



PERSONAL INJURY TRUSTS

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PERSONAL INJURY TRUSTS

A Personal Injury Trust is the only legitimate way of holding compensation for a personal injury as a result of a legal claim or because you have received an insurance policy pay out, whilst still receiving state means-tested benefits.

If you claim means-tested benefits any compensation money you receive will affect your entitlement to these benefits. If your compensation, when added to the value of your own capital (e.g. money in accounts, savings and investments) exceeds £6,000, your means tested benefits will reduce or may stop altogether.

To ensure that your compensation is not taken into account when deciding whether you are entitled to benefits, and to help to protect your future, you may be able to place your money in a Personal Injury Trust. Personal Injury Trusts might allow you to continue receiving state benefits.

WHY DO I NEED A PERSONAL INJURY TRUST?

As mentioned the main reason people transfer their compensation to a Personal Injury trust is to protect their means-tested benefits. If a person holds capital of between £6000 and £16,000 then their means-tested benefits will be restricted/reduced on a sliding scale. However, if they hold over £16,000 in capital, they will lose their means-tested benefits altogether. It is important to note that the total household income and capital is taken into account when the local authority assess someone for benefits, not just the individual.

You cannot simply give your money away or put it into someone else's name to prevent it affecting your means tested benefits. If you were to give away even just part of the money you received as compensation, then this may be treated as a deliberate deprivation of capital. If you are judged by the local authority to have given your money away to maintain your entitlement to the benefits (deliberately deprived them of the money), they will assess your entitlement to benefits as if you still had the money.

WHEN TO SET UP A PERSONAL INJURY TRUST?

Ideally you should create a personal injury trust ready to receive the compensation prior to payment, or within one year of receipt of the first payment of compensation.

Compensation can only be held for 52 weeks by the injured person before it becomes "assessable capital" and will be taken into account by the local authority for means-tested benefits. Therefore, funds need to be transferred to a personal injury trust within 52 weeks from the damages being received. How this works where a payment is received in instalments is not clear cut and individual cases need to be looked at carefully.



Money held in a Personal Injury Trust can be accessed by “trustees”. Trustees manage the trust and will usually be you and your spouse or partner, or a parent, but may also be solicitors, especially if the compensation is for a child. The trustees hold the money on trust for the person who benefits from the trust, known as the Beneficiary. If money is needed from the trust, all trustees must agree to its release.

To remain eligible for state benefits your compensation should be placed in a specially designated trust bank or building society account that will be set up by your trustees. This money should be held separately from your personal finances.

HOW THE TRUST WORKS

A trust is a means by which assets are held and managed by one or more persons (called ‘Trustees’) for the benefit of others (called ‘Beneficiaries’).

A discretionary trust allows income and capital to be paid to one or more of a class of beneficiaries, as the trustees think fit. A discretionary trust is, on the whole, the best way to protect your beneficiaries financial future. Any assets could go into a discretionary trust, e.g. a house, savings or investments. How much is put in a trust depends on each family’s circumstances. The assets of the trust, whilst available to be used for the disabled beneficiaries benefit, do not legally belong to the beneficiary, so are not assessed as their capital for means testing purposes. This is why these funds can exist whilst the disabled person receives their means tested benefits.

Trustees are chosen by you and named in your Will. They look after the money and other assets which go into the trust. Your trustees have a wide range of powers and therefore it is important that you choose someone who you trust to act in the best interests of the beneficiaries of the trust, and most importantly, the disabled beneficiary. Ideally this should be someone independent, such as a friend, although you could appoint other family members if you would prefer. You can choose your solicitor as a trustee, but you should be aware that there will be an ongoing cost for this service.

A beneficiary is a person with an interest in the trust, that is a person that could potentially receive something from the trust. It is usual to describe the class of beneficiaries widely to include all your children (not just disabled children) and further descendants (e.g. grandchildren) and even provide for a charity. In this way, there should always be someone to benefit from the trust.

No beneficiary has the right to take either income or capital from the trust and therefore the trust should not be included within any beneficiary’s estate upon their death for inheritance tax purposes, and should not be brought into account when calculating any beneficiary’s means tested benefits entitlements.

A Letter of Wishes is a document which acts alongside your Will stipulating particular wishes. The purpose of the Letter of Wishes is to give guidance to your trustees as to the way in which

you would wish them to exercise their discretionary powers. Although they are not legally bound to follow your wishes, it is likely that the trustees will do so in practice. This is an important document in terms of explaining to your trustees how you would like the trust to work. Your letter of Wishes is the document where you can state the main purpose of the trust and that you want your trustees to put your disabled beneficiaries needs first and benefit the other beneficiaries later, should the disabled beneficiary die or no longer require the benefit of the trust fund.

WHAT DO THE TRUSTEES DO?

Once your estate has been distributed, your executors transfer over the cash or assets due to the trust to your trustees. The cash assets due to the trust is called the 'Trust Fund'. The trustees will look after the trust fund and invest it as appropriate. They also decide if and when to pay out money and for whose benefit. For discretionary trust for disabled beneficiaries your trustees should be aware of your instructions in accordance with your letter of wishes.

Details are given below of payments the trustees can and can't make without affecting the disabled beneficiary's means tested benefits. In addition, trustees have a duty to act in the best interests of the beneficiaries.

In general the trust should not pay for:

- Ordinary food;
- Ordinary clothes and footwear;
- Basic utility bills;
- Rent if the claimant receives housing benefit unless the trust is topping up to pay a more expensive rent;
- Council tax if the claimant receives council tax benefit; and

The trust can pay for:

- Holidays;
- Care;
- Cars and their running cost;
- Eating out;
- Property improvements;
- Hobbies and pets; and
- Extra heating etc required by the claimant but not covered by means tested benefits, for example if they need the house very warm to ease their condition

WHAT NEXT?

Putting in place a Personal Injury Trust is an extremely important part of the process when proceeding with a legal claim or claim under a policy. We can give you expert help and advice on



creating and managing a trust, or on setting up a trust if you or one of your loved ones has been awarded compensation for an injury. Please contact us on the details below to discuss further.

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