



PRIVATE CLIENT
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A GUIDE TO
PERSONAL INJURY TRUSTS



Introduction

Following a personal injury, you may receive substantial sums of money from a personal injury or clinical negligence claim, personal accident insurance, or from other sources.

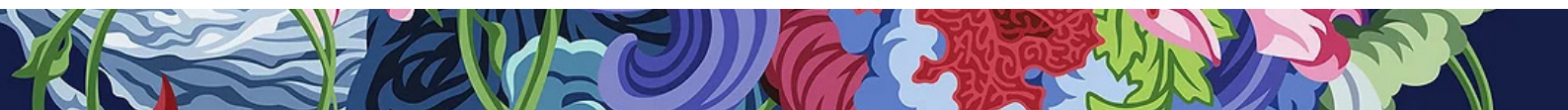
The money may be awarded for specific purposes, such as to compensate for lost future income, to cover the costs of rehabilitation and/or to cover home adaptations. The award is not designed to be spent as the person wishes.

As a result of the injury, you may be unable to work, your family members may have to give up their employment to provide care, yet you will continue to have your regular living costs to meet, including providing maintenance for your children or other dependant relatives.

All these financial requirements and commitments may mean that you need to access means tested state benefits and local authority funding for care services to provide continuing financial support to you and to your family. It is therefore important to consider whether a Personal Injury Trust would be beneficial to you, to ensure:

- that you are able to claim all state benefits and care funding that you are entitled to, both now and in the future; and
- that you have a suitable structure in place to manage your financial affairs.

This document provides an overview of the rules relating to Personal Injury Trusts in England and Wales. Laws differ in Scotland, Northern Ireland and the Channel Islands, so if you live there you will need to consult a specialist local solicitor. →



What is a Personal Injury Trust?

A personal injury trust is a legal arrangement for holding and managing funds received as a consequence of an injury. The trust must be managed according to specific rules. It is important that the right kind of trust is used, suitable for the individual's circumstances.

A personal injury trust will usually be managed by two trustees or a trust corporation. The trustees will thereafter make decisions together about the management of the funds, including any payments that are to be paid out of the trust.

The benefits of a Personal Injury Trust

Funds held in the personal injury trust are completely disregarded when assessing eligibility for means tested state benefits and services. Therefore, a person (and their partner if they claim benefits together) can continue to receive these benefits going forward, irrespective of the value received from the personal injury/clinical negligence claim. Whilst not an exhaustive list, means tested benefits may include universal credit, pension credit, housing benefit and council tax benefit. A personal injury trust will also protect entitlement to local authority funding for the costs of living in a residential care home and, depending on the local authority, care provided in a person's own home.

A personal injury trust can protect the interests of very young, old, disabled or otherwise vulnerable people. As mentioned above, the trustees must collectively authorise all transactions within the trust, providing additional protection against inappropriate use of funds.

By putting in place a personal injury trust, the injured person can benefit from the knowledge and experience of their appointed trustees. Appropriate trustees can provide valuable advice and support when making important financial decisions. This can ensure that funds are managed appropriately to protect the person's long term interests.

A personal injury trust helps to define and 'ring fence' the funds that have been awarded from a personal injury/clinical negligence claim, keeping them separate from other assets. This can assist greatly if a person's circumstances should change (for example due to depletion of savings, or due to unemployment) and as a result they would otherwise become entitled to means tested benefits and care services in the future.

It is important to note that if awarded funds are not held in a personal injury trust, such funds would first need to be depleted before entitlement to means

tested benefits may commence. Instead, holding the awarded funds in a Personal Injury Trust from the outset ensures that they are disregarded to allow the individual to benefit from means tested state and local authority benefits.

What funds can go in to a Personal Injury Trust?

The benefits rules allow funds to be held in a personal injury trust and therefore to be disregarded from means tested benefit financial assessment if they arise 'as a consequence of a personal injury'.

This means that personal injury trusts can be used to protect and hold:

- A personal injury award
- Compensation received from the Criminal Injuries Compensation Authority (CICA) for injuries caused by an assault
- Compensation from the Motor Insurers' Bureau for injuries caused by an uninsured motorist
- An Armed Forces Compensation Scheme award
- Payments from other government compensation schemes
- Charitable or public donations following an accident
- Payments from accident or travel insurance
- Payments from a professional negligence claim paid to compensate for a previously undervalued personal injury claim

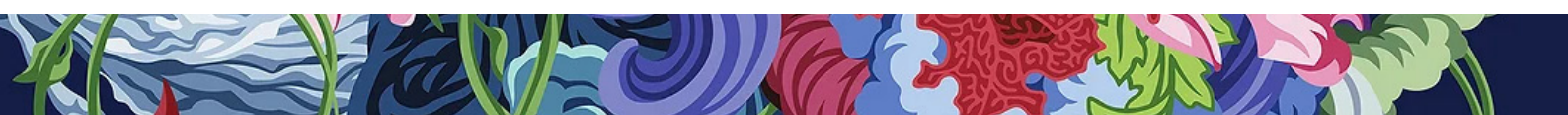
Setting up a Personal Injury Trust

In order to put in place a personal injury trust, consideration will need to be given to the following:

Trustees: It is necessary to appoint trustees. There should be at least two trustees (up to a maximum of four trustees). They must each be over 18 years of age and mentally capable of fulfilling their responsibilities. The trustees are appointed by a trust deed that all parties (including the injured party and the appointed trustees) must sign.

It is important to choose the right trustees, as they will have full control over the personal injury trust and the funds held within it. The trustees chosen must be able to work well together and act in the best interests of the person for whom the trust funds are held. It is often appropriate to appoint a professional trustee, such as a specialist solicitor, in

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situations where significant funds are held in the trust, or if no appropriate individuals are known who can be appointed as the trustees.

Trust Bank Account: Once the trust deed has been signed, a trust bank account should then be set up, which we can assist with, to hold the trust funds. All cheques and account transactions will be signed and authorised by the trustees.

Legal Advice and Type of Trust: It is important that legal advice is received from a specialist solicitor to ensure that the right type of trust is put in place. The simplest type of trust is called a 'bare trust' and this is often the most appropriate for a personal injury award. This type of trust ensures that the money still legally belongs to the injured person and provides power to that individual to make changes to the trust if required.

There are other types of trust (such as a Discretionary or Life Interest Trust) that may be appropriate, so it is important that the individual's specific circumstances are considered. For example, the type of trust may affect how the trust is taxed and also may affect the distribution of the individual's estate when they pass away.

Trust Deed: Once the necessary decisions are made, a trust deed, setting out all rules and obligations, will need to be prepared by a specialist solicitor. The trust deed will need to be signed, witnessed, and dated. The personal injury trust will usually have a name, such as the 'Josephine Anne Bloggs Trust'.

Costs: It is important to consider the costs involved in setting up a personal injury trust. These are usually paid out of the compensation settlement. Further, if a professional trustee, such as a specialist solicitor, is appointed to manage the fund they will usually charge an annual fee.

When to set up a personal injury trust

If possible, it is important that a personal injury trust is set up before a person receives their compensation. This will then ensure that funds can be transferred into the trust immediately providing no loss of benefits or care funding entitlement. As mentioned above, some people may not be entitled to means tested benefits and local authority services at the time they receive their funds, and so a personal injury trust may not seem immediately relevant. However, careful consideration should be given to the possibility that their situation may change in the future, for example:

- If they move out of the family home to live on their own
- If they move to live in a care home
- If they are discharged from hospital or a care home
- If they divorce or separate from their partner
- If they reach a significant age for benefits purposes; such as 16, 18 or the age when they qualify for retirement benefits
- If they, or their partner, lose their job or retire
- If they, or their partner, lose their entitlement to another benefit or source of income
- If they, or their partner, find their health deteriorates and they become entitled to higher rates of disability benefits, which in turn have a knock-on effect for some means tested benefits.

Whilst it is possible to set up a trust after funds have been received and held by a person for some time, this does not allow the person to retrospectively claim for any benefits that they have missed out on before the trust was set up. There is also a high risk that the compensation funds may get mixed up, or tainted, with other money, which can cause complications with the DWP and/or Local Authority. It is therefore advisable to set up a personal injury trust as soon as possible.

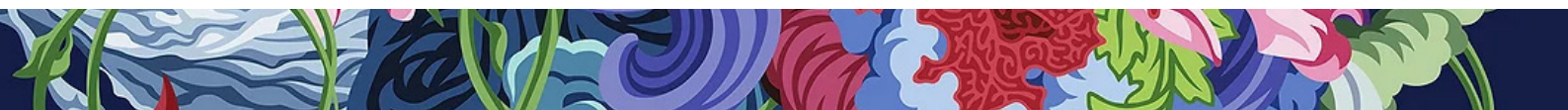
In most cases, the decision to set up a personal injury trust is one for the person to make for themselves, with advice from a specialist solicitor. However, if a person is unable to make their own decisions, it will be necessary to get approval to set up a trust for them.

The 52 week rule

The first payment received following a personal injury is disregarded from DWP and Local Authority financial assessment for the first 52 weeks. This could be the first interim payment from a personal injury claim, a payment from an accident insurance policy, or even a capital payment from a charity. This disregard does not apply to any later payments. As the rules on the 52 week disregard can be unclear, it is important to seek expert advice as soon as a payment is received.

In serious injury cases, it is usually sensible to set up a personal injury trust as soon as possible, regardless

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of the 52-week rule. Compensation payments for serious injury will usually last longer than 52 weeks, so there is little benefit in delaying. Any funds that are held outside of a personal injury trust after the expiry of 52 weeks can be taken into account in a financial assessment. In the majority of cases, this may result in the loss of an individual's entitlement to means tested benefits and care services.

Capital Thresholds

The lower threshold for claiming means tested benefits in England and Wales is £6,000. Therefore, any personal injury claim below this amount won't affect your benefit entitlement as a result, a personal injury trust won't be required. However, the DWP will assess you on 'household capital.' So if either you or your partner have savings over £6,000 or when your savings are added to your personal injury award and these exceed £6,000 – you may require a personal injury trust to continue claiming or to apply for means tested benefits.

How much can I put into a Personal Injury Trust?

You cannot put more than the total value of your Personal Injury compensation into a Personal Injury Trust. Depending upon your own circumstances, you may decide to place less than the value of your compensation into the Personal Injury Trust.

What happens if my circumstances change in the future?

If at any time you decide you no longer need the Personal Injury Trust, provided that your trust is a "bare" trust, you simply instruct your trustees in writing, to transfer the money over to you. The Personal Injury Trust will then cease, but you may lose your entitlement to any means tested State and Local Authority benefits.

Can I change my trustees?

If one of your trustees were to die, moved abroad or you simply fell out with them, you have the power to replace them with a new trustee of your choosing.

What happens if I die?

If you were to die, the value of your Personal Injury Trust would be distributed in accordance with the terms of your Will. If you die without making a Will, you may not control who would receive your award money. Your estate would simply be distributed in accordance with a set of legal rules, known as

the "Intestacy Rules". We recommend that you update / establish a Will as soon as practicable with a specialist solicitor.

Personal Injury Trusts for children

In cases involving a child, a High Court judge will need to approve the establishment of a personal injury trust to manage their funds until they reach 18 years of age. The Court will need to be satisfied that a trust is suitable and is likely to be beneficial to the child, as well as approving the trustees and the type of trust that is to be used. The assistance of a specialist solicitor will be required.

Personal Injury Trusts for people without mental capacity

A brain injury can impair an individual's decision-making abilities, including the ability to manage their own financial affairs. The criteria for capacity is set out in the Mental Capacity Act 2005 (MCA). If an individual lacks sufficient mental capacity to manage their own affairs, an application must be made to the Court of Protection (CoP) for an appropriate person to be appointed as their "Deputy".

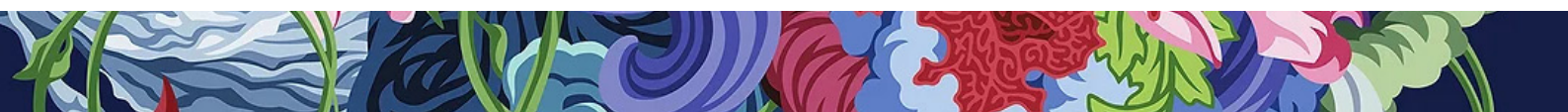
A CoP Judge will decide on the most appropriate person to be appointed as a Deputy and method for management of the person's financial affairs.

A Deputy will usually be appointed by the CoP in order to manage the individual's total property and financial affairs. This is usually preferred to the establishment of a personal injury trust, because a deputy is required to report, on an annual basis, to the Office of the Public Guardian (OPG) in England and Wales, the Office of the Public Guardian (Scotland) in Scotland and the Office of Care and Protection in Northern Ireland. This requirement provides assurance that the person lacking capacity will have their best interests looked after. Funds held by a Deputy will also be disregarded for the purpose of means tested benefits and local authority supported care, in the same way as funds held in a personal injury trust.

Summary

After a serious injury and a successful personal injury or clinical negligence claim, the injured party may be entitled to substantial sums of compensation. In addition, as a result of their injuries they may also receive money from insurance policies, charitable donations and other sources. Thought must therefore be given to how this money should be managed and applied wisely so as not to affect

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entitlement to an on-going, or future, means tested benefits and care services. Establishing a personal injury trust can often be the most effective way to do this.

How Private Client Solicitors (PCS) can help

Our solicitors are specialists in this field, and we are able to offer you a simple and straightforward service to help you to decide whether a Personal Injury Trust is in your best interests.

We are able to guide you through the process, inclusive of providing a suitable Trust Deed for you and your appointed trustees signature and help you to open a Trust Bank Account.

We can thereafter introduce you and your trustees to an appropriate financial advisor who can provide financial guidance to ensure longevity of your settlement.

Our charge to set up a Personal Injury Trust will be £600 plus VAT. However, if you would also like to put in place a simple Will (if you choose to leave your estate to your children / other beneficiaries), we can assist you with both documents for £1,000 plus VAT. For a Personal Injury Trust with Will that incorporates a trust structure to preserve your surviving spouse's entitlement to means tested benefits: £1,450 plus VAT.

The cost of putting in place a Personal Injury Trust is usually considered as a good investment as it ensures that your funds are well managed and protected in the future and are not considered for means tested financial assessment purposes now or in the future.

Please note, if a professional trustee is appointed to support the management of the trust, there will usually be an additional annual fee. An additional charge may also apply if you require a trust structure to be incorporated to your Will. We can advise you if any additional charges are likely to apply during our first meeting. The first meeting will be on a no-obligation and without charge basis.

Next steps

To proceed with the Personal Injury Trust, please complete our application form or request one by contacting enquiries@privateclientsolicitors.co.uk

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