



## ***Horton v Henry*: the impact on a trustee in bankruptcy's power to exercise options on behalf of the bankrupt**

### **Preamble**

#### **The background**

*Raithatha v Williamson* extended the scope of an Income Payment Order (IPO) to include a personal pension entitlement which a bankrupt was entitled to receive but which he had not yet elected to receive. This created a risk that the new flexibility in pension drawdown could endanger the pension savings of those declared, or at risk of being declared, bankrupt. It was feared that someone subject to an IPO could be compelled to elect for uncapped income withdrawals to satisfy their debt, where the lump sum exceeds the bankrupt's reasonable needs.

#### **The issues**

The issue of general principle was whether the Court has a power under section 310 Insolvency Act 1986 to make an IPO in respect of a pension which is not in payment. The prominent point of contention was the definition of the 'income of the bankrupt' (against which the IPO will be made) in s310(7); particularly, whether a bankrupt 'becomes entitled' to a payment under an uncrystallised pension even though he would not be receiving any payments from the pension trustees and would have no enforceable claim against them.

#### **What did the court decide?**

On very similar facts to *Raithatha*, the Court decided that a bankrupt only becomes entitled to a payment under his pension after there are definite amounts which have become contractually payable. Funds in an uncrystallised pension represent only latent income and so should not be considered income of the bankrupt. There are no obvious words in s310 which would give the Court the power to decide how a bankrupt was to exercise the different options open to him under an uncrystallised SIPP

or personal pension. Nor does s310 contain words which would provide for a trustee in bankruptcy to exercise such powers of election on behalf of the bankrupt. The corollary being that there is nothing in s310 to provide a basis for an IPO in respect of an uncrystallised pension.

#### **What does this mean for practitioners?**

The immediate upshot of the decision is that the uncrystallised pension pots of a bankrupt are under a lesser threat than they were after *Raithatha*. The chances of a bankrupt being forced to draw down on a pension which is not yet in payment have been reduced. However, the decision in *Horton* is a direct contradiction of *Raithatha* at the same level of authority. Clarity in the law will be delayed until the Court of Appeal hears the case in the spring.

Case: *Horton v Henry* [2014] EWHC 4209 (Ch)

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