGough produced from her papers a

form GP20P issued by the Ministry of Social Security on 12 December 1967. This showed that she had been credited with 8.2 units in respect of her employment from 13 October 1963 to 21 July 1967. In reply to Mrs McGough's letter, the Pension Service informed her that "our Newcastle office" advised that the statement was worth 8.2 tenths of a unit only, so should be rounded up to 1 unit. That letter is so obviously wrong that it was only to be expected that Mrs McGough would not accept it. It is absolutely clear on the face of the GP20P document that it credits 8.2 units, not 0.82 units. I repeat my comment in granting permission to appeal that I cannot understand how so obvious a mistake came to be made. Second, even if the letter was for some unexplained reason correct about the GP20P document then it was still wrong in its conclusion. This was because it ignored other relevant graduated payments previously acknowledged as made by Mrs McGough after the period covered by the document.

14. Mrs McGough pointed both these matters out to the Pension Service. Both points were ignored. The decision determining Mrs McGough's GRB at 10p was confirmed by a decision on 12 December 2005. The reason given was: "The Inland Revenue have confirmed the amount of Graduated Benefit in payment is correct and therefore the decision remains unchanged." This was the first indication that Mrs McGough was given that "our Newcastle office" was in fact the National Insurance Contributions Office (NICO) of HMRC, and not a part of the Pension Service or an office under the responsibility of SSWP. But the letter gave no indication why the information on the GP20P was being ignored.

15. Mrs McGough eventually received an explanation of the position, as seen by NICO, in a full letter from Angela Scott (who gave evidence before me) to Mrs McGough on 2 February 2006. Given the way her case had been handled before that letter was sent, it is perhaps not surprising that she did not accept that explanation either. The matter was listed for hearing before an appeal tribunal.

Submissions to the tribunal

16. At this stage further errors crept into the papers in the form of wrong or misleading submissions on fact and law on behalf of SSWP to the tribunal. The submission to the tribunal from the Pension Service set out some of the relevant correspondence. But it submitted to the tribunal that:

"The decisions about what types of contribution have been paid and how many have been paid are reserved to officers of Revenue and Customs and cannot be considered by the Decision Maker or the Social Security Appeal Tribunal. It also follows that any question about the accuracy of the figures supplied by HM Revenue and Customs is outside the jurisdiction of a Social Security Appeal Tribunal."

The person making that submission failed to explain why the official correspondence had nonetheless repeatedly referred to "our office" and records or why decision-makers for the Secretary of State had clearly considered precisely the questions that the submission stated they could not consider. Nor did it make any comment about how Mrs McGough's appeal should be decided. Nor did it suggest that either SSWP or the tribunal activate the procedure that should have been activated in accordance with regulations if the submission to the tribunal was correct.

17. Those errors were compounded in a further submission to the tribunal dealing with further evidence sent in by Mrs McGough. She sent in letters between her and

NICO, including the letter from Angela Scott. The submission writer for SSWP refused to comment on these, saying that the Pension Service did not have a copy of them, that they were not relevant to the appeal and that the tribunal could not consider them.

The tribunal decision

18. The tribunal adopted those submissions “reluctantly”. It is now accepted both for the Secretary of State for Work and Pensions, who is responsible for the Pension Service that made the submission, and for HMRC that the submissions were wrong in law and fact on several counts, and that the tribunal was wrong to adopt them. I do not comment further on the decision of the tribunal, save that I confirm it is set aside.

19. What the submissions and tribunal decision both show is continuing confusion in practice about who decides what in determining an individual’s state pension. There is also continuing confusion about which tribunals have jurisdiction to consider the position when an individual disputes her or his pension entitlement. I must therefore clarify the position with regard to graduated retirement benefit and state retirement pensions generally before turning to the facts of Mrs McGough’s appeal.

Graduated retirement benefit

20. Entitlement to GRB is based on contributions made by and on behalf of most employees between April 1961 and April 1975. This applied to employees who were over 18, who earned £9 or more a week, and who were not in occupational pension schemes. The primary legislation dealing with GRB is still to be found in sections 36 and 37 of the National Insurance Act 1965. They are kept in force by later legislation. See the Social Security (Graduated Retirement Benefit) (No 2) Regulations 1978 (SI 1978/393). I must also note two other aspects of the scheme briefly.

21. Graduated retirement contributions were collected by employers and paid to Collectors of Tax at the same time as income tax was collected from employees under the PAYE system. The amount of a graduated retirement contribution depended on the amount by which the employee’s pay exceeded £9 in any week. Contribution records were compiled by reference to the returns of those contributions made by employers to Collectors of Tax, subject to any later adjustments. The key statutory provision requiring this was section 4 of the National Insurance Act 1965.

22. Employers who arranged for their employees to be in occupational pensions could elect that their employees were contracted-out of this scheme. This was a matter for employers. Employees had no choice about the matter. Certificates of Non-Participation certified contracted-out schemes for this purpose. For an occupational pension scheme to be certificated it had to be shown that the scheme offered an employee equivalent pension benefits (EPBs) to that of the state scheme. The primary legislation was in sections 56 to 59 of the National Insurance Act 1965.

Responsibility for GRB decisions

23. Pensioners do not have to claim their state pensions when they reach state pensionable age. They may do so later. It will be several more years before all new claims for the GRB element of state retirement pensions have been made. Meanwhile, all relevant records must be maintained, and past legislation kept on the record.

24. For example, in this appeal I was asked in December 2007 to decide on the accuracy of a document issued in December 1967. Whether that document was or was not to be relied on has a significant direct and immediate effect on the amount of pension Mrs McGough is to receive each week. That illustrates just how important it is to note the relevant law applying at each and every stage of the working life of someone claiming a state pension. It also illustrates that both the state and all individuals need to keep clear records of all relevant transactions and notifications.

25. The formal responsibility for all official record-keeping and decision-making about graduated retirement contributions, credits and benefits rests, and rests only, with the Secretary of State for Work and Pensions.

26. At the same time, much of the practical record-keeping and decision-making about NI contributions has been transferred by Parliament from the SSWP to HMRC. I indicated in my provisional decision that my reading of all the relevant legislation from the National Insurance Act 1965 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 was that no function with respect of any part of the pre-1975 GRB scheme had been transferred from the Secretary of State to HMRC. Both Miss Main Thompson and Miss Jackson confirmed, on instructions, that that was also the agreed position of both the Secretary of State for Work and Pensions and HMRC. As it is common ground, I am happy to record this without repeating either my or their analyses of the legislation supporting that view.

27. It follows that all actions taken by HMRC dealing with GRB issues are actions taken as agents for the Secretary of State. It also follows that HMRC can only reach decisions about the graduated retirement benefit scheme either as agents in the name of the Secretary of State or by asking officers of the Secretary of State to take the decisions. It also follows that any decision about graduated retirement benefit must be a decision of the Secretary of State even if taken by HMRC as agent. Similarly, all correspondence about such issues is undertaken by NICO as agent not principal. And it follows that the position represented to the tribunal by the Pension Service in this case was fundamentally wrong.

28. It also follows that all decisions about entitlement to GRB are subject to appeal to the social security tribunals. That was another fundamental error in the submission to the tribunal.

Contributions record-keeping

29. Mrs McGough's appeal called into question the records on which the Pension Service based the decision for SSWP about Mrs McGough's pension entitlement. Mr McGough specifically identified what he contended were a series of errors and omissions in that record, and asked me to decide on that basis that the record was unreliable. I have heard similar challenges in other cases in both the social security and tax jurisdictions. They raise general questions about the approach to be taken by tribunals to the official records kept by SSWP and HMRC. Miss Main Thompson invited me to give some guidance on these issues and I do so on the basis of the evidence offered by Mrs Scott.

30. I was much assisted by the evidence of Mrs Scott. She gave evidence based on a lifetime's experience working in the Records Branch of what is now the National Insurance Contributions Office of HMRC and then in decision-making about contributions and in dealing with disputes about contributions and contributory benefits for the various government departments charged from time to time with

these responsibilities. She had direct experience of the process of the Records Branch when contributions for GRB were being collected and then continuing experience of the administrative procedures and appeals about contributions questions including being involved in dealing with records of, and disputes about, GRB entitlement. Mrs Scott confirmed that she was authorised to give evidence about the matters in dispute on behalf of her employer as well as giving evidence in her personal capacity. I fully accept her evidence as given by someone exceptionally well placed not only to deal with Mrs McGough's appeal but also general questions about the way in which such records are kept.

31. I also take into account the similar detailed evidence about keeping records before 1975 that I accepted from a similar expert witness when sitting as a Special Commissioner of Income Tax in *Rose v HMRC* [2006] UKSPC SPC00574, also reported at [2007] STC (SCD) 129. Although that was an appeal to the Special Commissioners from a decision for HMRC, and this is an appeal to social security tribunals and Commissioners from a decision for SSWP, the reality is that they both concern parallel issues of law to be applied to identical areas of practice about pre-1975 contribution record-keeping. I put my decision in *Rose* into the record in this case, as decisions of Special Commissioners have no precedent status before Social Security Commissioners. I adopt the relevant part of my reasoning in that case as part of my reasoning in this case without repeating it in full.

32. Both this case and *Rose* concern record-keeping about contributions before 1975. The reality evidenced in both cases is that there was a massive but careful system in place at Records Branch run by officials trained to follow strict procedures. These systems were used to keep many millions of records simultaneously, most of the records involving the need to record individual weekly transactions. This was done manually. Necessarily, officials used abbreviations and culled files of surplus documents and information.

33. The pressures presented in keeping these vast records for the full working life of everyone concerned leads to records being culled from time to time. That means that in cases like this – and equally that of Dr Rose – NICO cannot produce all the paperwork for all the individual weeks of decision for which it has records. I considered that point in my decision in *Rose* and decided as follows:

“Retention of original records

29. The RF1 produced to me was the original record for Dr Rose. All other forms produced were stock copies of forms or leaflets. Dr Rose pursued another line of attack against his record. It recorded, and Mr Greenshields explained about, the issue of forms CF 169, 170 and 172 to Dr Rose. But the originals of the forms sent to, and returned by, Dr Rose were not retained in the records. The only evidence about them was in the form of the copies of those forms read with the abbreviated notes referring to them. Dr Rose questioned why the forms he had returned were no longer available.

30. Mr Nawbatt pointed to the indication in the general statement that if Dr Rose's forms had been retained, fairness would require similar retentions for each of the other 38 million RF1 records maintained in respect of each of the years of contribution applying to each contributor. Dr Rose nonetheless considered that there must be some doubt about accuracy, and that the records should have been kept. He raised in his original grounds of appeal the

suggestion that the purpose of the destruction of the records could be to cover their inaccuracy. While he stepped back from repeating that after hearing Mr Greenshields' evidence, he did not entirely withdraw the point and I must deal with it.

31. Mr Nawbatt relied on the decision of Commissioner Mitchell in R(IS) 11/92. In the decision, the Commissioner considered the status of a challenge to social security entitlement decisions recorded in official documents that had been destroyed in accordance with normal departmental procedures. It was argued for the claimant in that case that he was entitled to the benefit of an adverse assumption against the Secretary of State then responsible for social security records on a number of points because the Secretary of State had organised the destruction of the claimant's records.

32. After an extensive discussion of relevant authority, Commissioner Mitchell set out his conclusions in respect of missing documents at paragraph 38:

'I set these out thus:

- (a) None of the documents which are now "missing" was destroyed with any intention of destroying evidence.
- (b) On the contrary, most, if not all, of such documents as would (if extant) bear upon [the current decisions under appeal] were destroyed pursuant to routines prescribed in order to keep the storage of documents within manageable proportions.
- (c) Those routines are not, of themselves, unreasonable.
- (d) No reasonable person would have supposed that the documents with which this particular case is concerned would ever be required again
- (e) In consequence, no presumptions as to the contents of those documents fall to be made (in either party's favour).
- (f) Secondary evidence, whether written or oral, is admissible as to what the original documents contained.
- (g) Such secondary evidence falls to be evaluated upon the principles applicable to evidence in general.'

That approach has been followed by Social Security Commissioners since. It is trite law in that jurisdiction that no adverse conclusion is drawn from the routine destruction of social security documents under a proper policy for destruction, and that relevant secondary evidence as to content can be relied on. This applies unless the policy of destruction is open to challenge or unless there is evidence that records are destroyed otherwise than during routine procedures as, for example, after a specific request that they be produced had been made or during an ongoing appeal.

33. That is the approach I apply when acting as a social security commissioner. I apply the same approach here for what is essentially the

same issue. Save for test (d) of the tests set out by Commissioner Mitchell, I can apply those tests without further discussion. Tests (a), (b) and (c) are established as applying on the evidence in this case. But the essence of Dr Rose's argument is that (d) is not met. It is in his view reasonable that he should now be able to see what he did or did not say in, for example, in 1958-59

34. I agree with Mr Nawbatt that the underlying reality is that if Dr Rose is right, then NICO must keep the originals of all of several forms that may routinely be issued to any one of millions of contributors in any one of the 49 years of the working life of each (male) contributor in case any of them may wish, on retirement, to make the sort of submission that Dr Rose made in this case.

35. The reality is also that the secondary evidence of those forms produced by HMRC shows which forms were issued, what those forms contained, when they were issued, whether Dr Rose returned them, and what he replied.

36. In that context, I do not see any sound reason in current administrative law for an additional test (d) to that in (c). It is the policy of destruction that is in question, not the particular decision by an official to destroy a form in accordance with that policy. Points (c) and (d) can in practical terms be tested together by a reference to the standards now observed generally in administrative law: those of fairness, legitimate expectation and proportionality. In that wider sense I see nothing that suggests that the destruction of Dr Rose's forms was undertaken otherwise than in accordance with a standard policy, nor that the policy under which they were destroyed was unfair or unreasonable."

34. Behind that argument is a more general point. Each individual's file is a collection of many separate records entered under official procedures. It is tempting for appellants to challenge "the record" and ignore their complex nature. Mr McGough did so in this case, as did Dr Rose. And it is tempting for officials to assume that the records are correct simply because they are products of their system – as again happened in both these cases.

35. The following points may help tribunals avoid those temptations and other common pitfalls in considering a disputed contribution record:

(1) The records kept by HMRC and SSWP record facts and decisions. They are not decisions themselves. The records are evidence of contributions, but they are not conclusive evidence. If there is a dispute, all other evidence must also be considered. HMRC or SSWP must produce copies of relevant records themselves to the tribunal so that it can itself assess the full evidence. It is not enough to produce records of records, or summaries of records or assertions about them.

(2) Whether someone has paid contributions of a particular kind in a particular year is to be decided at or after the end of the contribution year as a question of fact. That requires a decision to be made on all the evidence. There can be an appeal against that decision only when it has been made.

(3) There cannot be an appeal against the records themselves. They record evidence of contributions that were or were not made, and are not

statements of the contributions that should have been made. A challenge to the evidence provided by the records cannot be used as a late way of challenging the decisions evidenced by those records.

(4) No adverse inferences are to be drawn in assessing the evidence from official destruction or failure to produce a full record. This applies only if any loss or destruction of documents meets the official criteria set out in legislation or the relevant case-law.

(5) Save in exceptional cases (such as where the identity of a contributor is in question) an appeal about a contribution record depends for its evidence not on the reliability of the record as a whole but on the separate reliability of each entry in the record. The reliability of the record as a whole is not compromised because one item is wrong or missing. Nor is the record as a whole entitled to any special status as evidence.

(6) Contribution records are maintained according to strict procedures. It is necessary to be aware of those procedures, and the way in which individual records were kept, to evaluate the evidence provided by individual records. That does not require the whole system to be brought into question in every appeal.

Application to this case

36. I illustrate these points by applying them to Mrs McGough's appeal. Applying point (1) (evidence), this tribunal needed to have before it the evidence on which the assertions made by Mrs Scott in her letter were based, together with the evidence with which Mr McGough sought to challenge the detail of that record. The formal submission for the Pension Service included only a series of assertions made by the Pension Service, and no actual evidence of the records. When Mrs McGough put in her own evidence, the Pension Service refused to comment. That was plainly an inadequate response. The official failure to produce the relevant evidence has now been remedied in full.

37. Turning to point (2) (decisions), I conclude that a decision was made for SSWP. This is because any decision made about graduated retirement contributions by HMRC was made as agent for SSWP. The decision made for the Secretary of State about Mrs McGough's GRB was appealable even though the correspondence said it was taken by HMRC. By the time of the hearing before me it was common ground between all parties that I should accept the decision under appeal as the proper basis for this appeal.

38. Point (3) (no appeal against the record) is illustrated by Mr McGough's assertion on behalf of his wife that certain of her employments were not contracted-out employments, and that the records were wrong if they were found to state otherwise. That confuses two issues: the correct nature of Mrs McGough's employment, and the nature of the employment assumed when she was recorded as contributing. I deal with the facts below. But I reject any attempt to open up the question whether Mrs McGough's employment was or was not given the correct status at the time through a challenge to the records. The only question before me is what the records show in evidence. If they show that she paid contributions as someone contracted-out, then that decides the only issue now under appeal. She cannot now seek to reopen the question whether those contributions were properly

paid in 1967 or 1968. That should have been challenged at that time. It is now far too late to reconsider that question.

39. Point (4) (no adverse inferences) is also illustrated by Mr McGough's submissions. He made a number of specific points about missing information, notifications not received, and uncertainties in the record, as well as the failure of the official parties to be able to produce specific information. This was an issue I discussed in some detail in *Rose*. I take the same view here as I took in that case. I draw no adverse conclusions from any omissions in the records here, although Mr McGough asked me to do so. He did produce the form GP20P. That required an explanation. I am not satisfied that any other of the matters he raised about omissions and failures in the record called either the total record of his wife's contributions, or any other specific aspect of it, into question.

40. Point (5) (reliability of individual records) follows from point (4) in this case. Like most such appeals, it potentially required a separate factual decision about any graduated contributions made in each of the years before 1975 in which Mrs McGough worked in respect of each employment. In practice the dispute was confined to three specific years and contributions from three specific employments. I must deal with those separately. I see no evidence suggesting that any errors relating to those years and contributions in any way call Mrs McGough's records into question more generally. I accept Mrs Scott's evidence that the summary in her letter to Mrs McGough was correct save that I must examine in detail the specific questions in issue.

41. Point (6) (noting the procedure) is also illustrated in this case. I commented in *Rose* about the need to understand the abbreviations used in the official records. I endorse those comments here. Mrs Scott gave me full evidence about the way these records were compiled and kept, and I accept that evidence. I am satisfied that standard procedures were followed and that those procedures should therefore be noted in accepting the accuracy of the record as evidence.

Mrs McGough's GRB entitlement

42. Turning to the focus of this appeal, Miss Jackson and Miss Main Thompson both readily agreed that the submission to the tribunal in the name of the Pension Service was completely wrong in its approach. All records kept by NICO are kept for the Secretary of State as agent. Any mistake or error made by NICO is a mistake or error for which the Secretary of State is responsible in law. None of the matters said to be irrelevant in the submission were irrelevant. The submission to the tribunal was wrong in refusing to comment on, or even acknowledge, correspondence between Mrs McGough and NICO.

43. More generally, the approach in much of the correspondence with Mrs McGough suggests confusion on the part of those at the Pension Service who dealt with her case. The Service was correct to talk for these purposes about "our Newcastle office", but not then to deny any responsibility for what that office did. If, as in this case, the matter goes to a tribunal, then the Secretary of State must produce the evidence on which his decisions are based so that it can be tested by the appellant before the tribunal. It is not enough simply to say "the Inland Revenue gave us the figures". If the figures are in dispute, as here, then the records, or proper copies of them, must be produced to the tribunal with appropriate explanations. The tribunal must consider and make its own decision about the figures.

44. Both SSWP and HMRC have ensured that all relevant records have been produced to me, together with the evidence of Mrs Scott who wrote the key letter to Mrs McGough from HMRC. I must now consider the decision that the tribunal should have taken.

45. Mrs Scott confirmed in evidence to me, and I accept in general terms, that the conclusions she drew from the records about Mrs McGough's GRB record in her letter of 2 December 2006 were factually correct. In that letter she stated that the Departmental records showed contributions of the following amounts only:

1966/67	10s 08d	
1967/68	9s 10d	
1968/69	£4 3s 03d	
Total	£5 3s 09d	(or £5.19p in decimal currency).

Each unit of entitlement to graduated retirement benefit "costs" £9 in contributions for a woman, with partial sums being rounded up. So the rounded up total units to which Mrs McGough is entitled on that record is one unit. That was the amount on which SSWP based the original decision.

46. Mrs Scott produced copies of the full set of records on which that decision was based. These included paper copies of microfiche records of payments made to the Inland Revenue by Mrs McGough's employers during the years in question. I accept those records. While I agree with Mr McGough that they are not complete in every detail, I am satisfied that in general they provide adequate evidence to show that on the balance of probabilities the conclusions offered by Mrs Scott are correct.

47. Mr McGough's main challenge on behalf of his wife was to the absence of proper contributions in respect of each of her three employments in the years in question. These were with the Ministry of Social Security, the National Coal Board (NCB) and the Inland Revenue. These were not, he contended, contracted-out employments. His wife had paid graduated contributions while working at those employments, and she should get the proper GRB from that work.

48. The annual records kept for Mrs McGough show a belated posting in 1967/68 of a contribution of 10s 8d for 1966/67 paid for the Ministry of Social Security in 1967/68, and further contributions from that employer and the NCB of 9s 10d in 1967/68. They also show payment of £73 19s 4d in 1967/68 being made and then refunded. The records for 1968/69 show £4 2s 1d paid by the Inland Revenue as employer to itself in that year for Mrs McGough, and a separate payment of 1s 2d for her from NCB in that year.

49. Mrs Scott also produced copies of two other documents. One is a PIL Debit Adjustment dated by rubber stamp in what appears to be 1968. "PIL Debit Adjustments" were, I accept, used to notify adjustments made by the department to payments from employers for payments in lieu. "Payments in lieu" were block payments made by employers in place of individual payments of contributions. In this case, the document confirmed that a payment in lieu for Mrs McGough of £73 19s 4d should be cancelled because "EPB from NCB to stand." I accept that this shows that the payment made (and confirmed by the GP20P produced by Mrs McGough) was authorised for cancellation. The cancellation is itself shown in the

1967/68 records as I have noted. I also accept that the explanation at the time for that cancellation was that the payment in lieu for Mrs McGough was made in error as her employment was certificated as contracted-out and as giving her the equivalent pension benefits to that of the state scheme.

50. That is further confirmed by the other document, a Certificate of Assurance of Equivalent Pension Benefits dated 11 June 1968. This certifies that Mrs McGough “is absolutely and indefeasibly entitled to the benefit shown ...” on the form, namely a small annual pension.

51. I am satisfied that this evidence shows on the balance of probabilities that although Mrs McGough originally did pay and was credited with graduated pension contributions in the period from 1965/66 to 1967/68 as shown on the GP20P, those contributions were returned to her then employer, the NCB, because they were wrongly paid. And the reason they were wrongly paid was that her employment was at the time contracted-out.

52. Mr McGough challenged this on several grounds. Mrs McGough was not notified of this refund. Nor did she receive any return of contributions herself. Nor has she received any pension from NCB. She did pay contributions the following year. And her work for all three employers was of the same pensionable nature. This was shown in part by transfers between employers for pension purposes. I have taken each of those arguments into account in my finding. But they do not show grounds to contradict the evidence of the various documents held in the official record.

53. It may be that this procedure of rebating should have applied to the small amount of contributions from the NCB in the following year also, but they were not cancelled. I accept that those contributions were made (whether rightly or wrongly is now irrelevant) and that they are therefore available to Mrs McGough.

54. I also accept from the above that contributions were paid for Mrs McGough by the Ministry of Social Security and Inland Revenue on the basis that they were not contracted-out. But I do not agree with Mr McGough that this shows that I can deduce from that any conclusions about the NCB work.

55. I have noted the terms of the certificate of assurance now produced in the record about the NCB payments. I cannot comment specifically on any current entitlement to a pension from the NCB based on that certificate. That is a matter for Mrs McGough to pursue with the NCB (or, more realistically, with the pension trustees or perhaps the British Coal Authority that I understand now oversees such matters).

Conclusion

56. Although I must therefore allow the appeal, the decision I reach is that the decision of the decision-maker acting for the Secretary of State that Mrs McGough is entitled only to a graduated retirement benefit based on one unit of contributions is correct. That is no fiscal consolation to her. But I hope that the way in which she and her husband have pursued this appeal may have an indirect benefit in saving others from having to conduct the same lengthy litigation to have their state retirement pension contribution records checked properly.

