

# Personal Injury Trusts | frequently asked questions



## What is a Personal Injury Trust?

Personal Injury Trusts are funds set up with the compensation paid as a result of a personal injury. Different types of trusts exist and different names will be used, but the common source of the fund is some form of injury compensation. For example:

- Lump sum awards of damages or out of court settlements
- Periodical Payments under s100 & 101 of the Courts Act 2004
- Criminal Injury Compensation Scheme payments
- Motor Insurance Bureau payments
- Lump sum payments following collections or public donations made to people injured in an accident or disaster
- Lump sum payments from accident insurance

## Why use a Personal Injury Trust?

A Personal Injury Trust is a legal 'container' that allows any compensation resulting from a claim to be kept completely separate from any other assets. This means that any compensation will be disregarded when it comes to assessing means-tested benefits or local authority funded care, whether immediately or in the future.

A Personal Injury Trust requires at least two trustees so the person in receipt of a compensation payment can choose individuals they trust to support them in managing their financial affairs, whether family members or professionals, particularly if the beneficiary isn't experienced in managing significant sums of money. This could help to avoid the need for an application to the Court of Protection, or the need to establish a Lasting Power of Attorney.

A Personal Injury Trust also offers protection against financial abuse such as the undue influence of family or friends, 'ring fences' resources in the event of separation or divorce in the future, and essentially helps to safeguard a person's financial future.

## What are the rules?

There are different types of trust and the terms and conditions of each vary, so professional advice is a necessity to make sure that the form and terms of the Personal Injury Trust are tailored to best suit the circumstances of the individual and their family. The terms should protect the fund for the benefit of the individual, but not remove it from their control entirely. Here are a few key points to remember:

- The Personal Injury Trust must have its own bank or building society account
- It requires at least two trustees who will work together well and must act in the best interests of the person for whom the funds are held
- The compensated person can not have direct access to the cash in the fund; any withdrawals require the agreement of the other trustees who must sign any cheque or withdrawal form

## **When should a Personal Injury Trust be set up?**

A person due to receive compensation relating to a personal injury should consider setting up a Personal Injury Trust as soon as possible and certainly within 52 weeks of the first payment, which is the automatic disregard time allowed by most government agencies. Effectively this equates to a period of grace for people already claiming means-tested benefits to sort out their financial affairs and set up a Personal Injury Trust.

If the person is not in receipt of means-tested benefits or local authority funded care at the time of the award, there is no need to set up a Personal Injury Trust, however it would still be worth considering one given their circumstances could change in the future.

## **Can a Personal Injury Trust be set up for someone without capacity?**

If a person is unable to make their own decisions, it will be necessary to set up a Personal Injury Trust for them. Unless there is a suitable Lasting Power of Attorney in place, the Court of Protection will need to be asked to appoint a deputy to manage the person's property and financial affairs.

## **Are there costs involved in setting up at Personal Injury Trust?**

Yes; the costs will vary according to scale of any compensation award, the complexity of the trust required and the charges made by the professional adviser setting up the trust. In some cases the costs of setting up and administering a Personal Injury Trust could be included within a personal injury claim.

## **Are there any ongoing costs?**

This depends on the complexity of the trust and whether ongoing professional advice is required.

If the trustees are family members or friends who are able to deal with the administration of the trust themselves, there may be no other costs; if professional advisers are involved with ongoing administration including cash administration, preparation of trust accounts and records, tax compliance and fund management, they are entitled to charge reasonable fees. Only professional advisers are entitled to claim for more than out-of-pocket expenses.

## **Who can advise on setting up a Personal Injury Trust?**

Solicitors with the appropriate expertise can advise on and set up a Personal Injury Trust, as can some independent financial advisers with the right experience. It is very important to approach people with expertise of managing compensation awards for brain and catastrophic injuries as they have a greater appreciation of the challenges to be met and how best to structure the trust.