*Guidance issued to approved intermediaries*

Guidance to intermediaries is revised following the judgment in Horton v Henry[2014] EWHC 4209 (Ch) and with regard to the amendments to pension legislation which will come into effect in April 2015 giving extended access to personal pensions by individuals who are 55 or over.

Until the decision of the Court of Appeal on the Horton v Henry judgment is delivered the Service will follow the decision in Horton v Henryas holding precedent; the High Court having reached its decision after consideration of the earlier decisions [Colchester Estates (Cardiff) v Carlton Industries Plc [1986] Ch 80 refers]. Intermediaries should **not** consider an undrawn pension fund (which might be drawn as the debtor is 55 or over) in the calculation of income. Only funds in payment as income need to be included in the calculation of surplus income.

Undrawn pension entitlements remain excluded as assets for the purposes of assessing available assets in the application process. However, for entry into a DRO the debtor must be ‘unable to pay their debts’ in addition to meeting the asset and surplus income criteria. Intermediaries are therefore asked to consider when assessing a debtor’s overall financial position whether an undrawn pension fund (which could be accessed) offers an alternative debt solution to a DRO.

Where the value of the pension fund exceeds the total debt, and the debtor is simply electing not to access those funds, then consideration should be given to whether the debtor is in fact ‘unable to pay their debts’. For the purposes of section 251C of the Insolvency Act 1986 the official receiver must be satisfied that the debtor is unable to pay their debts or she is obliged to refuse the application.

If the debtor is 55 or over with access to a personal pension fund and the fund value is considerably in excess of the debts owed the intermediary should contact the DRO Team to discuss whether the official receiver is likely to make a DRO in the circumstances of the case.

For clarity guidance to official receivers who deal with bankruptcy cases is also being amended and they are instructed to consider whether a debtor who has petitioned for their own bankruptcy met the criteria of being unable to pay their debts when an undrawn but available pension fund is taken into consideration.