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TRUSTS AND PERSONAL INJURY AWARDS

Trusts and personal injury awards

A trust is an arrangement whereby assets are held by individuals or a trust corporation for the benefit of others. Until fairly recently there were restrictions on what the trust fund could be spent on. However, these restrictions have now been removed.

What is a trust?

A recipient of a personal injury award can transfer their compensation into a trust known as a personal injury trust. The recipient of the personal injury trust is named as a beneficiary (and possibly a trustee) and is able to benefit from the trust without owning the assets in their name personally. A trust is usually created by deed, which transfers assets (known as the trust assets or funds) to the trust.

Trustees are obliged to manage the trust according to specific rules and act in the best interests of the beneficiaries. A recipient of the personal injury award is, however, expected to be the main concern of the trustees, even if there are other beneficiaries named in the trust.

The choice as to who should be appointed to act as a trustee is an important one, as they will need to look after the compensation fund and make decisions about payments. They will also need to ensure that the trust created does not infringe the Social Security Regulations ("the Regulations").

Trusts and the benefits regime

Following an accident or an illness, you may become eligible for state benefits. The benefits will often incorporate both means and non-means tested benefits. Creating a trust may allow you to keep your entitlement to benefits.

Means tested benefits

You may cease to be eligible for means tested benefits if you have assets over £16,000. Generally, means tested benefits are payable in full if you have capital below £6,000 and are payable at a reduced rate if you have capital between £6,000 and £16,000. If you are a couple, you and your partner are treated as a single unit for means tested benefits purposes.

When calculating the capital in a means test, certain capital are disregarded such as clothing, cars, furniture, life insurance policies and the family home.

You lose your entitlement to means tested benefits where money received from a personal injury claim, which exceeds these levels, is held in your own name.

Means tested benefits include:

- Income related Employment and Support Allowance;
- Income Support/Income based Jobseeker's Allowance;
- Housing Benefit;
- Council Tax Benefit (entitlement is dependent on the local authority); and
- Universal Credit.

Can a trust prevent loss of means tested benefits?

The first payment following a personal injury (whether an interim payment, final award, periodical payment in the compensation claim, a charitable/ public donation, or an accident/travel insurance policy) is disregarded for 52 weeks when assessing entitlement to means tested benefits and services. The disregard does not apply to later payments.

After 52 weeks, if funds have not been transferred to a personal injury trust, they will be included in the means test. If, however, the capital derived from a personal injury is held in a trust, it is disregarded for the purpose of the means tested benefits.

In addition, where a personal injury trust is created, the usual rules that treat capital as "available" to the claimant do not apply. Even though the trust fund is available to the claimant, it should not considered as "available" capital for the purposes of the means test.

Even if you are not currently in receipt of means tested benefits, you should consider creating a trust as you may wish to apply for these benefits in the future. This may be because your circumstances change, such as moving to live in a care home or you divorce or separate from your partner.

Means tested benefits and income

Your level of income (earnings, pensions or other benefits) also affects your entitlement to means tested benefits. Periodical payments in a compensation claim and income (including interest) earned on the award will also affect entitlement unless they are paid into a personal injury trust. If the income that accrues is kept within the trust, it is disregarded from the means test.

Until fairly recently there were restrictions on what the trust fund could be spent on. However, these restrictions have now been removed.

Local authority funding

The Regulations detailed above do not apply in the case of local authority funding for care.

The Care Act 2014, underpinned by the Care and Support (Charging and Assessment of Resources) Regulations 2014, creates a single framework for charging for care and support services. Under this legislation, the capital and income of a personal injury award held in a personal injury trust must be disregarded when carrying out the means test for care and support services, with the exception of any payment or any part payment that has been specifically identified by the court to deal with the cost of providing care.

Do I need a trust?

The benefits of a personal injury trust extend beyond retaining entitlement to means tested benefits.

Some claimants may find that a substantial personal injury award can put a great deal of strain on them and their family at a time when their priority is to re-establish their daily lives. Any additional paperwork relating to investments and tax can seem rather daunting. Appointing someone to look after the funds and hold those for your benefit can be a big advantage of a trust.

Trustees should take advice on investment matters on the claimant's behalf. They can also pay bills on the claimant's behalf and can act as protection from individuals who might not have the claimant's best interests at heart. This can be particularly important for young claimants who may have had little experience in managing their own money.

In some cases, it can be helpful to use professional trustees to help claimants maximise investment returns and minimise the risk that the compensation fund will run out during their lifetime. In other cases, family and friends may be suitable trustees.

Which type of trust?

There are a number of types of trust that may be created and the options available below depend on your individual circumstances.

Bare trust

A bare trust is a simple trust where the trustees hold the trust fund "absolutely" or "outright" for the beneficiary. The assets within the trust are the property of the beneficiary "but for the asking". The beneficiary can, therefore, request that the trustees transfer all of the trust assets to them.

All details of income and gains will be included in the beneficiary's personal tax returns as this type of trust does not have a tax life of its own. Currently, a simple bare trust is adequate to ensure entitlements still apply for benefit purposes.

Disabled trust

A disabled trust is statute based and was traditionally used when a parent wished to provide for their disabled child. However, this type of trust can also be created by a claimant for their own use.

There are tight restrictions on income and capital distributions from the trust and any distribution made by the trustees, broadly speaking, must be used for the disabled person. It only applies to injured persons who fall within the definition of disabled person for tax purposes. This includes that the disabled person is in receipt of certain qualifying benefits or is incapable by reason of brain disorder of managing their own property and affairs, (or would be if they were UK resident or were not resident in a hospital or care home).

Qualifying benefits include Attendance Allowance, the care component of Disability Living Allowance at the highest or middle rate, the mobility component of Disability Living Allowance at the higher rate, Personal Independence Payment, Constant Attendance Allowance or Armed Forces Independence Payment. If the personal injury claimant does not meet these criteria, a bare trust may be the more sensible option.

"The highly efficient and impressive pro bono service provided by Stewarts proved to be of immense practical use to both myself and my husband after my husband suffered a serious fall which resulted in spinal cord injury. I was very impressed with their professionalism throughout."

(F.M. a former client's wife)

Other types of trusts
Although other types of trusts can be created, these should only be considered if the value of the compensation award is less than the current nil rate band. The nil rate band refers to the value of an estate that is not subject to Inheritance Tax, which is currently £325,000. If the award exceeds this sum, there will be an immediate charge of 20% Inheritance Tax on the balance over the nil rate band.

Summary

There are various issues involved in the decision of whether or not to create a trust. These include whether or not it is in your interests to maintain an entitlement to means tested benefits and whether or not you are able to manage your own affairs. For substantial compensation claims, it is often advisable to place the funds in a trust irrespective of the benefits position. The recipient of the award can then take advantage of professional guidance and protection within a secure structure under the control of the trustees.

The advantages:
Protects your entitlement to means tested benefits;

- Those means tested benefits entitle you to associated benefits including free prescriptions and benefits that are provided by the local authority, such as housing benefits, council tax benefit and potentially the provision of funding towards the cost of long-term residential care;
- Gives some protection from trust funds being taken into account in assessments for local authority funding;
- Professional guidance and flexibility on how the funds are invested, managed and distributed;
- Provides protection from financial pressures by third parties;
- Tax neutral on creation; and
- Even if the injured person does not intend to claim means tested benefits, a personal injury trust may still be necessary to preserve their partner's eligibility to claim.

The disadvantages:
The personal injury claimant will not have total control over the trust assets themselves, however, in some circumstances they may be appointed as a co-trustee;

- There will be charges associated with the drafting, creating and reporting of the trust and, for trusts other than a bare trust, there will be annual administration fees in respect of the tax returns and general advice in relation to the trust assets and their distribution. It is likely that a proportion of these would be incurred by the personal injury claimant if they owned the assets outright, but a trust may increase annual costs; and
- It will be important at all times to ensure that the trust and the distributions are correctly administered so as not to infringe the Regulations.

In every case, however, it is important to consider creating the trust before the compensation is received and particularly prior to the expiry of the 52-week disregard for the purposes of means tested benefits.

"Not only are they extremely professional, they are caring and supportive, giving us the confidence to look to the future."

(C.C. a former client)

We would like to thank Wilsons Solicitors LLP for their specialist advice and assistance in preparing this guide.

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