Personal injury trusts (also known as compensation protection trusts)

Trusts can be created to protect compensation received in personal injury and clinical negligence settlements.

When a person receives damages for a personal injury, the compensation may reduce or even stop that person's entitlement to means tested benefits such as income support, family credit, housing benefit, council tax benefit and increasingly PIP and universal credit.

Generally the amount of money or "capital" a person can have before losing income support and other benefits is currently £16,000. You may have less than this, but with capital over £6,000 you would start to lose benefits on a sliding scale.

The benefits agency can ignore the award for up to a year after a payment is made, but thereafter there is the risk that the award will bring to an end the entitlement to means tested benefits.

Legally, it is legitimate to place the award in a trust to keep it separate from your other assets. Once the money is in the trust, it is disregarded when means tested assessments are made and thereafter for so long as the money remains separate from the injured person's own resources. The money can still be accessible and paid out for the benefit of the injured person.

There are various types of trust that can be used including bare trusts and discretionary trusts. The state of the injured person's health will influence the type of trust that is chosen. In some cases setting up the wrong sort of trust can have adverse tax consequences, so professional advice on the type of trust which is appropriate is important.

The person who puts their award into the trust is called the 'settlor', and they can, in many cases, also be one of the trustees that manages the trust. Once the trust is in existence, the funds belong to and are controlled by the trustees but are to be used for the settlor's benefit. It is important that the trustees understand their obligations, and are suitable in terms of expertise when they are appointed to the trust.

Bear in mind:

- Action to set up the trust must be taken within 52 weeks of when the first payment in the claim is made.
- If interim payments are made in the claim, the 52-week period starts to run from that date of the interim payment.
- Once the trust is established, further award money can be added.
- The trust can only hold award funds, the award cannot be mixed with other funds.

We have extensive experience in drafting these trusts and in managing them on an ongoing basis. Phillipa Bruce-Kerr is a recognised expert in the field, editing legal reference journals on the subject. Many members of the team have experience in advising on these trusts and in establishing them.

We also have expertise in providing advice during the course of the personal injury claim to make sure that choices are made at the right time to decide whether a personal injury trust or a deputyship is the right way to manage funds. If capacity is a problem, the court will need to approve the form of the trust.

Meet our team

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