

Personal Injury Trusts: What you need to know

There are many challenges to face if you have been seriously injured in an accident. Besides your injuries themselves, and the work needed to get your life back on track, taking legal action to recover compensation can bring its own difficulties.

One unexpected challenge is the matter of what may happen if your claim is successful. A sudden and potentially large influx of money can have several consequences, particularly involving means-tested benefits. Personal Injury Trusts are one way to solve some of these problems.

What is a Trust?

A trust is a legal instrument; a way of holding money or property which differs from the usual form of ownership.

At their most basic, a trust involves a settlor (the person who owns the property which is being 'settled' in the trust) giving property to trustees to hold on behalf of one or more beneficiaries. The trustees have authority to deal with the trust property in a number of ways, but they are under duties to always act in the best interests of the beneficiaries. The rights beneficiaries have over the trust property will vary depending on the trust. When the trust ends, however, it is the beneficiaries who will ultimately receive the trust property.

A person may have multiple roles in a trust at the same time, possibly even all three: settlor, trustee, and beneficiary. However, if someone is the settlor, trustee and beneficiary of the trust and no other people are involved, the trust would be invalid. It would be no different from the usual way in which people own property.

What is a Personal Injury Trust?

A Personal Injury Trust is a way of holding compensation you receive from a personal injury claim. Using a Personal Injury Trust brings several financial advantages. It also provides a way of managing the compensation funds you receive, which could be a substantial amount of money.

What are the advantages of setting up a Personal Injury Trust?

The main advantages of a Personal Injury Trust relate to means-tested benefits.

Means-tested benefits

When your benefits are means-tested, the amount of capital you own is assessed.

For housing benefits, for example, if you own £10,000 or over, but less than £16,000, any benefits you claim will be reduced. If you own £16,000 or more, you will not be eligible for these means-tested benefits.

This applies equally to Universal Credit, which is a system being rolled out to gradually replace certain benefits.

A lump sum payment of compensation from a personal injury claim could reduce or stop your entitlement to means-tested benefits. In the long-term, this could lead to you being worse off financially, with a compensation payment that is enough to stop your benefits, but not enough to undo the need for those benefits in future.

A Personal Injury Trust prevents the money or assets held within them from being assessed for the purposes of the means-test. This applies to the value of the capital in the trust as well as any income which is generated from the trust fund.

Personal Injury Trusts can have other benefits as well. They can:

- Restrict access to the compensation you have received, such as from friends, relations, or yourself.
- Protect the trust assets from any future divorce or bankruptcy proceedings.
- Protect the trust assets in relation to other means-tests, such as tests for care home fees. Also, putting compensation into a Personal Injury Trust does not count as deliberate deprivation of capital. For more information on deliberate deprivation in relation to care home fees, [see our blog post](#).
- Help to manage the compensation. If you are the injured person, your trustees can manage the money for you. This is useful if you know you are not good with money. Alternatively, if it was a loved one who was injured and they lack mental capacity or their capacity varies, a trust means that the trustees will have authority to manage the money for them.

Can Personal Injury Trusts help other people in my household?

Means-tested benefits can also take into consideration any capital which is held by people in your household.

This means there are other situations in which a Personal Injury Trust could be useful:

- If you are making a personal injury claim and you aren't on means-tested benefits, but a household member is.
- If a household member is making a personal injury claim and you are on means-tested benefits.

In either case, creating a Personal Injury Trust may be the best way to hold any compensation. Doing so would ensure that it is not counted towards any household assessment of capital in the means-test.

What requirements must a Personal Injury Trust meet?

To be able to set up a Personal Injury Trust, you must meet several requirements:

- The funds must be a payment from a personal injury claim. This includes:
 - accidents at work
 - slips and trips
 - criminal injuries (and claims made against the Criminal Injury Compensation Authority)
 - road traffic accidents (including claims made against the Motor Insurers' Bureau)
 - medical negligence
 - occupational or industrial diseases
- The trust must be wholly or partially for the benefit of the injured person. For this reason, compensation from claims made by the dependants of someone killed in a fatal accident could not be put into a Personal Injury Trust because the injured person would not be one of the beneficiaries.

The rules are strict on the source of the funds. Personal Injury Trusts cannot contain any money or property which is not from a personal injury claim as described above. If non-claim funds are added to a Personal Injury Trust, the whole trust will lose its advantages of being disregarded for means-tested purposes.

When should I set up a Personal Injury Trust?

Ideally, if you decide to set up a Personal Injury Trust, you should do so as soon as you know compensation is coming to you. This is to avoid compensation being included in any means-test when you receive it.

However, the rules on Personal Injury Trusts allow for a 'grace period'. During this time, any compensation you have received will not count towards your capital for the purposes of means-tested benefits. The period is 52 weeks, starting from the first compensation payment you receive.

It is common in personal injury claims, especially where serious injuries have been suffered, for interim payments to be made. These are compensation payments made whilst the claim is still ongoing as a form of advance from the final award. If you receive an interim payment, this is sufficient to begin the 52-week period running.

The Universal Credit system also has a similar 'grace period'. The rules for that allow for 12 months in which the compensation sum would not be considered.

Who should I choose as my Trustees?

Choosing the right trustees is one of the most important decisions you can make when creating a Personal Injury Trust. You should only appoint people you trust.

Here are a few considerations to bear in mind:

- Trustees must be over 18 and have mental capacity (please see our ['Mental Capacity' help guide](#) for more information)
- It is generally considered best to appoint two to four people as trustees
- Professional trustees can be appointed but they will charge for their services. Depending on the value in the trust, this may not be a supportable expense. There is no requirement to appoint a professional trustee, unless in rare situations where a court so directs, although in some cases it makes sense to appoint a professional
- Friends and family who live close by can make good trustees. They are more likely to be aware of your current needs than professional trustees or those who live far away
- You can appoint yourself as a trustee

What types of trust can be Personal Injury Trusts?

There are no restrictions on which types of trust can be used as a Personal Injury Trust. However, your own situation and requirements will largely determine the right trust for you.

Here is a brief overview of some of the most common types of trust:

- **Bare Trusts** – these are the simplest trusts. They are trusts which have only one beneficiary. The beneficiary is absolutely entitled to the trust property, meaning they do not have to meet any conditions before they become entitled. The trustees will essentially be holding the trust property for the beneficiary.
- **Life Interest Trusts** – these involve a 'split' in who is entitled to the trust property. One or more beneficiaries will be designated as the 'life tenants' who are entitled to the income from (or enjoyment of) the trust property for their lifetimes. For example, if the trust property is a house, the life tenants may have the right to live in the house for their lifetime.

Upon their deaths, there will be another beneficiary or beneficiaries who are entitled to receive the trust property itself.

- **Discretionary Trusts** – these trusts give the trustees ‘discretion’ over when and if any of the trust property is to be distributed, and to which beneficiaries. There will usually be a group or class of beneficiaries, and the trustees will be able to choose any of these eligible beneficiaries to receive the trust assets or income.

Please note that trusts are a huge subject and can only be dealt with very briefly for the purposes of this help guide. If you need any more specific information, please do not hesitate to [contact us](#) for further advice.

What happens when I take funds out of a Personal Injury Trust?

When money or assets are taken out of a Personal Injury Trust, they lose the protection that the trust provides. So, if, for example, money is paid out from the trust into your account, it can be included in assessments for means-tested benefits.

The situation is the same if the money being transferred out is income generated from funds or assets held in the trust.

If you are making a large expenditure using trust fund money, it may be best to allow your trustees to pay the third-party directly. This way, the money will not pass into your account, where it could potentially be accounted for in a means-test.

What will happen to my Personal Injury Trust after I die?

This depends upon the type of trust that has been used for the Personal Injury Trust.

For example, with a bare trust, the death of the sole beneficiary means that the trust ceases and the trust property forms part of the beneficiary’s estate. If the beneficiary had made a Will, the Will determines who is ultimately to receive the property. If there is no valid Will, then the trust property will pass according to the [intestacy rules](#).

By contrast, for life interest trusts where the deceased is the life tenant, the beneficiaries of the trust (as specified in the trust documents) will receive the trust property.

Are there any situations where I shouldn’t set up a Personal Injury Trust?

Even when compensation is paid from a personal injury claim, a Personal Injury Trust will not suit every situation.

Most of the advantages for Personal Injury Trusts relate to means-tested benefits, or other means-tests. Where these are not a consideration for your household, alternative ways of managing your compensation may be preferable.

As with any trust, there are costs associated with setting up a Personal Injury Trust. Administration fees will also be incurred during its lifespan. Any decision to create a Personal Injury Trust must look at whether the benefits of doing so outweigh the costs.

Where only a small amount of compensation has been awarded, it is unlikely to be worthwhile setting up a Personal Injury Trust in which to hold it. This is not just confined to situations where compensation is beneath the means-tested benefits thresholds. It can also apply to compensation which is likely to be exhausted within the 52 week 'grace period' mentioned above. Within that time, the compensation award is not counted in the means-test, so if it is likely to have been spent or invested in alternative assets within that time, then there is a good reason for not setting up a Personal Injury Trust. The costs of doing so would not be justified.

Other reasons against setting up a Personal Injury Trust include:

- A lack of suitable trustees
- An unwillingness to take on the potential complexity of a trust
- An alternative arrangement which may be preferable (see below)

Are there any alternatives to setting up a Personal Injury Trust?

There are other arrangements which are similarly exempt from means-tested benefits assessments. Some of these include:

- Investing in property or in your home
- Investing in a business
- Investing in an annuity
- Putting money into a Deputyship account. This option would be open to injured people who lack mental capacity. Court-appointed Deputies have accounts where funds are held on behalf of the injured person. Our help guides on the Court of Protection and Deputies explain more about acting as a Deputy.

Many of these alternatives also have the added benefit of restricting access to compensation funds if this is a consideration.

Where can I get more information?

It is the duty of the legal representatives acting in your personal injury claim to make you aware of the potential risks compensation could pose to any means-tested benefits.

You should give full details of your background and any benefits which you, or members of your household, receive. That way, you can be sure you are receiving the right advice for your situation.

However, trusts can be complicated. Legal advisers who deal with personal injury claims are unlikely to have the necessary expertise to advise you fully in this respect. Therefore, when looking to set up a Personal Injury Trust, you should consult a solicitor who specialises in dealing with trusts. Roche Legal has this required expertise and would be happy to discuss your situation with you.

How Roche Legal can help

Dealing with legal issues can be confusing and stressful. We understand this, and we're always on hand to untangle jargon and offer support.

If you need advice on any of the issues raised in this help guide, please don't hesitate to [get in touch](#). Roche Legal is an award-winning legal practice, offering practical and caring advice.

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