

## PERSONAL INJURY TRUSTS 1

### WHAT ARE THEY AND DO I NEED TO CONSIDER ONE?

Once a good settlement looks likely in a claim for personal injury it is vital that the client has information upon the possible advantages of setting up a personal injury trust, rather than receiving the lump sum direct.

Damages received in respect of a personal injury range from damages received as a result of accidental and criminal injuries, and clinical or other negligence causing physical or mental harm to a person. It also covers compensation granted for any disease or injury caused as a result of disease.

Although the retention of entitlement to means tested benefits is not the only good reason to set up a PI trust it is one of the main reasons most people do.

If the lump sum option is taken and damages received direct it will mean that any means tested benefits will cease until the claimant's capital and income fall again below the required limits.

If the claimant decides to take the lump sum and 'dispose' of it to retain their entitlement the Income Support rules state:

'A claimant shall be treated as possessing income of which he has deprived himself of for the purposes of securing entitlement to Income Support – except in the case of a trust derived from a payment made in consequence of a personal injury'.

Therefore the money has gone and there would be no entitlement to Income Support either!

### WHAT TYPES OF TRUST ARE AVAILABLE?

There are many different names given to trusts set up in this area. If the source of the funds is an award for compensation for a personal injury, the trust will be a personal injury trust (PI trust). The

trust itself can be given a different title but still remains a personal injury trust as a result of the source of funding. This is important from the point of view of entitlement to benefits, as we will see later.

The one exception to this rule is a 'trust for the disabled'. This has slightly different rules mainly in relation to the tax treatment of capital and income and discussion is beyond the scope of this fact sheet. These trusts are usually set up for the use of disabled people by a donor and not by the person themselves as a result of damages received.

The PI trust itself can be set up in a number of different ways depending on the circumstances of the claimant and their intentions short and long term. The trustees will have control over the funds, the client can be one of the trustees if wished. The client can be the only or one of the beneficiaries, depending on the circumstances. These details are covered in a separate factsheet.

### BENEFITS OF SETTING UP A PERSONAL INJURY TRUST

One of the reasons a client may choose to set up a PI trust is the fact that under the Income Support rules:

'Where the funds of a Trust are derived from a payment in consequence of any personal injury to the claimant, the value of the trust fund and the value of the right to receive any payments under the Trust may be disregarded'.

*Therefore if the client is, at present, in receipt of Income Support and any other assistance that stems from it e.g. Housing benefit, exemption from or reduction in council tax, help with prescription charges, it may be possible for these benefits to continue and the money placed in a trust.*

The amount held in trust does not matter for the purposes of the Income Support rules: the whole

of its capital value is disregarded provided it is received as a result of personal injury.

It is important that none of the trust funds are used to pay for items for which the benefit is being received. These are classed as:

'Food, ordinary clothing and footwear, household fuel, council tax or water charges or housing costs covered by benefits'

It may therefore be possible for the funds to be used to purchase a TV or holiday or car without the Income Support rules being broken.

Any income paid by the trust to a beneficiary who is also claiming Income Support (the Claimant) is only assessed by the DSS (now DWP) as such when it is received into their account. It is important that any items are purchased direct by the trust rather than the funds going through the claimant's account. The claimant must ensure that (s)he does not have more than the allowed amounts for both capital and income in her/his own account(s).

*Equally, if the client is in residential or nursing accommodation long term and the funding of their place is assisted by the Local Authority, similar rules apply with regard to the disregard of capital and income in a PI trust.*

It can be seen that even if the client is in good health and not in receipt of means tested benefits at the time of the settlement, a PI trust could be set up, so that, if they needed accommodation or assistance in future, only the savings they held in their own name at that time (and not the money in the trust) would be assessable. This may be relevant for older claimants.

If you think that a PI trust may be an option for you another factsheet has been produced giving more detail about the costs and set up and content of such a trust.

Please ask for it.

Lees Solicitors LLP provide this fact sheet free of charge

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