

## Wills, Trusts and Probate Briefings

# Personal Injury Trusts

### How Trusts help

- Following an award of damages, you may find it beneficial to put this money into a Trust, particularly if you are, or will be, receiving means tested benefits, which include Income Support, Housing Benefit and Council Tax Benefit.
- If your capital, after receiving compensation, is between £6,000 and £16,000 your payment of benefits will be reduced and if it exceeds £16,000, you will no longer be eligible for means tested benefits.
- You can protect your compensation and your benefits by creating a Trust. By putting the damages into a Trust, the monies are held by Trustees (of whom there should be at least two), and will be effectively held in the Trustees' own names. Therefore, the damages will not form part of your assets and will not be taken into account when assessing your entitlement to benefits.
- You should be aware that damages can be held for up to fifty-two weeks before being taken into account in an assessment of your means for the purposes of benefits. The fifty-two week disregard runs from the date of the first interim payment - not every interim payment. If it is likely that your capital will fall below £6,000 during this period, it is probably not worth considering a Personal Injury Trust.
- Therefore, you should consider the possibility of creating a Trust as soon as your first payment is received.

### Using trust monies

- Basic living requirements, such as food, clothing and so on, should not be met by the Trust and, instead, should be covered by your benefits. However, Trust monies can be used to fund non-essential and luxury items. The Trustees may make payments directly to you, but they must be careful as regular payments could be seen as income and could affect your benefits entitlement. As long as irregular payments are made, which do not take your capital above £6,000, your benefits will not be affected.

### Future benefits

- Even if you are not currently receiving benefits, it may still be beneficial to set up a Trust, if there is a possibility you may receive benefits in the future. Once you have received compensation it may not be possible to put the remainder of it into a Trust at a later date, as you may be seen as deliberately giving away your capital, which in turn could affect your benefits entitlement.

### Forms of Trust

- The Trust may take several forms, with the two most common types below: -
  - Bare Trust - the simplest form of Trust whereby you are the only Beneficiary and the Trustees hold money on your behalf.
  - Discretionary Trust - this form of Trust would name you and others you have chosen as the Beneficiaries and the Trustees would have discretion how the Trust fund is spent. It is a flexible type of Trust and can provide for you and your family as needs dictate.
  - It is important that the correct Trust is in place for you before your compensation is received in order to prevent problems arising with your eligibility to receive means tested benefits.

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