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Personal Injury Trust - Useful Information

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What is a personal injury trust?

A personal injury trust is a legal arrangement whereby 'trustees' hold and manage a personal injury award for a 'beneficiary'. This allows the beneficiary

- To retain their entitlement to means-tested benefits, and/or
- minimises their contribution towards the costs of 'community care support' provided by their local authority Social Services.

Regulations state that personal injury awards held in this way are to be disregarded when assessing entitlement to means-tested benefits and contributions towards community care costs.

Which benefits are means-tested?

For people of working age, means-tested benefits are:

- Income Support
- Income-based Jobseeker's Allowance (JSA)
- Income-related Employment and Support Allowance (ESA)
- Housing Benefit
- Council Tax Support (also known as 'Council Tax Reduction')
- Universal Credit

The means-tested benefits for people aged over state pension age are:

- Pension Credit (Guarantee Credit)
- Housing Benefit
- Council Tax Support

NB. The regulations in respect of how personal injury payments are treated when assessing entitlement to means-tested benefits are different for pensioners – see page 7.
Tax credits are means-tested in a different way to other benefits – see page 5.

What is community care support?

Community care means providing the right level of intervention and support to enable people with health problems and disabilities to achieve maximum independence and control over their own lives.
Following a 'needs assessment' by your local authority Social Services, this can be the provision of a carer, 'direct payments' to enable you to employ a private carer or the provision of supported accommodation.

NHS Continuing Health Care funding, is not means tested so will not be impacted through the receipt of a personal injury award.

Do I need to set up a personal injury trust?

Setting up a personal injury trust may be a wise decision if you fall into any of the following categories:

• below pension age and currently receiving means-tested benefits,
• receiving community care support regardless of age,
• likely to join either of these groups soon,
• or want to safeguard your entitlement to means-tested benefits and/or community care funding in the future.

To qualify for means-tested benefits, the claimant's income and capital, as well as that of their partner (if any), are considered. However, the capital of their children does not affect their eligibility. Conversely, a community care recipient's contribution towards the cost of their support from the local authority are assessed solely based on their own income and capital, and not their partner's.

If you receive a personal injury settlement, it counts as capital and may cause a reduction or cessation of your means-tested benefits, or an increase in your contributions to community care support. The impact of the settlement depends on its amount, your other capital, and whether this is the first payment from the defendant, such as expenses paid for medical costs.

Individuals above pension age and those claiming tax credits may not require a personal injury trust to prevent their settlement from affecting their entitlement to benefits/tax credits, but they may still choose to do so for their peace of mind.

How does capital generally affect entitlement to means-tested benefits?

Our Trusts team can provide advice on what assets and investments qualify as capital, which includes funds held in bank accounts and property other than the primary residential home.

For individuals claiming means-tested benefits below pension age, the first £6,000 of their capital is disregarded regardless of its source. If they have capital between £6,000 and £16,000, for pre-Universal Credit claims, the excess amount generates "tariff income" of £1 per week on every £250 (or part thereof) above the £6,000 level. This results in a reduction in their "income" means-tested benefit, such as Income Support, income-based JSA or income-related ESA, by a corresponding amount.

If the claimant still qualifies for their "income" means-tested benefit after the tariff income has been applied, they will still receive full Housing and Council Tax Support. However, if the tariff income negates their means-tested benefit, it will then apply to their assessment of Housing and Council Tax Support, thereby reducing these benefits as well.

Once claims are transferred onto Universal Credit, the claimant receives a monthly payment from which they must cover their expenses, including rent. If the claimant has capital between £6,000 and £16,000, tariff income will be deducted from their Universal Credit payment at an equivalent rate to that outlined above (£4.35 per month). If the claimant still qualifies for Universal Credit after the tariff income has been applied, they will continue to receive full Council Tax Support. If the tariff income negates their Universal Credit, it will then be applied to their Council Tax Support assessment, reducing it as well.

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The general capital rules for means-tested benefit claimants aged over pension age

The rules for assessing capital for means-tested Guarantee Pension Credit claimants are as follows:

1. The first £10,000 of the claimant's capital (and that of their partner, if they have one) is ignored, regardless of its source.
2. Any capital over £10,000 is considered to generate 'deemed income' of £1 per week on every £500 (or part thereof) above the £10,000 threshold. This deemed income is used to reduce the claimant's Guarantee Pension Credit by a corresponding amount. If the claimant still qualifies for Guarantee Pension Credit after the deemed income has been taken into account, they remain eligible for full Housing Benefit and Council Tax Support. However, if the deemed income exceeds the Guarantee Pension Credit entitlement, it will also reduce the amount of Housing Benefit and Council Tax Support they receive.

How does capital affect entitlement to tax credits?

Working Tax Credit and Child Tax Credit are not directly affected by a claimant's capital, but they are affected by the taxable income generated by that capital. Tax credits are calculated based on annual income. The first £300 of taxable income generated by capital is disregarded each year, and any additional taxable income is included in the claimant's overall income for the purpose of assessing entitlement, which can result in a reduction of the tax credit award through tapering.

It is important to note that Tax Credits are being replaced by Universal Credit, with a phased introduction for new claimants from April 2013. Existing tax credit claimants will have their claims transferred to Universal Credit starting from April 2014. The capital rules for Universal Credit are the same as those for means-tested benefits, with a lower capital limit of £6,000, an upper capital limit of £16,000, and the application of tariff income in respect of capital between these levels.

Therefore, existing tax credit claimants should consider whether they need a personal injury trust to protect their future entitlement to Universal Credit, even if they do not currently need one to protect their tax credit entitlement. If necessary, our Trusts team would be happy to discuss this in more detail.

How does capital affect entitlement to community care support?

The Social Services department of a local authority is responsible for providing services and accommodation to individuals assessed to require them. As long as the cost does not exceed a certain threshold. However, a means assessment will be conducted to determine whether the individual will be required to contribute to the costs.

The capital rules for means-testing are as follows:

1. The first £14,250 of an individual's capital is disregarded, regardless of its source.
2. Capital between £14,250 and £23,250 is treated as generating 'tariff income' of £1 per week on every £250 (or part thereof) above the £14,250 level. This amount is then added to their income, resulting in an increase in their expected contribution.
3. Individuals with capital in excess of £23,250 are expected to cover the full costs of any required services.

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If I don't have a Personal Injury Trust will my personal injury payment affect my entitlement to means-tested benefits and/or community care support?

Means-tested benefit claimants aged under pension age

The regulations state that if the defendant's payment for your personal injury case is the first payment made, including payments to other parties for medical expenses, it will be disregarded for up to 52 weeks, regardless of the amount or where it is held. This rule is known as the '52 week disregard.' However, any subsequent payments received will not be disregarded under this rule. If these subsequent payments take your total capital to over £6,000, you will need to set up a personal injury trust to avoid impacting your means-tested benefits.

If you are likely to spend the first payment within 52 weeks or bring it below the £6,000 limit, you do not need to set up a personal injury trust. However, you should spend it on reasonable things to avoid the 'deprivation of capital' and 'notional capital' rules.

If the payment will not take your total capital to above £6,000, it will not affect your entitlement to means-tested benefits, and you do not need a personal injury trust at this stage.

If the payment is not the first payment and will take your total capital to above £6,000, it will lead to a reduction in entitlement. If it takes the total to above £16,000, it will lead to benefits stopping. In this case, it is recommended that you set up a personal injury trust to prevent your benefits from reducing or stopping, as payments derived from a personal injury are disregarded as capital when held on trust.

Recipients of community care services/accommodation

Your contributions towards community care costs will not be affected by your personal injury payment if it does not increase your total capital above £14,250. However, if it does, your expected contributions will increase. If your total capital exceeds £23,250, you will be responsible for covering the full cost of care.

To avoid an increase in expected contributions, we recommend setting up a personal injury trust immediately. This will ensure that any payments received from personal injury claims are not considered as capital when assessing your contribution towards community care costs, as per the regulations.

Means-tested benefit claimants aged over pension age

For individuals over pension age, regulations stipulate that personal injury payments are not counted as capital when assessing means-tested benefits. Therefore, setting up a personal injury trust is not necessary to prevent a reduction or loss of benefits. However, it is crucial to keep the payment separate from other finances to ensure that authorities administering benefit claims can easily identify the disregarded sums. One way to achieve this is by setting up a trust and associated bank account.

If a trust is not established, it is recommended to open a separate bank account in the individual's name solely for the purpose of holding the personal injury payment. Additionally, it is necessary to inform the authorities administering the means-tested benefits of the receipt of the funds as it constitutes a significant change of circumstances that must be disclosed. It is essential to clarify that the funds were obtained from a personal injury claim to ensure the appropriate disregard rule is applied.

Despite not being a requirement, some pensioners may prefer to set up a trust to hold their personal injury payment for other reasons, such as having multiple trustees to oversee the expenditure of funds or to address tax or investment matters.

What if I decide not to set up a trust and just spend all of my personal injury payment?

If an individual who receives means-tested benefits acquires a capital sum that increases their total capital beyond the lower limit of £6,000, but subsequently uses it for purposes that are considered unreasonable by the authorities managing their benefits, they may still be deemed to possess the sum under the 'notional capital' rule. As a result, their benefits may be reviewed and reduced or terminated under the 'deprivation of capital' rule if it is suspected that the individual intentionally deprived themselves of the capital in order to maintain their entitlement to means-tested benefits.

For instance, giving the capital away to family members, even if it is intended to repay a debt, is likely to be deemed an unreasonable disposal by the authorities. This is because it is expected that the individual should use the capital to support themselves rather than give it to someone else. Moreover, proving the existence of the debt and the amount owed can be challenging without proper documentation.

However, repaying formal debts such as loans, credit card balances, rent, council tax, utility bills, and mortgages should be regarded as reasonable use of a capital sum and therefore not trigger the notional capital and deprivation of capital rules. Similarly, purchasing a new car within one's typical price range is also reasonable, but buying a property other than the one they live in will result in the capital value of the second property being added to their total capital, potentially affecting their means-tested benefits.

Repaying one's existing mortgage is considered reasonable, but doing so for someone else who does not reside with them is unlikely to be deemed reasonable as the individual should use their resources to support their own housing costs instead of someone else's for whom they are not responsible.

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What is a trustee?

A trustee is an individual selected by you to manage your personal injury funds. Their responsibility includes reviewing and approving any proposed expenses from the trust, and granting consent for any withdrawals made from the fund. It is imperative that trustees act in the best interests of the beneficiary, who is the intended recipient of the trust fund.

How many trustees should I have?

To establish a personal injury trust, it is mandatory to have at least two trustees. You may choose to appoint yourself as one of the trustees, but you must also have at least one additional trustee to establish a valid trust. We advise limiting the maximum number of trustees to four.

Who can be a trustee?

Individuals who are over the age of 18, including friends and family members, may serve as trustees, provided they have not been deemed mentally incapable by the Court of Protection. Additionally, all proposed trustees must be residents of the UK. It is important to note that negative credit ratings or criminal records may create obstacles when establishing a trust bank account.

Selecting trustworthy individuals with whom you anticipate maintaining long-term contact is essential, as they will be required to co-sign cheques, authorise online banking transactions and make investment decisions.

Alternatively, a solicitor may serve as a professional trustee, although this will result in additional fees. Having a professional trustee involved can be very beneficial particularly where there are large sums of money involved and where you may feel like you need the additional support to manage things. It is important to exercise caution when choosing trustees, as changing trustees after the trust has been established incurs an additional fee and can result in complications if retiring trustees do not consent to their removal. For more information, please refer to page 10 - "Do the trustees have to act on my wishes?"

How can my trust fund be invested?

The initial step is to open an associated trust bank account where your personal injury payment(s) will be received and held. However, this account offers a minimal amount of interest and is intended primarily as a "holding" account for your damages. You may consider investing these funds in other financial products to obtain a better rate of return. We can provide advice on the best options available.

As long as the investment or asset allows investment from a trust and can be registered in the name of the trust, the funds in the main "holding" account can be invested in a wide range of assets, such as share portfolios, bonds, savings accounts, and property. These investments will be held in the name of the trust rather than your own, but they still belong to you because you are the sole "beneficiary" of the personal injury trust. The interest or income generated from these investments can be paid back into the main trust bank account and will be disregarded for means-tested benefits/community care funding purposes.

Please keep in mind that the rules for investments within personal injury trusts with regards to Tax Credits may differ. Please contact us if you need further discussion about this.

We suggest that your trustees appoint a professional financial adviser, preferably one who specialises in the investment of personal injury and clinical negligence awards, to assist with investments. Our financial advisers can perform this role, any initial consultation with our advisers is completely free of charge and with no obligation.

How can I access my trust fund once the account has been set up?

To withdraw money from the personal injury trust, your trustees can sign a cheque, or make an online bank transfer, from the trust account payable to you, which you can then deposit into your personal current account. This can be done periodically to keep the funds available to you. However, make sure that the balance in your personal account does not exceed £6,000 at any point, as this will cause the funds to be no longer disregarded once they are outside the trust.

Withdrawals require authorisation from at least two trustees, and to avoid these withdrawals being treated as income, vary the amounts and time intervals between them. Monthly payments from the trust may be easy to manage, but it can lead to excess funds outside the trust, so it is advisable to make irregular advances based on your needs. Keep in mind that any residual amount outside the trust that exceeds £6,000 can affect your means-tested benefits.

Can I pay other money into the trust bank account?

Payments received as a result of a personal injury can be deposited into your personal injury trust bank account, including subsequent interim payments and the final settlement sum. However, only payments received as a result of a personal injury claim can be deposited. Other capital sums, such as an inheritance, cannot be deposited into the trust account.

What are the tax requirements in respect of the trust fund?

If the trust bank account remains without any investments, there is no requirement to notify HMRC about the trust. However, if the trustees make any investments within the trust, the beneficiary must take the following steps:

- Notify the local tax office about the investments made under trust.

- Keep records of income and expenses generated from these investments and disclose them in their annual tax returns.

Your trustees may need to seek accountants to assist with the tax obligations of the trust. We can refer them to a trusted firm of Chartered Accountants, who can provide the necessary assistance.

Do the trustees have to act on my wishes?

Your wishes as the beneficiary of the trust will be taken into account by your trustees, but they are not obligated to follow them. Their primary responsibility is to act in your best interests. If you feel that your trustees are not fulfilling this duty, such as by denying your request to withdraw funds, they may be breaching the terms of the trust. In such a situation, you may consider replacing them.

However, it is important to note that the consent of the current trustees is required for their replacement. If they refuse to step down, you may have to seek legal action to have them removed on the grounds of not acting in your best interests. This can be a costly and time-consuming process, so it is advisable to maintain positive relationships between all parties involved in the trust. This should be considered when selecting trustees initially.

What happens if I get divorced?

The assets held within the trust, as you are the beneficial owner, will generally be treated as any other capital asset during financial negotiations. Nonetheless, it may be possible to argue that the funds held in the trust are a result of your personal injury and were awarded to you rather than being linked to your marriage. To explore this possibility, it is advisable to seek the advice of a solicitor who specializes in family law.

What happens in the event of my death?

When you die your personal injury trust dissolves, the funds and assets held within it will become a part of your normal estate, which will be distributed according to the terms of your will. However, it's important to note that if any of your subsequent beneficiaries who are also means-tested benefit claimants inherit from your estate, the capital they receive will not be disregarded even if it was originally derived from a personal injury payment and held in a personal injury trust.

In case you pass away without a valid will, your estate will be distributed according to the rules of intestacy, which may not align with your wishes. To avoid this, we strongly recommend seeking specialist legal advice to draft an up-to-date will. We can put you in contact with one of our trusted legal partners to assist with this.

What is the process for setting up a personal injury trust?

We provide a free initial assessment to determine if it would be beneficial for you to establish a personal injury trust. If we determine that it is advisable and you decide to proceed, we charge a one-time fee for setting up the trust. This includes all the legal paperwork and setting up the Trust bank account.

To begin the process, please contact one of our consultants or email us at **Enquiries@PaladinGroupltd.com.** We will then obtain necessary information from your solicitor to draft the trust deed. After drafting, we will send the deed to you and your trustees to sign in the presence of a witness. We will also provide an application form to open the associated bank account, and you will need to send the completed documents along with proof of identity for you and your trustees (if requested).

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When will I be able to access the trust funds?

Please note that once we send all the necessary documents to the bank, it may take a few weeks before the trust fund is accessible. As there are very few banks in the UK offering Trust bank accounts, the ones that do are incredibly busy. The process of setting up the bank account can typically take around four weeks from the time you return the Acceptance form to us.

If you require some of the funds to cover your expenses during this period, you can request an 'advance payment' from your solicitor. However, this advance is only available if your solicitor has received the compensation award and deposited it into their client account. It's essential to ensure that this advance payment does not exceed £6,000, which includes the total funds in your and your partner's accounts, to avoid affecting your means-tested benefits entitlement.

What happens next?

If you would like to arrange a discussion with a Paladin Advice Consultant then please get in touch. You can either contact your consultant directly or alternatively please send an email to **Enquiries@PaladinGroupltd.com**

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