

Trusts and Estates

An explanation of Personal Injury Trusts



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Why should I have a personal injury (PI) trust?

If you are in receipt of means tested benefits then you should consider having Linder Myers Solicitors set up a PI Trust for you. The following are means tested benefits:

- income support
- housing benefit
- council tax benefit
- working families tax credit
- disabled person's tax credit
- income based jobseeker's allowance

As a general rule – if you have over £6,000 at your disposal you are at risk of having your benefits reduced. If you have over £16,000 then you are at risk of losing them entirely. If your compensation is paid directly to you then you will be classed as having this money at your disposal.

Therefore, if you are going to be receiving more than £10,000 in compensation you should give serious thought to having Linder Myers set up a PI Trust fund on your behalf. If you are expecting to receive less than £10,000 you should discuss it with us as it may still be cost effective to set up the trust.

Finally, if you think you may need to go into residential care at some point in the future, the setting up of a PI Trust will protect your compensation from being taken away by the Local Authority in order to pay for your care.

Are there any other ways to protect benefits?

No, not really. Personal Injury Trusts are sometimes referred to using different names, however. Common alternative names include:

- Special Needs Trusts
- Compensation Protection Trusts
- Compensation Protection Plans
- Benefits Protection Trusts

What do I need to do?

As we would be setting up a trust you need two people to act as trustees. Usually one of these people would be you. The other person can be anyone over 18 years old, and most of our clients usually have a family member act as trustee

with them. A solicitor from Linder Myers can act as a trustee for you. However, we charge for this and we would only really recommend that we act for you if you are going to receive in excess of £100,000 in compensation money.

We will take details from you and draft what is known as a Trust Deed for you. You will sign this deed and so will any other trustees that you wish to appoint. Someone needs to witness you signing the deed. The witness can be anyone over the age of 18 but it cannot be a relative or anyone who is mentioned in the deed.

To comply with statutory requirements we will need to take ID from you. Ideally we would like copies of your passport or driving licence and proof of your address from a recent utility bill. We can accept photocopies and we can arrange to do this by post. We will also need your National Insurance number.

After you and the trustees have signed the deed you return it to us. We would then store the deed for you and send you certified copies.

You then need to open up a bank or building society account in the names of the trustees. Ideally the account should be in the name of 'The Trustees of the (your name) Personal Injury Settlement'. However, provided that it is a joint account in the names of all of the trustees it should be fine. From experience we have found that some banks and building societies are better than others at setting these accounts up. Some will know what you are asking for straight away and others may not. If you have any problems setting up an account then you should get in touch with us and we will help as much as we can and point you in the right direction. We will speak to the bank you have chosen to ensure you are getting the right account but we can not, however, set up the account for you as the bank will want to see you and the other trustee(s) in person and will also require you all to bring ID evidence similar to the ID evidence we require. They may also want to see a copy of the trust deed, which is why we would send you a certified copy.

We would then transfer your compensation from our client account into your new trust fund account, having first deducted our fee for setting up the trust.

What happens next?

The money is yours. If you do not spend the money it will sit in the bank / building society and gain interest. If you have been awarded a significant sum, say, over £50,000, we would recommend that you see an Independent Financial Adviser (IFA) to see how you can make your money work best for you. We can recommend an IFA to you. Please note that we do not have any formal relationship with any IFA and we will not receive any payment for the introduction.

How easily can I get hold of my money?

The money is to be used for your benefit. You can easily obtain the money - provided that all of the trustees sign the cash withdrawal form or cheque. However, see below for some rules about how you should spend your money.

Do I need to inform the Benefits Agency of the existence of the Trust?

Yes. We will do this for you and will need your National Insurance number and the addresses of your local Benefits Agencies.

Will the Trustees have to complete an income tax return?

Often the trust will be a "bare" trust, which means that, notwithstanding the existence of the trust, you are immediately entitled to the trust fund. In such circumstances the Trustees do not need a separate tax return and any income should be included on your personal tax return, if you need to complete one. If the trust is not a bare trust then it may be necessary to complete a tax return, but we will advise you of the position.

What if my Trustees won't let me have the money?

Your trustees have to act in your best interests. There may be very good reasons why they do not want you to have money at a particular time. However, if you are unhappy you have the power to remove a trustee and appoint someone else.

Can I put more money in the account?

The ONLY money that can be placed into the trust account is your compensation money. It is very important that you DO NOT put any money into the account that isn't part of your compensation.

What can I spend my money on?

Until fairly recently there were restrictions on what you could and couldn't spend the money on. It was a strange situation where you could buy a plasma TV but not food and you could not buy ordinary clothes but extravagant clothes were OK!

This has now changed. You can spend the money on anything you like.

Can I receive the interest payments that my money will generate?

This is a hard question to answer. If you keep any interest payments in the Trust bank account then the answer is 'yes'. In relation to transferring money into your current account the short answer is both 'yes' (in relation to random sums of money) and 'no' (in relation to paying yourself a wage or taking out the interest only). Without going into a complex legal argument we would advise the following:

- Do NOT transfer the interest payments alone into your normal bank account.
- If you need some spare cash try not to make regular payments to yourself. Avoid doing things like paying yourself a regular income (whether weekly, monthly etc).
- Do NOT, for example, transfer £500 on the 1st of every month from the trust account to your current account.
- If you must make payments from the trust account into your personal current account then make irregular payments such as £200 one week, £300 six weeks later and so forth. Ideally, however, you would only make payments directly out of the Trustee account to purchase specific items.
- You would also have to be careful about paying too much money into your normal current account. Remember that if you have more than £6,000 in the bank (and this means a total of £6,000 or more in ALL non PI Trust accounts when you add them together) you will be at risk of having your benefits reduced.



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