

Can a judgment debtor be obliged to drawdown pension benefits under an occupational pension scheme in order to satisfy a judgment debt?

In the recent English case of *Manolete Partners v White*, 2023 EWHC 567 Ch (<https://www.bailii.org/ew/cases/EWHC/Ch/2023/567.html>), the High Court had to consider whether Mr Ian Russell White (“**White**”) should be required to draw down his pension in order to pay his creditors. With reference to section 91 of the UK Pensions Act 1995 (the “**Act**”), it was argued on behalf of White that the Court cannot make any order which would have the effect of White being restrained from receiving his pension under the occupational pension scheme.

After taking into consideration the facts and previous case law, however, the Court referred to the reasoning in the case of *Bacci v Green* [2022] EWCA Civ 1393, [2023] Pens LR 2 and directed that White be ordered to draw down his pension pot (in accordance with the scheme rules), which pension was to be paid into a nominated UK bank account in White’s name and which is previously notified to the applicant creditor in writing. The Court went on further to explain that this would not amount to a contravention of the Act as White would not be restrained from receiving his pension, in fact he would be receiving it. In this regard the Court stated that although payment of the pension would be made with the motive of enabling White’s pre-existing creditors to use those funds to satisfy pre-existing judgment debts when the pension fund entered the nominated account, section 91 of the Act would not be contravened.

In coming to this decision, the Court noted that a “highly important consideration” in this case was that the primary asset in White’s pension fund was derived wholly from funds provided by the relevant company and the debt in issue arose due to White’s misfeasance and breaches of fiduciary duties whilst acting as the controlling director and shareholder of that company. Accordingly, the Court stated that it would not be just, convenient nor equitable for White to remain entitled to retain his pension, whilst the judgement debt remained unsatisfied.

Although the Isle of Man does not have a legislative provision equivalent to section 91 of the Act, from our experience in the Isle of Man, occupational scheme rules generally (subject to restrictions) include provisions which entitle an employer to exercise a charge or lien on or set off against a member’s benefits for the purpose of enabling the employer to obtain the discharge by the member of some monetary obligation due to the employer, and arising out of a criminal, negligent or fraudulent act or omission by the member.

If you would like further information on this subject please contact Annemarie Hughes or Rachel Winterbach.

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