

Lawyer calls into question High Court pension ruling

Pension experts question the recent High Court ruling that means pension pots are no longer safe if someone has been declared bankrupt.

By Donia O'Loughlin | Published 11:36 |



The High Court should not be able to insist pensions can be accessed for the benefit of the trustee in bankruptcy under insolvency legislation, a pensions lawyer has said.

[On Wednesday \(4 April\) the High Court](#) allowed a bankruptcy trustee the right to claim against an approved pension to repay creditors.

Bankruptcy trustee Situl Devji Raithatha won a claim against Michael Roy Williamson to claim against Mr Williamson's £1m pension fund to repay creditors.

According to Ashwin Mody, solicitor for Spearing Waite, which acted for the trustee in the case, Mr Williamson became bankrupt in November 2010 following a shareholder dispute.

He had not drawn on his pension, but if he had the trustee could have applied under the general income payments order legislation to seek to recover that part of the income - alongside any other income - that is deemed over and above the reasonable needs of his family and himself.

If he had not drawn on the pension, the Welfare Reform & Pensions Act 1999 states that it is excluded from the bankruptee's estate.

However, Mr Mody said that the trustee was advised, prior to Mr Williamson being discharged from bankruptcy, to consider issuing an application against him under the Income Payments Order rules as Mr Williamson was entitled to begin drawing on his pension.

He added that the Court concluded there was no logical reason why there should be a distinction between a bankrupt who had drawn down his pension and was caught under the legislation and one who could draw but had not done so.

Jennie Kreser, partner at Silverman Sherliker LLP Solicitors, claims that allowing bankruptcy trustees access to a bankrupt's pension is effectively "forcing a third party to exercise a discretion in a particular way".

She said: "I think there is still a grey area where a member does not have an absolute right to ask (or elect to receive) a pension.

"For example, most schemes allow early retirement from age 55 but some require the consent of (say) the principal employer or the trustees to the grant of such a pension.

"In those circumstances, I think it might be arguable that the court cannot (as it has here) insist that the pension be accessed for the benefit of the trustee in bankruptcy under the insolvency legislation as it would effectively be forcing a third party to exercise a discretion in a particular way."

Ms Kreser also pointed out whether there could be an age discrimination issue.

The judge said a person aged less than 55, who would not have a right of any sort to take a pension save for ill health, would be protected but one aged 55 plus may not be.

Ms Kreser said: "I have a slight twitch that if an individual is under 55 and becomes bankrupt, there is a possibility that they would not be able to access their pension whereas if over 55 and can ask for an early retirement, then they can access it. I think personally there could be an age discrimination issue.