*Guidance issued to official receivers*

**March 2015**

This notice replaces information provided in notices T25-13 and T22-14.

**Background**

1. Where a pension is excluded from a bankruptcy estate the trustee in bankruptcy can still realise funds from the pension for the benefit of creditors by either:-

a) an income payments order or agreement (IPO/A), or

b) an application to recover excessive contributions.

2. In April 2012 the Court concluded that the definition of “income” for the purpose of an IPO/A should include an entitlement to an undrawn pension where the bankrupt was eligible to bring that pension into payment (Raithatha v Williamson [2012] EWHC 909 (Ch)).

3. In December 2014  the High Court re-considered that decision, disagreed and found that a bankrupt has no entitlement to receive the pension monies until they have made the election on how to draw that fund.  Therefore an undrawn pension was not within the definition of income.

4. The latest decision is reported as Horton v Henry [2014] EWHC 4209 (Ch). This produces conflicting decisions and the matter stands to be determined by the Court of Appeal later this year.

**Advice**

5. **Official receivers are instructed not to include an undrawn pension fund in any calculation for an IPO/A.** This reverses earlier guidance.

**Detail**

6. Only pensions which are in payment at the date of the bankruptcy order, can be included in a calculation for an income payments order / agreement (IPO/A).  If the bankrupt elects to draw his pension before discharge, or whilst subject to an IPO/A, the pension, including any lump sum the bankrupt has elected to draw, might be included in any calculation or revision of the IPO/A.

7. The election to draw the pension and the manner in which the pension will be drawn is the bankrupt’s to make, the official receiver cannot influence or intervene in that decision.  Only once the election is made are the funds to be received capable of inclusion in the calculation for an IPO/A.

8. Where the bankrupt is 55 or over and holds an undrawn personal pension fund official receivers are instructed to obtain a current fund value. Where the pension fund value exceeds the total unsecured liabilities and the bankrupt might have elected to draw the pension before seeking the bankruptcy order (debtors’ petition cases only) official receivers are asked to consider whether the bankrupt met the insolvency test at the date of the petition.  Where solvency is present official receivers are asked to consider an application for annulment on the grounds the order ought not to have been made.

9. Official receivers are also reminded that payments into a pension scheme to the detriment of creditors might be challenged (TM chapter 31.4B, part 9).  This is of particular relevance where the bankrupt holds a Self-Invested Personal Pension (SIPP) and the main asset of the SIPP is a property.

10. Pension arrangements where the bankruptcy order was made on a petition presented prior to 29 May 2000 remain vested in a bankruptcy estate.  All these cases should now have been referred to the LTADT Pension Unit.  The Pension Unit and the contractor employed to realise the benefits have been given separate instruction on the realisation of these pension benefits. In short the contractor will seek to realise the maximum sums available applying the changes in pension rules which come into effect on 1 April 2015.

Any questions concerning this notice should be referred to Shona Manson