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A Guide to Trusts and Personal Injury Awards

What is a Trust?

A trust is a manner in which assets are held by individuals or entities for the benefit of others. The trust assets (in this case any interim, final lump sum or periodical payments arising as compensation for an injury) are transferred to and held by the Trustees for the benefit of the Beneficiaries named in the Deed. The recipient of the personal injury award is therefore able to benefit from the Trust without owning the assets in their name.

Trustees are obliged to look after the trust fund and act in the best interests of the Beneficiaries. The recipient of the personal injury award is however expected to be the main concern of the Trustees even if there are other potential Beneficiaries named in the Trust.

The choice as to who should be appointed to act as a Trustee is an important one as they will need to look after the compensation fund and make decisions about payments. They will also need to ensure that the Trust created does not infringe the Social Security Regulations.

Benefits Regime

Following an accident a claimant may become eligible for state benefits. A claimant's benefits will often incorporate both means and non-means tested benefits.

Non-means Tested Benefits

Non-means tested State benefits are paid to the claimant irrelevant of the claimant's own levels of capital and income.

Non-Means Tested Benefits include:

- Disability Living Allowance
- Incapacity Benefit/National Insurance element of Employment and Support Allowance
- Severe Disablement Allowance
- Invalid Care Allowance
- Attendance Allowance (over 65)

Means Tested Benefits

Entitlement to State means tested benefits is reduced by the amount of capital the claimant has above a certain threshold. There is no entitlement if a claimant has assets over £16,000 (current level). The benefits are payable, but at a reduced rate if a claimant has assets between £6,000 and £16,000, and are fully preserved if a claimant has assets below £6,000.

Means tested benefits include:

- Income Support
- Means tested element of Employment & Support Allowance
- Housing Benefit
- Council Tax Benefit

The Regulations exclude personal items such as clothing, cars, furniture, the family home and life insurance policies. All other assets are included.

Therefore a claimant would lose their entitlement to means tested benefits where money received from a Personal Injury claim which exceeds these levels is held in the claimant's own name.

Can a Trust Prevent Loss of Means Tested Benefits?

Any capital held within a Personal Injury Trust which is derived from a Personal Injury award is disregarded for the purpose of the Means Tested Benefits Regulations.

In addition to this, where a Personal Injury Trust is created, the usual rules that would treat capital as 'available' to the claimant do not apply. Even though the Trust Fund capital may be held within a type of trust that makes it available to the claimant on demand, it should not be considered as available capital for the purposes of the means test.

If a claimant is not currently in receipt of means tested benefits, the claimant should consider creating a trust as he may wish to apply for these benefits in the future.

Means Tested Benefits and Income

The claimant's level of income also affects their entitlement to means tested benefits, income includes the interest or distributions earned from the capital sum.

Unless it is disregarded under the Regulations income can reduce the entitlement to means tested benefits. Income from a Personal Injury Trust is NOT disregarded under the Regulations and can affect the claimant's entitlement to means tested benefits if it is paid directly to them.

Income is only assessed for benefits purposes if it is actually paid over to the claimant. The reason being that until the claimant actually receives spendable income; it is of no use to them. Any income accruing therefore can be applied for their benefit but not applied directly to them.

If the income that accrues is kept within the Trust it is disregarded provided it is applied in the correct manner under the Regulations.

Until fairly recently there were restrictions on what the Trust Fund could be spent on, however, as the restriction has now been removed the Trust Fund can be spent on anything.

Local Authority Funding

The specific statutory disregards detailed above do not apply in the case of local authority funding where care is provided in the claimant's own home, however, they do have a discretion as to whether to assess the claimant's capital and income.

Do I need a Trust?

The intention for creating a trust is to provide the correct level of protection for the claimant. The benefits of a personal injury trust extend beyond retaining entitlement to means tested benefits.

Claimants may find that a substantial Personal Injury award can put a great deal of strain on them and their family at a time when their priority is to re-establish their daily lives. Any additional paperwork relating to investments and tax can seem rather daunting and appointing someone else to look after the funds and hold them for the claimant's benefit can be the main advantage of a Trust.

Trustees should take advice on investment matters on the claimant's behalf, they can also pay bills on the claimant's behalf and can also act as protection from individuals who might not have the claimant's best interests at heart. This can be particularly important for the young who may have had very little experience in managing their own money.

Which Type of Trust?

There are a number of types of trust that may be created and the options available below depend on the individual circumstances of the claimant.

1. **Bare Trust**

   A Bare Trust is a simple trust where the Trustees hold the Trust Fund 'absolutely' or 'outright' for the Beneficiary. The assets with the trust are the property of the Beneficiary "but for the asking". The Beneficiary can, therefore, request that the Trustees transfer all of the Trust assets to them.

   All details of income and gains will be included in the claimant's personal tax returns as this type of trust does not have a tax life of its own.

   Currently a simple Bare Trust appears quite adequate to ensure entitlements still apply for benefit purposes. However, the benefits regulations as mentioned at the beginning of this note might change in the future which could expose the Trust Fund as capital means for means assessment purposes thereby jeopardising the claimant's means tested benefit entitlement. The rules are currently very generous but may not remain so in the future.

2. **Disabled Trust**

   The Disabled Trust is statute based and was traditionally used when a parent wished to provide for their disabled child. However, this type of trust is being increasingly used where the claimant creates one principally for their own use.

   There are restrictions on income and capital distributions, insofar as at least half of any distribution made by the Trustees must be used for the disabled person and in order to qualify for the advantageous tax regime, the disabled person must be in receipt of the care component of disability living allowance at the highest or middle rate or be incapable by reason of brain disorder of managing their own property and affairs. Therefore if the claimant is not in receipt of disability living allowance then the Bare Trust would be the sensible option.

3. Other Types of Trust

Although there are other types of trusts that can be created these should only be considered if the value of the compensation award is less than the current Nil Rate Band. If the award exceeds this sum there will be an immediate charge to inheritance tax of 20% on the balance over £325,000.

Summary

There are various issues involved in the decision of whether or not to create a Trust. These include whether or not it is in the claimant's interest to maintain entitlement to means tested benefits and whether or not they are able to manage their own affairs. As most compensation claims are fairly substantial, it is often advisable to place the funds in a Trust. The claimant can then take advantage of professional guidance and protection from third parties as the funds are not those of the claimant but are kept within a secure structure under the control of the Trustees.

The advantages are as follows:

- Preservation of entitlement to means tested benefits
- Professional guidance on how the funds are managed and distributed
- Protection from third parties against financial pressures
- Flexibility in the way funds can be managed and distributed
- Preservation of the associated knock on benefits including free prescriptions and benefits that are provided by the local authority such as housing benefits, council tax benefit and potentially the provision of funding towards the cost of the long term residential care.
- Tax neutral on creation.
- The Trust is taxed as though the claimant still owns the money outright.
- On death, the trust assets may take advantage of the tax free uplift for capital gains tax purposes but will be taxed as part of the claimant's estate as if they continue to own them outright.

The disadvantages are as follows:

- There will be charges associated with the drafting, creating and reporting of the Trust and in addition there will be annual administration fees in respect of the tax returns and general advice in relation to the Trust assets and their distribution. It is likely that a proportion of these would be incurred by the claimant if they owned the assets outright but a Trust may increase annual costs.
- It will be important at all times to ensure that the Trust and the distributions are correctly administered so as not to infringe the social security regulations.
- The claimant will not have total control over Trust assets themselves however in some circumstances they may be appointed as a co-Trustee.

In every case however, it is important to consider creating the Trust before compensation is received.

About Stewarts Law	About New Quadrant Partners LLP
Stewarts Law is the leading personal injury law firm in the United Kingdom with expertise in claims for compensation following spinal injury, brain injury and other serious injuries. Stewarts Law is ranked number one by the two key independent guides to the legal profession, the Legal 500 and Chambers and Partners.	New Quadrant Partners LLP is a boutique private client legal practice and advisory service specialising in trusts, tax and estate planning and has expertise in creating Personal Injury Trusts.
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This document was prepared in conjunction with New Quadrant Partners.