

### **Update-In respect of certain bankrupts handing over their pensions**

In April 2012 we advised you of the decision in the case of Raithatha v Williamson when a High Court judge had ruled that bankrupts could be forced to draw their pensions and hand them over to their Trustees, for the benefit of their creditors. However, the judge had granted Mr Williamson permission to appeal this decision.

The decision meant that a bankrupt may no longer be able to keep his/her pension from his/her Trustee in Bankruptcy by deciding to defer drawing it until after the discharge of the Bankruptcy Order. Instead the Trustee would now be able to compel an individual to draw his pension benefits.

Whilst Mr Williamson was granted leave to appeal the decision the appeal hearing has now been vacated following settlement between the parties. Although it is likely that the decision will be challenged in a future case, for the time being a precedent has been set.

*Summary of Case: Mr Williamson had been entitled to start drawing his pension, but was still in work and had not exercised his right to do so. (He was aged 59 at the time of the application and under the terms of his pension was entitled to take his pension at the age of 55). The Trustee in Bankruptcy had applied for an Income Payment Order (IPO) and asked for it to cover Mr Williamson's undrawn pension.*

*The High Court found in favour of the Trustee in Bankruptcy, and confirmed that an IPO could be made in respect of the undrawn pension, deciding that a pension scheme member's unexercised right to draw his pension represented income under Section 310(7).*

For many people their pension provisions represent a significant sum and therefore individuals of a certain age contemplating either bankruptcy or a voluntary arrangement may need to consider their pension arrangements and the effect of personal insolvency upon them.

Please note that should your clients require any confidential advice regarding this or any other insolvency matter they are welcome to contact one of our Partners. Initial advice is provided free of charge and without obligation. Also, if you or any of your colleagues require any clarification regarding insolvency law or procedure, please do not hesitate to contact us.

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