



The Budget 2014 - the impact of the new flexibilities on the pensions of bankrupts

Introduction

The Chancellor's 2014 Budget speech revealed significant changes to the way in which pension scheme members will be able to access their savings. This move falls as just one of a raft of changes to workplace pensions which Steve Webb MP has described as a "pensions revolution".

Whilst the introduction of greater flexibility into pension drawdown has been much welcomed by some commentators, it is unclear whether the government has considered its ability to amplify the effects of the recent case of *Raithatha v Williamson* [2012] EWHC 909 Ch and further endanger the safety of the personal pensions of the bankrupt.

Practical issues

The Welfare Reform and Pensions Act 1999 (the "WRPA 1999") acts to protect the pensions of the bankrupt from the grasp of Trustees in Bankruptcy ("TIB"). It provides that where a bankruptcy order is made against a person on a petition presented after 29 May 2000, any rights of the bankrupt under an approved pension arrangement are excluded from his estate.

However, this is subject to the limit of any Income Payments Orders ("IPOs") which a TIB may obtain under the Insolvency Act 1986. An IPO can allow a TIB to claim a bankrupt's excess income for a period of up to three years and, under section 310(7) of the Insolvency Act 1986, an IPO can apply to any:

"payment in the nature of income which is from time to time made to him (the bankrupt) or to which he from time to time becomes entitled".

Prior to the decision in *Raithatha v Williamson*, it was accepted that an IPO could allow a TIB access to three years' worth of a bankrupt's excess annuity payments but, benefits payable subject to an election by the bankrupt were outside their scope and protected.

The court in *Raithatha v Williamson* surprised insolvency practitioners by extending the perceived scope of IPOs to include a personal pension entitlement which a bankrupt was entitled to receive but which it had not yet elected to receive. This was not only surprising as it acted in conflict with the government's policy of pension protection but, also because it recreated a division between personal and occupational

pension schemes which the government had previously legislated to remove.

The case of *Blight v Brewster* [2012] EWHC 165 (Ch) (which allowed a judgement debt to be enforced against a lump sum personal pension entitlement) is thought to ensure the enforceability of the decision in *Raithatha v Williamson* by determining that, whilst a debtor could not be forced to elect to take their pension entitlement, a court could enable someone else to take the required election on his behalf.

The Budget

The government's proposed amendments to the Finance Act 2004 under the Finance Bill 2014 are intended to increase flexibility into pension drawdown by:

- increasing the annual withdrawal cap for pension members who have opted for capped drawdown;
- increasing the limits for commutation of a member's pension benefits to allow commutation to be more frequently available; and
- decreasing the minimum income requirement for flexible drawdown.

Moreover, these amendments have been expressed to be merely transitional changes ahead of more radical reforms. The Government proposes to introduce a new system from April 2015 under which all members of defined contribution pension schemes will be able to withdraw their full fund.

Considerations

By removing the limits on the income a person can withdraw from their pension schemes, the technical difference between a lump sum and pension income will be blurred.

If *Raithatha v Williamson* allows TIBs to gain access to bankrupts' lump sum entitlements under personal pension schemes, it remains to be seen how far the courts would allow TIBs to use the new flexibilities to gain access to a far larger proportion of a bankrupt's personal savings than was previously possible.

Whilst many pensioners will welcome the government's proposals, they will no doubt cause concern for those at risk of

bankruptcy with personal pensions who may, in some cases, find that their entire funds are at risk.

In considering whether to apply to court for an IPO, a TIB will weigh the reasonable needs of the bankrupt against the potential value of the election available. Given the expected increases in the lump sum entitlements of pension scheme members, IPO applications are expected to increase as the lump sums available upon election rise significantly to dwarf the bankrupt's reasonable needs and the associated costs of the application.

Whilst *Raithatha v Williamson* exposes personal pension elections to the claws of IPOs, it is not thought to extend to those occupational pension schemes where the payment of lump sums on commencement are often subject to the discretion of the scheme's trustees.

In the face of increasing IPO applications, the protection on bankruptcy which may be gleaned from occupational pension schemes is expected to become a more weighed consideration for members. Members may be encouraged to rely more heavily on their occupational pension schemes and, in an effort to ensure that any IPO is limited, to convert personal pension scheme funds into annuity income.

Occupational defined contribution pension scheme trustees will keep their scheme rules under review as the new legislation develops. A discretion to decide or restrict the benefits that may be paid could become a valuable protection for some members.

Similarly, members already contributing to personal pension schemes may want to consider their governing rules and whether there are sufficient protections to meet their needs.

Conclusion

At this stage, *Raithatha v Williamson* remains binding on District Judges. Whilst the decision aligns with *Blight v Brewster*, it has been criticised by commentators for removing the protections previously afforded to pension scheme savings and for being prejudiced against bankrupts who have reached the age of pension entitlement. In the meantime, TIB should remain alive to any judgements which seek to curtail the use of IPOs against personal pension entitlements.

About Burges Salmon

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