What is a personal injury trust?

A ‘personal injury trust’ is a form of ‘trust’.

A ‘trust’ is a relationship that is recognised and enforceable in the courts. Where there is an award of compensation for a personal injury a trust arises for the injured person when that award is put under the control of other persons (the trustees).

What must the trustees do?

The trustees must look after the award (which becomes the ‘trust fund’) for the benefit of another person (the beneficiary).

How must the trustees act?

When the trustees are appointed they agree to act in the interests of the beneficiary and not themselves. This is why it is called a ‘trust’. They are entrusted to look after the trust fund for the beneficiary.

In the case of a personal injury trust, the beneficiary can benefit in the ways set out in a document (the trust deed). Some trusts are imposed by law and do not need a trust deed but personal injury trusts should have a trust deed to make sure all the terms are clear.

Who can be a trustee?

A minimum of two people need to be appointed to act as trustee. This can include a combination of the recipient of the compensation award, friends or family of the recipient or independent third parties. Ideally, the trustees will work well together and will be supportive of the person who is to benefit from the money.

Who should not be a trustee?

- Any person under 18. It may also be too much responsibility for younger people over 18.
- Undischarged bankrupts and those with voluntary arrangements with creditors.
- People with current money troubles or with a history of money troubles.
- People in prison or who have or may soon be convicted of offences involving dishonesty.
- People with a conflict of interest with the compensated person or others in the trust.
- People with serious health problems who may be unable to fulfil their duties at any time.
- People who live outside the UK or may do so.
- People who are in any way concerned they might be unable or unwilling to fulfil their duties as trustee.

What are the powers of the trustees?

The trustees have certain powers over the handling of the trust fund. These are set out in the trust deed. Trustees do not have any power to go beyond the terms of the trust deed unless they are included within the general law.

Most things a person would want to do with their own money can be done by the trustees for the benefit of the beneficiary. For example they can, upon taking appropriate advice, open and operate a bank account, invest money, buy and insure property and purchase help and assistance for the beneficiary.

Trustees may sometimes need to take advice from others. For example, an accountant in filling in tax returns, and from other professionals as required. This is at the expense of the trust fund so far as it is necessary to ensure the smooth running of the trust.

What are the duties of the trustees?

A trustee must:

- Disclose any circumstances where they might have a conflict of interest with a beneficiary. For example if a beneficiary owed a trustee money this should be disclosed.
- Not act in conflict with the interests of the beneficiaries or profit from their role as trustee.
- Ensure they know what the terms of the trust are and that they are carried out.
- Ensure that they do not act beyond the terms of the trust and its powers.
- Ensure that good trust records and accounts are kept and pay tax due on time.
- Take independent financial advice. This does not preclude the use of common sense. The trustees must also ensure that the advice taken is in accord with the Trustee Act 2000. The ultimate decision over what to invest in is the trustees' decision. It cannot be delegated.
- Take reasonable care.
- Act jointly. Trustees should not normally delegate functions to each other. Trustees are jointly liable for mistakes and should therefore act together.
- Ensure the beneficiary is kept fully informed. This avoids disputes.

Please note that only professional trustees can claim more than out of pocket expenses.

Means-tested Benefits and Local Authority Funded Care

1. If a person receives damages for a personal injury then that compensation may reduce or even stop entitlement to 'means-tested' benefits such as Employment Support Allowance, Family Credit, Housing Benefit and Council Tax Benefit.
2. The amount of money or 'capital' a person can have before affecting entitlement to Employment Support Allowance is currently £6,000. You will only get full state benefits if you have under £6,000. Some means-tested benefits allow you to have more savings but income support can help determine your eligibility to other benefits which means its thresholds are very important.
3. 'Capital' is made up of cash/investments and so on - subject to certain 'disregards' - such as for the value of the family home whilst you live there and the surrender value of life policies. Disregarded items are not treated as part of your capital.
4. The funds held within your trust are also ring fenced for the purpose of assessing your eligibility for local authority funded care.

It is your responsibility to ensure that you're entitled to any payments that you're receiving.

How can you avoid losing means-tested benefits when receiving an award for a personal injury?

1. The law says that where money, "derived from a payment made in consequence of any personal injury" is placed in a trust then "the value of the trust fund and the value of the right to receive any payment under that trust" shall be disregarded as capital in calculating a claimant's entitlement. This means that, by putting your compensation for your personal injury into a trust you should be able to retain your entitlement to state benefits.
2. It is important that you are aware that the disregard of compensation placed in trust is not a 'loophole'. The government recognises the special situation. It is happy for you to keep on claiming benefits but you must do it in the way the government has specified. That means putting the personal injury compensation into a trust.

How can a beneficiary of a Personal Injury trust benefit from the money in their trust?

1. You can receive the benefit of the money/investments in the trust. That is on top of your being able to keep means-tested benefits.
2. Broadly speaking, if the capital paid out to you from your trust means that the money you have in your own name is more than that allowed by the benefit rules then your means-tested benefits will be reduced or stopped altogether until your capital drops below the limit again. This means that only relatively small payments may be made directly to you from time to time out of capital. At present, it would usually be a benefits disadvantage for you to have over £6,000 in assessable capital in your own or joint names.
3. Although you may not receive large amounts into your own account there is nothing to stop the trustees from buying things for your use or paying for bills etc.
4. In short there is nothing in the normal way of things the trust could not pay for.