

Personal Injury Trusts

In this article we explain the benefit of setting up a Personal Injury Trusts following the payment of compensation received as a result of a personal injury claim.

What is a Personal Injury Trust?

A Personal Injury Trust is a legally binding arrangement for holding and managing compensation that an individual has received as a result of an injury.

What are the benefits of a Personal Injury Trust?

The main benefit of a Personal Injury Trust is that any funds held in such a Trust will be disregarded when an individual is assessed for some means tested benefits and when being assessed for the purposes of local authority funded care fees.

For mean tested benefits, if you own assets worth between £6,000 and £16,000, any benefits you claim will be reduced. If you own assets over £16,000 you will not be entitled to means tested benefits.

With regard to local authority care, if your assets are above £23,250 then you will not be entitled to funding to assist with care cost.

The Personal Injury Trust effectively “ring fences” the compensation, ensuring it is excluded from the asset calculations

This therefore avoids a situation where a claimant recovers compensation only to have their benefits terminated, or their future potential entitlement affected, resulting in a claimant being financially worse off than before they received any such compensation.

An additional benefit for individuals who have received a significant compensation settlement is that they may wish to have assistance in managing the sums involved. Appointing a suitable co-trustee can provide that support in making difficult decisions with regard to the use of and investment of the funds.

Do I need to consider a Personal Injury Trust if I am not in receipt of benefits?

There are reasons to consider a Personal Injury Trust even if you are not in receipt of means tested benefits.

Any compensation received may impact the means testing of a household member and, as such, the points detailed in the previous section would still be of relevance.

Whilst you may not be in receipt of any means tested benefits now, your situation may change in the future as a result of a change in employment status or a need to receive local authority care.

What funds can go into a Personal Injury Trust?

The funds must relate to compensation from a personal injury claim, including but not limited to road traffic accidents, accidents at work, slips and trips, criminal injuries and medical negligence.

The trust must also be wholly or partially for the benefit of the injured person. This requirement means that compensation received by dependants of someone killed in a fatal accident cannot put the funds received in a Personal Injury Trust.

Are there any time limits for setting up a Personal Injury Trust?

Whilst it is never too late to put a trust in place, it is good practice to set up a trust as soon as the compensation monies are received.

There is a 52 week “grace period” from when a claimant receives compensation for those already in receipt of *some* but not all means-tested benefits whereby the money received can be disregarded. This is to allow the recipient to make arrangements for their financial affairs and set up a personal injury trust. This is not, however, a time limit for doing so.

This 52 week period does not allow an individual to frivolously spend their compensation. Following the 52 week period, the DWP can examine how an individual has spent their compensation and if such expenditure is not considered reasonable for someone receiving benefits, they will be treated as still having the money.

Whilst there is no time limit to set up a Personal Injury Trust, a delay in doing so can create difficulties. A Personal Injury Trust can only hold compensation and income received on said compensation. If the monies received have been mixed with other funds, it may be difficult to establish what (if any) of the remaining funds relate to the compensation.

Types of Personal Injury Trust

Each person's circumstances differ and the suitability of each type of trust available would need to be considered on a case-by-case basis.

Typically the types of trust available would fall in to the following categories:

- **Bare Trusts** – these are the simplest trusts and the type of Trust typically used in Personal Injury Trusts. Such a trust would have only one beneficiary who is absolutely entitled to the trust assets.
- **Life Interest Trusts** – here, one or more beneficiaries (referred to as the “life tenants”) will be entitled to any income received on the trust assets during their lifetimes. Upon the death of the life tenants, a different beneficiary or beneficiaries will be entitled to receive the capital from the trust assets.
- **Discretionary Trusts** – such trusts give the trustees (the people managing the Trust) discretion as to if and when any of the trust assets are to be distributed and to which beneficiary or beneficiaries.

Trustees

When preparing a Personal Injury Trust, one of the most important aspects to consider is who should be appointed as Trustees. These are the people who will manage and make decisions in relation to the trust funds. A minimum of two trustees should be appointed.

Trustees must be over the age of 18 and have mental capacity.

Whilst family members can be trustees, it may be appropriate to consider professional trustees who have experience in managing trusts.

The person who received the compensation (known as the Claimant) can be one of the trustees.

Seeking advice

Butcher & Barlow are able to provide assistance at every stage of your claim, from the claim itself through to advice on and preparing the necessary Trust Deed to set up a Personal Injury Trust.

Our [Personal Injury Team](#) will provide frank and honest advice on the prospects of your claim, and if you decide to proceed will guide you through what may appear to be a daunting process.

Our [Trusts Team](#) will then be able to advise and assist with the setting up of a suitable trust.

To get in touch, contact your local office and ask for the Personal Injury team.

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