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Personal Injury Trusts

If you have received an award for compensation, you may wish to consider the potential benefits and options available to you in setting up a trust.

This leaflet provides an overview of the types of trust you may wish to consider. We would be happy to provide specific legal advice based on your circumstances.

What is a Personal Injury Trust?

A personal injury trust is created when an award of compensation is ringfenced from the injured person's assets and put under the control of trustees. This then becomes known as the trust fund. This can be useful to protect the funds from any creditors and the cost of care in the future.

The trustees are normally initially chosen by the person setting up the trust. The trustees are responsible for looking after the trust fund for the benefit of the injured person and for others who may be named in the trust. These people are known as the beneficiaries. How they can benefit is normally set out in the trust document, known as a trust deed.

It is possible to be both a trustee and a beneficiary.

Types of Personal Injury Trusts

Bare Trust

A bare trust is the most basic trust and is popular with people who have been awarded compensation for injury.

In this type of trust, the beneficiary (here the injured person) would be entitled to the trust fund whenever they request. This type of trust puts the beneficiary in full control over the money or trust assets. These types of trust are often used for personal injury awards as they are straightforward to administer and the injured person can keep control over the assets. They are also useful if the beneficiary is in receipt of means-tested benefits as they can ringfence the compensation from benefit assessment.

A bare trust is tax neutral and the funds are taxed in accordance with the beneficiary's personal tax position.

This type of trust is suitable when the beneficiary is able to make their own decisions and capacity is not an issue. The beneficiary can be very flexible with how they wish to use the funds.

However, this type of trust may not be suitable for those who lack the capacity to make decisions or if there are worries about how the funds could be used. This may be a concern if the beneficiary is vulnerable to outside influences.

Life Interest Trust (or an Interest in Possession Trust)

Life interest trusts operate by dividing the capital and income of the trust fund.

In respect of personal injury trusts, the injured person would receive income from the award. Upon their death, the capital in the trust fund would then pass to the named beneficiaries. This protects the capital of the trust fund for the ultimate beneficiaries (known as the 'remaindermen').

Given the flexibility and discretion required by trustees to administer the trust, it is crucial the trustees are chosen wisely. Normally, a memorandum of wishes is prepared to guide the trustees in exercising their powers.

The tax treatment for these types of trust are a little more complicated and it is important to seek specific advice on how this would work for you.

Discretionary

A discretionary trust is held for a group of potential people who could benefit from the trust. This would normally include the injured person, their loved ones and charities.

The trustees will have the power to decide who can benefit from the trust, or not.

This means the trustees will have power to pay out capital and/or income from the trust fund for the benefit of the injured person and/or the other beneficiaries, or to keep it in the trust fund.

For example, the injured person can be named as a 'Principal Beneficiary' and guidance given to the trustees as to the circumstances when they can provide to the injured person from the trust, taking into account their personal circumstances.

The discretion the trustees have is very wide and it is important that they have an indication of the way in which you would like them to be exercised. A Memorandum of Wishes is normally prepared when the trust is set up to help guide the trustees.

A discretionary trust is a flexible vehicle which is often used in circumstances where some control is needed over the trust assets for the protection of the beneficiaries.This can be useful if the injured person is vulnerable to outside influences or unable to manage their money wisely. Again, the tax treatment for these types of trust can be complex and it is important to seek specific advice on the implications of this type of trust.

Disabled Person Trusts

There is a specific type of trust specifically for an injured person who falls within the definition of a 'disabled beneficiary'. These types of trust can provide a more favourable tax position providing the criteria is met. However, the rules regarding these types of trust are complex and would need to be assessed on a case-by-case basis. Please let us know if you would like further advice on this.

Next steps

While looking at the differences in the trusts as a whole is important, your own circumstances and intentions should be a driving force behind any decision you make. It is important to consider the level of control and flexibility you require and what your ultimate intentions are with the capital within the trust.

The experienced team at GA Solicitors is here to help you through this process. For a free initial consultation on what to do after being awarded personal injury compensation, call our Wills Trusts and Probate team on 01752 203500 or email enquiries@GAsolicitors.com.