Information

Personal injury trusts

Introduction

Receipt of personal injury damages by a Claimant, unless placed in trust, will affect assessable capital and income as regards means-tested benefits. This is subject to what is said below regarding the 52 week 'disregard'.

The capital threshold for most means-tested benefits is £6,000, with an upper limit of £16,000. This figure includes not only the Claimant's capital but that of a marriage or civil partner or someone with whom they live as such. Between £6,000 and £16,000, the Claimant partially loses benefits, on a sliding scale. It is important to check that there is no other capital which, when added to the personal injury damages, would take the Claimant above the £6,000 or £16,000 level.

A trust set up with money received from a personal injury or clinical negligence claim is called a Personal Injury or PI Trust. The main feature of a PI Trust is that the capital and accumulated income in the trust fund is 'disregarded' for the purposes of means-tested benefits. It is important that no other money is added to the trust from any other source, so that the trust fund consists purely of personal injury damages.

A PI Trust cannot be used in respect of a Fatal Accidents Act Dependency Award.

There is a duty to advise the DWP or local authority of any relevant change of circumstances promptly. There is, therefore, a duty to advise them of the receipt of personal injury damages, even if they are to be placed in trust.

Type of trust

A trust is an arrangement by which a number of people, called trustees, hold and invest money on behalf of someone else, called the beneficiary. The trustees are required to act in the interests of the beneficiary and not themselves.

Although there are several different types of trust, the simplest is a 'Bare Trust'. This is often the ideal form of trust for holding personal injury damages. Typically, there might be three trustees, namely the Claimant, a solicitor and a member of the Claimant's family. These trustees will hold and invest the personal injury damages on behalf of the Claimant.

The document setting up the trust is called a trust deed, and the powers of the trustees are set out in this. In general terms, most of the things a person would want to do with their own money can be done by the trustees for the benefit of the Claimant e.g. open a bank account, invest money or buy a property.

The trustees should seek professional advice regarding investment. Advice might well be sought from two or three independent financial advisors, depending on the size of the trust fund.

If a PI Trust is set up, the money in the trust can be used to pay for possessions e.g. a TV or even, depending on the amount available, a home.

Money from the trust can also be paid over to the Claimant to hold in a bank account (subject to their capital not exceeding £6,000). Income from the trust will supplement the Claimant's other income.

Head Office
3 Lonsdale Gardens
Tunbridge Wells
Kent TN1 1NX
T 01892 510000
F 01892 540170

Thames Gateway
Corinthian House
Galleon Boulevard
Crossways Business Park
Dartford
Kent DA2 6QE
T 01322 623700
F 01322 623701

The key point about a Bare Trust is that the money still belongs only to the Claimant. The Claimant can, if they wish, bring the trust to an end at any time. The Bare Trust has no tax advantages or disadvantages (e.g. as regards Capital Gains Tax or Inheritance Tax). For Income Tax purposes the trust income will be that of the Claimant and should be included in their personal Tax Return.

The 52 week disregard

In the absence of a trust it should be borne in mind that there is still a 52 week 'disregard' period for benefits purposes. However, this is more complicated than might be thought. For example, it does not apply to the means-testing of local authority care. Also, the 52 weeks run from the first receipt of payment in respect of the personal injury. So the 52 weeks could be triggered by an interim payment, or arguably by receipt of insurance money such as under a critical illness policy.

The 52 week disregard period may help if the Claimant has a small award and plans to spend it quickly. However, even then one needs to consider carefully what the money is going to be spent on. Reducing a mortgage or replacing a car (within reason) would be acceptable. However, the disregard could cease to apply, for example, if the money was given away to family members or if it was spent on an asset which itself would not be a disregarded asset for means-testing purposes.

When a trust may be inappropriate

Circumstances in which a PI Trust may not be appropriate are:

1. where the damages (when added to any capital the Claimant already has) will not exceed £6,000;

2. where the personal injury damages will be spent within 52 weeks on things which will not adversely affect the Claimant's entitlement to benefits (subject of course to the Claimant not having received any previous payments in respect of their personal injury);

3. where the Claimant intends to come off means-tested benefits and is therefore not concerned about losing them;

4. where the amount of benefits received is small and likely to remain so in the foreseeable future, and would be less than the cost of setting up and running the trust.

However, there could be practical difficulties if a Claimant in receipt of means-tested benefits decides not to have a trust, spends the personal injury award within the space of a few years and then seeks to come back on to benefits again. There could be administrative problems, and also the DWP or local authority may look very carefully at how the money has been spent. Depending on the rate at which it has been spent and what it has been spent on, they may argue that there has been a deliberate deprivation of capital so that the Claimant should not be entitled to further benefits.

Other reasons for a trust

Even if the retention of means-tested benefits is not a relevant factor, there may be other reasons for a PI Trust, particularly if the Claimant is going to be receiving very substantial damages. The Claimant may have no experience of handling a large sum

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of money, and a trust can provide protection from grasping relatives or friends, or simply ill advised decisions.

Some Claimants, for example those who are young or who have suffered a brain injury, can be particularly vulnerable. For a Claimant with a fluctuating mental/psychological condition, there may be occasions when they are less able to deal with things and a trust is likely to be helpful at such times. It may also be the case that the Claimant does not want the trouble of having to deal with investment and financial decisions entirely on their own.

Conclusion

In addition to the cost of setting up a trust, there are also annual running expenses. The amount of these will depend on what is in the trust fund and how much administrative work is involved. Our trust and tax team will be able to provide an estimate if consideration is being given to setting up a PI Trust. These charges can, however, be well worth incurring if they enable the Claimant to retain a much larger income by way of ongoing benefits or if they mean that the trust can safeguard and assist the Claimant for the reasons set out above.

Disclaimer

This information sheet is written as a general guide. As any course of action must depend on your individual circumstances, you are strongly recommended to obtain specific professional advice before you proceed. We do not accept any responsibility for action which may be taken as a result of having read this information sheet.

If you require further information, please contact Rachel Braithwaite, Sue Currie or Stuart Goodbody on 01892 510000 or by email at:

rachel.braithwaite@ts-p.co.uk

sue.currie@ts-p.co.uk

stuart.goodbody@ts-p.co.uk