

Personal Injury Trusts

Trusts Vital steps after a damages award

Personal Injury Trusts can play a vital part in protecting assets following an award of compensation.

Personal Injury Trusts

Personal Injury Trust is the title given to a trust which has received funds paid as compensation for personal injury. The special characteristic of such trusts is that capital held within them is disregarded for the purposes of certain means tested benefits.

Protect benefits entitlement

Receipt of a large compensation payment may affect entitlement to means tested benefits. This is relevant even where the injured party does not currently claim state benefits. Careful planning is necessary so as not to obstruct any future entitlement; long term care or other assistance may be required later in life.

As mentioned above, re-directing an award of compensation to this type of trust means that the value received will be disregarded for certain means testing purposes.

Asset protection

There are also other advantages in having the funds held in a trust:

- if a person has restricted ability to deal with financial affairs, appointing trustees can help them with that;
- there may be a desire to 'ring-fence' the assets so that they are protected from the impact of events such as a divorce;
- it may also be that some freedom from the burden of financial administration/ reporting requirements is desired.

The money placed into trust remains available for use by the injured party, as required.

In most cases, it will be prudent for the trustees to seek independent investment advice to ensure that the trust funds are appropriately invested. It may be necessary for the funds to produce an income to help support the injured party, or it may simply be that the funds should be invested for future use.

Get the type of trust correct

Several different types of trust can be utilised and we would work with

the injured party to ascertain which type of trust would best suit their needs. For example, certain types of trust would be more suitable for those under eighteen; others should be considered where the injured party has limited capacity to deal with their own affairs.

As well as advising on the most suitable type of trust, we also ensure that issues surrounding inheritance are explored. Such issues include the impact of inheritance tax and also the rules of succession in Scotland. The use of an unsuitable trust could lead to significant and unnecessary upfront tax charges as well as putting the trust into a disadvantageous tax regime going forward.

There is no "one size fits all" regime for personal injury trusts and we consider the factors relevant to each client's circumstances and wishes when advising on setting up a personal injury trust.

Protecting Succession to the Trust Funds

It is also important that the injured person has a Will and that it is up to date. This is, of course, something that we advocate for all our clients, but it becomes even more important where certain types of trusts are used for compensation payments.

Certain trusts revert to the personal estate of the injured person on death. This means it is necessary to ensure that the potentially valuable assets end up with the right beneficiaries. Scots law has strict rules governing the devolution of a person's estate where there is no Will. These rules are often a complete surprise to clients, most of whom quickly take steps to ensure they have a Will in place.

Efficient Management of Affairs – Power of Attorney

Similarly, appointing a Power of Attorney over the injured person's affairs is vital. In the event of the injured person being unable to manage their affairs for any reason, a Power of Attorney will ensure that the funds placed in trust can be used on their behalf. The attorney would be able to manage the person's legal, financial or property affairs and can also be granted authority in respect of personal welfare in the event that capacity is lost.

Without a Power of Attorney, an application must be made to the court for power to make decisions and conduct the affairs of another. Spouses and next of kin may not otherwise have authority to discuss matters with financial institutions, care homes etc. A Power of Attorney can therefore avoid the expense and difficulty of a complicated court action at a later date.

Our Personal Injury Trusts Team

Our Personal Injury Trusts team has built up significant experience in advising individuals, solicitors, financial and investment advisers and other professionals on the establishment of effective legal structures to receive personal injury awards. We bring together trusts and estates expertise, tax specialism and incapacity law experience to offer a genuinely rare blend of knowledge and insight to the issues in this area.

KEY CONTACTS

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