

Guide to Personal Injury Trusts



If you have suffered any kind of personal injury, it could be some considerable time before you are able to return to work or resume a 'normal' life.

If you are able to return to work, the severity of your injury may force you to consider a different role – possibly reduced earnings – and in the longer term you may have to think about residential or nursing care. If you are retired or under 18, special circumstances may apply, but the underlying principles and protections remain.

If your injury resulted in compensation, it's possible to use a Personal Injury Trust to protect that award whilst still allowing you access to full State support.

What are the benefits of a Personal Injury ('PI') Trust?

- Your compensation is generally ignored for the calculation of means-tested benefits
- Most local authorities will disregard compensation held in trust when it comes to calculating your contribution for care and support in your own home
- If non-NHS funded residential or nursing care is required now or later, compensation monies held in a PI Trust are exempt under the Department of Health guidelines
- It allows you to pick individuals you trust to help and support you in managing your finances and can help avoid the need for an application to the Court of Protection for assistance, or the need for a Lasting Power of Attorney.

When should I consider one?

If you are due to receive compensation related to an injury, consider it as soon as possible and ideally within 12 months of the first payment as this is the automatic disregard time allowed by most government institutions (although it may be possible to create a trust later).

The trust must only contain personal injury compensation and if one is created much later it can be difficult to identify the monies stemming from the compensation after it has been mixed with ordinary funds.

What is a trust?

A trust is a legal 'container'. Assets placed in a trust are held separately from any other assets you own, and often have various protections built in. It is similar in many ways to company or pension arrangements, which holds assets subject to particular rules on behalf of someone else. You will need to pick trustees to manage the trust.

Who should be a trustee?

You can choose almost anyone to be a trustee, including yourself. It is important to pick people you trust as they will manage the assets either with you or on your behalf. It is normal to have more than one trustee, but not generally more than four in order to protect the trust fund.

Can I get to my compensation when I need it?

Yes, depending on the terms and rules of the Trust specified when you create it. This is where specialist advice comes into its own: the terms should ensure that the compensation is protected, but not locked away and out of your control.

You still need to be aware of certain financial limits in respect of any benefits you are claiming or the cost of care when drawing cash from the Trust, so it is useful to set up a Trust with the power to buy things for you.

How it works - Residential Nursing Care

Paula was awarded compensation of £50,000 following an injury at work. Paula and her husband are now both retired. They own their own home, valued at £375,000, and have other assets of £30,000. They receive both private and state pensions, but no means-tested benefits.

Although her health will not improve, Paula's injury doesn't currently affect her independence and the couple are enjoying an active retirement. However they are concerned that Paula may eventually need long term residential or nursing care.

By creating a Personal Injury Trust now to protect the compensation, Paula and her family will retain control of the money to use as they wish, and reduce the impact of care costs if they become necessary in the future.

Are all PI Trusts the same?

No; there are many types of Trust and each one can have different terms, tax treatments and rules that dictate how much administration is required.

It sounds complex and expensive – is it worth it?

It can seem daunting, but with expert advice you can choose and tailor a Trust to suit your individual needs and wishes now and in the future.

The initial investment in setting up an appropriate Trust is certainly worth considering: if you have to claim means-tested benefits over a long period, it could preserve those benefits for many years, or it could protect your assets from being eroded by the costs of care either now or in the future.

What will the charges be?

Simple trusts for smaller awards are relatively easy to put in place and usually need little or no on-going advice. They often cost less than £1,000 to set up.

The cost will be higher if it is a larger and more complex matter. However, even if you choose a professional trustee or seek on-going advice, the income from the Trust should normally be more than enough to cover all on-going costs without touching your capital.

Do I have to make a trust?

You're under no obligation to set up a Trust, although sometimes the Court or other body, such as the Criminal Injuries Compensation Authority, will request one is made.

We recommend that anyone receiving a compensation award should consider whether a Trust will be cost effective and suitable.

How it works

Bryan, 29, suffered a serious spinal injury 18 months ago when he was knocked down by a car and hasn't worked since. His rehabilitation is likely to involve more surgery, and he's unlikely to be fit to return to work from some time. He now receives housing and council tax benefits in addition to other means-tested income benefits.

The insurers have admitted liability, and Bryan has received an initial payment of £20,000 pending full settlement. This award will be disregarded in the short term due to the 12 month automatic disregard, but unless it's 'protected', he risks losing his means-tested benefits after that.

By setting up a Personal Injury Trust now, when the disregard period ends he will still be able to receive benefits and use the compensation however he chooses to improve his quality of life, such as additional therapy, adapting his home, or taking a welcome holiday.

Whether a one-off or interim payment, the advice would be the same; additional personal injury compensation can be added to the PI trust, and will benefit from the same protection.

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