INCOME PAYMENTS ORDERS AND PENSIONS

Simon Passfield, Guildhall Chambers

Introduction

1. It is commonly the case that an individual adjudged bankrupt will have one or more pension policies which (depending on the fund value) represent a substantial source of future income. Primarily, such income will be intended to ensure that the individual is adequately provided for in retirement. For this reason, Parliament has historically imposed a wide range of statutory restrictions as to when and how a pensioner is entitled to payment from a pension fund.

2. However, in certain cases, such income will also represent a substantial fund potentially capable of being made available to meet the claims of the bankrupt's creditors.

3. Accordingly, the treatment in bankruptcy of pension policies (and the income capable of being derived therefrom) is a matter of considerable importance, it being necessary to strike the appropriate balance between the interests of the bankrupt (who, without any obvious source of future income may end up destitute) and the creditors (who may consider it unjust for a bankrupt to enjoy an envious future lifestyle at their expense by retaining the benefit of his substantial pension entitlements).

4. The issue takes on a greater degree of significance in light of the sweeping legislative reforms proposed in the Budget 2014, which are due to come into effect from April 2015. Under these proposals, the Government proposes to provide greater flexibility to pensioners by removing the effective requirement to buy an annuity, meaning that a pensioner will become entitled, subject to scheme rules, to draw their entire pension fund as a cash lump sum.

5. It will be appreciated that these proposals represent a dramatic departure from the previous protectionist position adopted by the legislature. As the Pensions Minister (Steve Webb MP) stated:

> *"If people do buy a Lamborghini but know that they'll end up just living on the state pension, that becomes their choice".*

Relevant Law

6. By s 283(1) IA, a bankrupt's estate comprises: (a) all property belonging to or vested in the bankrupt at the commencement of the bankruptcy, and (b) any property which by virtue of any of the following provisions of this Part is comprised in that estate or is treated as falling with the preceding paragraph.

7. However, by s 283(6) IA, that provision is expressly subject to any other enactment under which any property is to be excluded from a bankrupt's estate.

8. By s 436 IA, "property" includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property.

9. By s 283(4) IA, references to property, in relation to a bankrupt, include references to any power exercisable by him over or in respect of property, except in so far as the power is exercisable over or in respect of property not for the time being comprised in the bankrupt's estate.

Income Payments Order ("IPO")

10. Prior to the enactment of the Insolvency Act 1986 ("**IA**"), the power of the court to make surplus income available for a bankrupt's creditors was contained in s 51 of the Bankruptcy Act 1914.

11. As noted in the Report of the Review Committee: Insolvency Law and Practice (Cmnd. 8558 (June 1982)) ("**the Cork Report**") (at [1160]), these provisions were restrictively construed, and

certain forms of income were held to be excluded from its ambit. Accordingly, life income from a family settlement and income from self-employment were held not to be "income" but rather formed part of the bankrupt's estate vesting in the trustee.

12. The Cork Report recommended a shift in emphasis, stating (at [591]):

> *"It has been almost the rule in the past to think in terms of 'selling up' the debtor and dividing the proceeds amongst the creditors as the main, if not the only, means of debt recovery. We believe that, in principle, far more emphasis should in future be placed on the prospect of the debtor's ability to pay his debts out of surplus future income. This is not to say that the existing assets are to be ignored or that a debtor's earning capacity is to be made available for payment until the debts are paid in full however long that may take; the debtor must in no circumstance become the slave of his creditors. This shift in emphasis should, nonetheless, enable a more realistic and a more humane attitude to be taken than previously regarding the position of the debtor and his family."*

13. These recommendations led to the enactment of s 310 IA, which enables the court to make an order claiming for the bankrupt's estate so much of the income of the bankrupt during the period for which the order is in force (up to a maximum of 3 years) as may be specified provided that the effect of such order would not be to reduce the income of the bankrupt (when taken together with any payments by way of guaranteed minimum pension) below what appears to the court to be necessary for meeting the reasonable domestic needs of the bankrupt and his family.

14. The definition of "income" for these purposes is contained in s.310(7) IA. As originally enacted, this provided as follows:

> "For the purposes of this section the income of the bankrupt comprises every payment in the nature of income which is from time to time made to him or to which he from time to time becomes entitled, including any payment in respect of the carrying on of any business or in respect of any office or employment."

Pensions: the Historic Position

15. In *re Landau (A Bankrupt)* [1998] Ch 223, the respondent (who was adjudged bankrupt in 1990) had a pension policy which provided for the payment to him of an annuity from his 65th birthday, which occurred after his discharge. Ferris J held that the bundle of contractual rights under the pension policy constituted a chose in action, and was therefore "property" within s 436 IA, notwithstanding that at the commencement of the bankruptcy nothing was immediately payable. Accordingly, the benefits of the policy vested automatically in the bankrupt's trustee in bankruptcy on his appointment by virtue of s 306 IA.

16. Ferris J went on to confirm that s 310(1) IA did not apply to the income from the pension policy (i.e. it was not necessary for the trustee to apply for an IPO in order to lay claim to that income):

> *"On the ordinary meaning of the language used in section 310 I would have no doubt that the section has no application to property or income which vests in the trustee under section 306. Property or income which so vests cannot, on the face of it, be a "payment in the nature of income which is from time to time made to [the bankrupt] or to which he from time to time becomes entitled," because it ought to be paid to the trustee and only the trustee is entitled to it. Correspondingly the trustee has no need to obtain any order for the purpose of getting such income into the bankrupt's estate, for it will be payable to the trustee automatically by virtue of the vesting."*

17. In *Krasner v Dennison* [2001] Ch 76, the Court of Appeal affirmed the decision in *re Landau* and rejected the argument that the vesting of the bankrupt's pension policies in his trustee with no discretion to the court to order that a certain proportion of the income from those policies be paid to the bankrupt under an IPO constituted a breach of Article 1 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Similarly, in *Patel v Jones* [2001] EWCA Civ 779; [2001] BPIR 919, the Court of Appeal held that the entitlement of a local government employee under a statutory occupational pension scheme to basic and discretionary pension benefits on redundancy vested in his trustee pursuant to s306 IA, notwithstanding that the trigger for actual payments did not occur until after his discharge from bankruptcy[1].

The Pension Reforms

18. Between 1993 and 1999, Parliament has enacted a series of legislation which has had the effect of reversing the decision in *Re Landau*.

19. By s 159(5) of the Pension Schemes Act 1993 ("**PSA 1993**"), the rights of a bankrupt who was entitled or prospectively entitled to a guaranteed minimum pension under an occupational pension scheme or to payments giving effect to protected rights under such a scheme were expressly excluded from his estate.

20. Section 91(5) of the Pensions Act 1995 ("**PA 1995**") extended this exclusion (with effect from 6 April 1996) to a bankrupt's entitlement and/or accrued right to a pension under an occupational pension scheme. At the same time, s 310(7) IA was amended[2] to provide:

> "For the purposes of this section the income of the bankrupt comprises every payment in the nature of income which is from time to time made to him or to which he from time to time becomes entitled, including any payment in respect of the carrying on of any business or in respect of any office or employment and any payment under a pension scheme but excluding any payment to which subsection (8) applies."

21. Section 11 of the Welfare Reform and Pensions Act 1999 ("**WRPA**") further extended the exclusion (with effect from 29 May 2000) to any rights under an "approved pension arrangement". At the same time, s 310(7) IA was further amended[3] to provide:

> "For the purposes of this section the income of the bankrupt comprises every payment in the nature of income which is from time to time made to him or to which he from time to time becomes entitled, including any payment in respect of the carrying on of any business or in respect of any office or employment and (despite anything in section 11 or 12 of the Welfare Reform and Pensions Act 1999) any payment under a pension scheme but excluding any payment to which subsection (8) applies."

Blight v Brewster

22. In *Blight v Brewster* [2012] EWHC 165 (Ch); [2012] 1 WLR 2841, a judgment creditor applied for an order requiring a judgment debtor to elect to draw down a lump sum from his uncrystallised pension in order to enable the judgment creditor to obtain a third party debt order against the pension trustees. At first instance, the district judge held that the court did not have jurisdiction to make such order.

23. Gabriel Moss QC (sitting as a Judge of the High Court) noted (at [60]):

> *"As a matter of impression, if this were correct then this would work a substantial injustice to the claimants, who have been the victims of fraud and forgery. The idea that the fraudster and forgerer can enjoy an enhanced standard of living at his retirement instead of paying the judgment debt would be a very unattractive conclusion. The defendant clearly has the means of paying the 25% to the claimants: all he has to do is to give notice to Canada Life.*

24. The Deputy Judge held:

[1] Upholding the decision of Robert Englehart QC in *Patel v Jones* [1999] BPIR 509. The court held that it would be inequitable in the circumstances for the trustee to take the benefit of post-bankruptcy contributions because the bankrupt had made them believing that he was enhancing his own pension rights which he genuinely felt were his and his alone.
[2] By para 15(b) of Schedule 3 PA 1995
[3] By para 2 of Schedule 2 WRPA

[70] *There appears to me to be a strong principle and policy of justice to the effect that non-bankrupt debtors should not be allowed to hide their assets in pension funds when they had a right to withdraw moneys needed to pay their creditors.*

[71] *Whilst Parliament has seen fit in the area of bankruptcy to create special statutory protections for pensions, no such intervention has taken place in the area of the enforcement of judgments. Mr Weale for the defendant nevertheless suggested that public policy requires pensions to be treated as exceptional when it comes to the execution of judgments on the basis of the special treatment under bankruptcy law.*

[72] *In my judgment, that suggestion is erroneous. A person who files successfully for bankruptcy surrenders all his assets, save those protected by law, to a trustee in bankruptcy for the payment of his debts. Filing for bankruptcy is a relief from the ability of creditors individually to execute upon the debtor's assets, in favour of collective execution. But this relief comes at a significant price. Bankruptcy carries very important disadvantages in terms of obtaining credit and acting as a director of a limited liability company, such restrictions being designed to protect the public. A judgment debtor in my view cannot have the benefits of bankruptcy without its burdens. If he chooses the advantage of not being bankrupt, for example because he considers himself to be solvent, then he must pay his debts or his assets (including contingent assets subject to some act on his part) will be amenable to the enforcement of judgments by individual creditors.*

25. Accordingly, he granted an injunction pursuant to s 37(1) of the Senior Courts Act 1981 compelling the defendant to delegate to the claimants' solicitor the power to elect to receive 25% of his pension as a lump sum, up to the amount needed to pay the balance of the judgment debt and (in the event of the defendant's default) authorised the claimants to write in the defendant's name to the pension trustee making the election on his behalf and in his name.

Raithatha

26. In *Raithatha v Williamson (a bankrupt)* [2012] EWHC 909 (Ch); [2012] 1 WLR 3559, a bankrupt had various pension policies and other pension entitlements amounting to a fund estimated at between £900,000 and £990,000. Having reached the age of 55, he was entitled to elect to receive 25% of the overall fund (£248,708) as a tax free lump sum and a pension from the residual fund, the value of which would depend upon the type of pension selected but might be an annuity in the range from £23,000 to £43,000.

27. The trustee applied to the court pursuant to s 310 IA for an IPO. It was readily apparent that if the bankrupt had elected to receive payments from his pension prior to the hearing of the application, those payments could be claimed for his estate by way of an IPO. However, the bankrupt had not exercised this right and, as he was still in employment, had no intention to do so for the foreseeable future. In the circumstances, he argued that the court did not have the jurisdiction to make an IPO.

28. Bernard Livesey QC (sitting as a Judge of the High Court) identified that the principal issue for determination was:

> "*whether pension entitlements which a bankrupt is entitled to receive, but has not yet elected to receive, constitute a "payment in the nature of income which is from time to time made to him or to which he from time to time becomes entitled" within the meaning of s 310(7) and therefore constitute income by reference to which the court is entitled to make an IPO.*"

29. The bankrupt argued that the payments which he was entitled to elect to receive did not constitute income for the following reasons:

    (i) amongst the "bundle of contractual rights" vested in the bankrupt was the right to decide when and how to exercise the various options under his pension arrangement concerning

drawing down the pension, when to do so and what proportion to take as a lump sum as against an annuity, and so forth; these rights remained his property and the trustee had no right to interfere with those rights at all;

(ii) in order to constitute "income" within the meaning of s 310 IA, the payments must either have been received by the bankrupt or at least he must have become entitled to receive them during the course of his bankruptcy; there was no basis for the trustee to assert his claim where the bankrupt's entitlement to actual payment has not crystallised prior to his discharge;

(iii) the bankrupt did not have any entitlement to receive any payment until he had made his election. The respondent had not made an election and therefore had no entitlement to any payment;

(iv) the powers of the court under s 310 IA are set out in s 310(3): neither gives the court any power appropriate to the situation here, where there had not been an election and no entitlement to payment, and what would be necessary to effect payment would be a mandatory injunction to compel the respondent to make his election in a particular manner;

(v) the exercise of such a power would represent a fundamental and wholly unwarranted interference with the respondent's property contrary to his rights under the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular under article 1 of the First Protocol to the Convention;

(vi) any lump sum paid under a pension scheme does not constitute "a payment in the nature of income" for the purposes of s 310(7) IA, since the payment would be a one-off payment and would not be made on a repeat or periodical basis.

30. Having quickly rejected the arguments set out at para 15(i), (v) and (vi) above (see paras [30]-[33], the Deputy Judge went on to consider the proper meaning of "entitled" for the purposes of s 310(7) IA:

> [34] *The submission that there is no entitlement to a payment because there has been no express election appeared initially to me to be an attractive argument. I can understand the validity of the technicality illustrated by the example given and which I have quoted at paragraph 25 above.*
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> [35] *However, the question has to be asked, whether the intention of the legislature was to preserve the technical difference so that a person whose election had preceded his bankruptcy would be brought into the s. 310 regime, whereas the person who had not yet elected to take his pension, would not. I ask myself – "Why would the legislature want to do that?"*
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> [36] *Why they should want to preserve the distinction puzzles me. The distinction would provide an anomaly which is difficult to justify. Why should it be that a person who elected on the day preceding his bankruptcy be in a position where his entitlement to enjoy the fruits of his pension is subject to the right of the Trustee to apply for it to go to his creditors under s. 310 whereas the person who had not yet elected is immune from the impact of the section and can enjoy the full fruits of his pension to the detriment of his creditors. By using the word "immune" I mean that, such a bankrupt could avoid losing any part of his pension simply by choosing – for whatever reason - not to issue an election until the date of his discharge. I can think of no reason of policy, nor has one been suggested to me in argument, why the legislature should have legislated in order to create such an anomaly. It cannot be to the benefit of the bankrupt's creditors; the creation of such an anomaly would be to discriminate in favour of a class of bankrupts, those who happened not to have made an election, without (so far as I can see) any reason or justification.*

[37] *In these circumstances I am driven to the conclusion that the trustee's contentions are correct. The proper interpretation in my judgment is that a bankrupt does have an entitlement to a payment under a pension scheme not merely where the scheme is in payment of benefit but also where, under the rules of the scheme, he would be entitled to payment merely by asking for payment.*

31. Having concluded that the court had jurisdiction to make an IPO, the Deputy Judge noted that it would be necessary to hear further argument on what was an appropriate order, both in terms of any part of any lump sum and in relation to periodical payments (see para [20]). In this regard, he suggested that before making an IPO, the court must evaluate what is fair and just between the competing interests of in particular the bankrupt and his creditors and make an order which is appropriate in all the circumstances of the case (see para [18]).

Post-*Raithatha* Developments

32. In an article in Insolvency Intelligence[4] written shortly after judgment was handed down in *Raithatha*, John Briggs mounted a stringent attack on the decision for the following reasons:

    (i) it was unclear whether the Judge recognised that the principal amendment in s 310(7) IA was actually introduced by the Pensions Act 1995. It was "tolerably clear" that this intended to catch only pensions in payment. It would appear that Chadwick LJ reached the same conclusion in *Krasner v Dennison*. There was no hint in the judgment that the Judge had drawn to his attention either the legislative history in this field or the policy behind the WRPA, or all the features of that legislation. It would seem perverse if the rights under an approved pension which the legislature excluded from the bankrupt's estate by s 11 WRPA were to be substantially brought back into the estate by the operation of s 310 IA;

    (ii) the whole scheme of pensions legislation and scheme rules is to give to the person with an accrued pension entitlement the right to elect when and in what form to take his pension. The rights of a trustee representing creditors are wholly incompatible with these rights. The court has no crystal ball to see into the future and ascertain what is fair and just over the debtor's life (including retirement) and that of any dependants. Its only real ability is to consider the current position when a debtor is a pensioner with a pension in payment so as to deduce whether his reasonable domestic needs are more than satisfied from his pension (and any other income) such that it is appropriate that an IPO should be made for a period not exceeding three years;

    (iii) the Judge based his conclusion on the puzzling distinction in treatment between a person who exercises his right to elect to receive his pension before bankruptcy and a person who had not yet so elected. However, his interpretation of s 310(7) would lead to far greater anomalies. For example, it would discriminate against those whose bankruptcy occurs at a time when they are entitled to make an election (those who are 55 years of age and over) and in favour of those who would not be so entitled at any time before their discharge from bankruptcy (persons under 55 years of age).

33. At that time, it was anticipated that the matter would be considered by the Court of Appeal, Bernard Livesey QC having granted permission to the bankrupt to appeal his decision. However, shortly before the hearing of the appeal (which was fast-tracked) the case was settled.

In consequence, *Raithatha* stood as authority for the proposition that the court has jurisdiction to make an IPO where a bankrupt was entitled to receive, but had not yet formally elected to receive, payments from a pension. However, there was no guidance as to the relevant principles which the court should apply or as to the form which any order would take.

34. Subsequently, numerous applications were issued by trustees in the County Courts (relying on *Raithatha*), resulting in favourable settlements.

[4] The recent court decision of Raithatha v Williamson: creditors' right to an IPO/IPA over more than the debtor's "pension in payment" (2012) Insolv Int 25(5), 65-71

35. In *Re X (Application for Income Payments Order)* [2014] BPIR 1081, a bankrupt who had an income deficit of £5,592.48 per annum was entitled to elect to crystallise a personal pension policy and draw: (i) a pension of £5,471.04 per annum (i.e. less than her deficit); or (ii) a tax free lump sum of £26,971.72 and a reduced pension of £4,103.28 per annum. The trustee sought an IPO compelling the bankrupt to elect to receive the full lump sum in order to make that payment available, in whole or in part, for her creditors. District Judge Smith (sitting in the Manchester District Registry) made the following observations in relation to *Raithatha*:

> [51] *I am aware that the decision is controversial. However it is a decision of a deputy High Court judge, and accordingly is binding on this court. I can see the force of the decision for the reasons which the judge gave at para [35] of this judgment, namely the fact that a different interpretation would provide, or would produce, an anomaly. However I struggle to see how the decision falls to be implemented on the facts of his particular case...where there has been no election and there are two options available, one of which does not involve a lump sum.*
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> [52] *In para [36] of his judgment, the judge refers to the bankrupt being entitled to payment merely by asking for payment, but that begs the question: payment of what? Where there is more than one option, which option? How, acting under this section, would the court determine that? In effect the court is removing the bankrupt's right to decide how to take his pension as well as his right to decide when to take the pension. That interpretation of the decision, in my judgment, does follow logically from the way in which the judgment was given by the deputy High Court judge, but the judgment nonetheless does not give any assistance whatsoever as to the principles which the court would adopt in making such a decision. I am told that there is no other authority on the point; it is entirely novel.*

Accordingly, whilst expressly acknowledging the jurisdiction to make an IPO, on the facts of the case, the court declined to do so:

> [54] *As I have indicated I have found that X has a shortfall, as at today's date, of £5,592.48 pa and in my judgment it is reasonable for me to infer that that shortfall will continue, if not increase in the future. In my judgment it would not be right on an application of this nature for the court to compel X to exercise her option to take her pension in such a way as would reduce her annual income well below the figure which she requires to live on. In my judgment the court can arrive at that conclusion by a number of possible routes, either by interpreting her reasonable domestic needs, in s 310(2), not just for a 3-year period but for an indefinite period; or interpreting payment in s 310(7) as a payment that the bankrupt could reasonably be expected to elect to take in all the circumstances of the case; or as an exercise of the court's discretion, because of the discretionary nature of the remedy set out in s 310(1). The fact that there are a number of different routes available seems to me to highlight the difficultly of applying the Raithatha decision in the specific circumstances of a case of this nature, where one is dealing not with whether the bankrupt can be expected to elect to take the pension but how the bankrupt can be expected to elect to take the pension, and its interrelationship with s 310.*
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> [55] *In my judgment interpreting the section in that way is entirely in keeping with the policy of the 1999 Act which was, effectively, to remove the bundle of rights under a pension from the bankrupt' s estate, save to the extent that an income payments order could be made in relation to them. In my judgment to compel a bankrupt to elect to take his or her pension in such a way that would ultimately be to her detriment in the long term would be inconsistent with the policy of the 1999 Act.*

36. The trustee's application to the High Court for permission to appeal that decision was refused.

Horton v Henry

37. In *Horton v Henry* [2014] EWHC 4209, having reached the age of 55, a bankrupt was entitled to crystallise part or all of his SIPP (which, based on the most recent valuation, had a fund value of £929,818.23) to draw benefits and to take up to 25% of the amount crystallised as a tax free lump sum. In addition, he was entitled to receive benefits from three further pension policies. However, he did not yet wish to crystallise his pension policies; his ultimate objective was to pass on the value of his SIPP fund to his children in due course.

38. The trustee applied for an IPO, relying on the decision in *Raithatha*. The bankrupt opposed the application on the basis that that decision was wrong (principally for the reasons set out by John Briggs in his critique of *Raithatha*). The matter was listed for hearing before Robert Englehart QC (sitting as a High Court Judge).

39. The Judge acknowledged that although he was not bound by the decision in *Raithatha*, as a matter of judicial comity it should be followed unless he was convinced that the judgment was wrong (cf *Police Authority for Huddersfield v Watson* [1947] KB 842; *Lornamead Acquisitions Limited v Kaupthing Bank HF* [2013] 1 BCLC 73). Nevertheless, he reached a contrary conclusion for the following reasons:

    (i) the word "entitled" in s 310(7) IA suggests a reference to a pension in payment under which definite amounts have become contractually payable [28];

    (ii) there is no obvious wording in s.310 IA which would give the Court power to decide how a bankrupt is to exercise the different elections open to him under an uncrystallised SIPP or personal pension. Nor is there any obvious route for a trustee in bankruptcy to be said to have the power [29];

    (iii) that interpretation was supported by various commentaries, in particular the Report of the Pension Law Review Committee (Cm 2342-I), the Explanatory Notes to the WRPA and the Insolvency Service's guidance notes as they were prior to *Raithatha* [31].

40. Accordingly, the Judge dismissed the application for an IPO. He went on to hold (at [33]) that if, contrary to his decision, he had jurisdiction to make an IPO in respect of the pension entitlement, it would have been appropriate to make an IPO to the full extent claimed because the moneys were not necessary for meeting the reasonable domestic needs of the bankrupt and his family.

41. In addition, the Judge disagreed with Bernard Livesey QC's suggestion that, in making an IPO, the court should balance the interests of the bankrupt and his creditors:

> *"I am far from clear that it is for a Court on an IPO application to conduct the kind of evaluation suggested by the Deputy Judge. It seems to me that the scheme of section 310 is that there is to be available for the creditors simply the surplus income over what is needed for the reasonable domestic needs of the bankrupt and his family.*"

42. The Judge granted permission to appeal. An appeal has now been lodged with the Court of Appeal and is listed in a hearing window between 14 May 2015 and 14 July 2015.

Consequences of Henry

43. In light of the decision in *Henry*, there are now two conflicting decisions of judges of coordinate jurisdiction. The jurisprudential consequences thereof were famously explained by Nourse J in *Colchester Estates (Cardiff) v Carlton Industries Plc* [1986] Ch 80 at 85F:

> *"There must come a time when a point is normally to be treated as having been settled at first instance. I think that that should be when the earlier decision has been fully considered, but not followed, in a later one. Consistently with the modern approach of the judges of this court to an earlier decision of one of their number (see, e.g.,* Police Authority for Huddersfield v. Watson [1947] KB 842*, 848,* per *Lord Goddard CJ), I would make an exception only in the case, which must be rare, where the third judge is convinced that the*

second was wrong in not following the first. An obvious example is where some binding or persuasive authority has not been cited in either of the first two cases. If that is the rule then, unless the party interested seriously intends to submit that it falls within the exception, the hearing at first instance in the third case will, so far as the point in question is concerned, be a formality, with any argument upon it reserved to the Court of Appeal."

44. In the circumstances, until *Henry* is considered by the Court of Appeal, it must be taken as settled law that the court does not have jurisdiction to make an IPO in respect of uncrystallised pension entitlements.

45. Nevertheless, given that an application for an IPO may only be instituted before discharge, trustees may be well advised to issue protective applications and seek a stay pending the decision of the Court of Appeal.

Simon Passfield
Guildhall Chambers
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