

Court of Appeal Decision Horton V Henry

The decision in this matter has been handed down in the Court of Appeal and the Trustee's appeal has been dismissed.

The Court had to decide whether a Trustee in Bankruptcy could compel a bankrupt, who has reached the age at which he/she is contractually entitled to draw down their pension but has not done so, to elect to do so in order that the proceeds would then become available to the estate under an Income Payment Order.

The judgement focuses on the difference between the right to elect to receive income under a pension and actually being in receipt of that income- *"As a matter of construction of section 310 of the Insolvency Act, there is no basis for concluding that a bankrupt's contractual rights to draw down or "crystallise" his pension come within the definition of "income of the bankrupt" within section 310(7)."*

The decision has been made that section 310 of the Insolvency Act only extends to pensions which are "in payment".

The Court held that a bankrupt does not have a duty to the Trustee to comply with a request for them to elect to draw down their pension and is therefore excluded from the bankruptcy estate; the rights and discretion to exercise them remain firmly outside of the bankruptcy estate.

The Insolvency Act as well as the relevant provisions of the Pensions Act 1995 and the Welfare Reform and Pensions Act 1999, draw a clear distinction between rights under a pension scheme and payments under such a scheme.

Please note that should your clients require any confidential advice regarding any insolvency matter they are welcome to contact Ian, John or Robert. An initial consultation 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.