Personal Injury Trusts

LINDER MYERS
SOLICITORS

LOCAL • NATIONAL • INTERNATIONAL

If a person receives an award for compensation following an injury it is important to consider ring fencing the award for a variety of reasons. Compensation is not a windfall, but is awarded as recognition of what has happened. However, a lump sum will be taken into account for any means tested benefits or an assessment for local authority funded care. Ring fencing the compensation can be achieved by creating a Personal Injury Trust

Reasons for setting up a Trust

A Trust is a way of managing the compensation, whilst ensuring the award is not treated as the person's money for the purposes of means testing. Without a Personal Injury Trust:

- Compensation may mean that the means tested financial threshold used for assessing certain benefits is exceeded, which could lead to the benefits being reduced or stopped until the threshold is no longer exceeded. This will effectively mean using the funds in place of benefits.
- If at anytime in the future care is required, the local authority will carry out a means assessment. Any compensation received will be taken into account and used to fund the care.

How to set up a Personal Injury Trust

A Trust Deed is drafted which appoints at least two people to act as Trustees. Trustees need to have mental capacity and be aged over 18, and provided these two criteria are met, the person who is in receipt of the compensation can be a Trustee. Once the Trust Deed is signed by all the Trustees, then the Trustees need to open a bank or building society account. The compensation is then transferred into the Trust account.

It is important to be aware that the **only** money that can be placed into the trust account is the compensation money.

How to access the money

The Trustees must act in the best interests of the person who received the compensation and the money must be used for their benefit. It can be used for any purpose provided all the Trustees sign the cheque or cash withdrawl form. It is important not to make regular payments which could be looked upon as a regular income. It is best to use the money for the purchase of specific items.

Tax Considerations

Most Personal Injury Trusts are called "Bare Trusts". This means that for tax purposes the money and any income or capital gain will be treated as personal and should be included in the person's tax return. It is not therefore necessary in the majority of cases for the Trustees to file a separate tax return.

Notifications

If the person is in receipt of benefits they will need to inform the Benefits Agency of the existence of the Trust.

Time Limits
There are strict time limits imposed by the Benefits Agency, after which an award will be taken into account for means tested assessments. It is therefore important to set up a Trust as soon as possible.

What happens to the money on death
On death, the trust will come to an end and whatever money remains will form part of the person's Estate. If the person has left a Will, then the money will pass in accordance with the terms of the Will. If there is no Will then the rules of Intestacy will apply. It is possible to state in the Trust Deed where the money should go, although it is important that this does not conflict with any wishes in the Will.

Requirements
- A formal Trust needs to be set up and for this, you will need a solicitor
- There must be at least two Trustees
- The Trust must have a separate bank or building society account
- Withdrawls require all Trustees to sign which means it is necessary to have a cheque book

Advantages
- Compensation is disregarded for the purposes of assessing means tested benefits.
- Compensation is disregarded for the purposes of assessing local authority funded care.

Why Use Linder Myers
We have a large team of dedicated lawyers specialising in the preparation of Trusts

We are committed to delivering the very best possible service at a competitive price. We work closely with clients to take the strain out of the legal process. Distance is not an issue as we offer a range of ways that you can appoint us including a postal service, email service, telephone service, Skype and face to face meetings.

Contact Linder Myers – place your trust in a specialist lawyer.

0161 832 6972

bernard.seymour@lindermyers.co.uk | suzanne.lurie@lindermyers.co.uk

www.lindermyers.co.uk