What is a Personal Injury Trust?

Overview

A Personal Injury Trust (PI Trust) enables an award to be disregarded in relation to most means tested benefits that you have or may have in the future. It “ring-fences” your award within a Trust that is controlled by your chosen Trustees. If a PI Trust is not set up the award becomes capital that you hold in your own name and may lead to benefits being stopped or reduced because capital limits have been exceeded.

It may not appear relevant to many recipients, but circumstances do change – a young claimant moving away from home to live independently, moving to a care home, divorce or separation, redundancy, loss of job and a number of other situations

When should it be implemented?

There is a “52 week disregard” that the Benefits Agency will grant from the first part of the award payment, but in our experience it is best practice to set up the PI Trust as soon as possible.

What type of Trust is used?

The simplest type of trust is a “bare trust” which is usually the most appropriate for personal injury awards as this still gives the recipient “ownership” of the funds, but they can close the trust at any time if they wish.

A theme that will run throughout this article is that qualified legal advice should always be sought when considering the virtues of a PI Trust.

What are the advantages of a PI Trust?

Apart from the “52 week disregard” mentioned above in relation to Benefits, there are a number of other key advantages.

It can protect the interests of old, young, disabled or vulnerable recipients as funds within the PI Trust must be used and monitored correctly.

The trustees can support the recipient in making important financial decisions and protect the person’s long term interests.

And, as mentioned above, it ring-fences the award away from other financial assets

Who should be the Trustees?

It may seem obvious, but they should be people that you trust to look after your interests and can also include family members and/or a solicitor. Ideally the number of trustees should be at least 2, but you can have more as long as they are all 18+, of sound mind and above all willing to take on the responsibility.

What do the Trustee actually do?

The PI Trust will contain a set of rules that the trustees must adhere to and they are responsible for holding/investing the award in a way that is beneficial and in the best interests of the award recipient. But be assured that if at any time the trustees prove to be unsuitable or unwilling to carry out their responsibilities, they can be replaced.

Where will the money in the PI Trust be kept?

Normally the first step will be for the trustees to set up a Trustee Bank Account to receive the award. Following this step the trustees will be able to use the money on your behalf and make appropriate investments as they see fit – all trustees would normally be required to sign a cheque to release funds from the bank account.

How much can be put into a PI Trust?

Any amount up to the total award payment can go into the PI Trust, but not any other personal capital.

Changing circumstances

There is always the option to close the PI Trust and this will require a simple request in writing to all of the trustees. However in our experience the advantages of a PI Trust outweigh any disadvantages.

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What is needed in order to set up a PI Trust?

As mentioned above, the first step should be to appoint a solicitor to do this on your behalf. This is not a time to attempt a DIY solution or to try cutting corners to save a few pounds. If you are going to set up a PI Trust (and you should!), do it properly with the help of a solicitor.

You will generally need to provide the solicitor with:

- Name, address & Nat Ins number
- Dates when injuries were sustained
- The amount of compensation awarded
- Full names and identity of the chosen trustees

Your solicitor will give further guidance.

What happens to the PI Trust on death?

Just like other assets the funds held within a PI Trust will form part of the deceased estate which will be distributed according to the will. If no will has been written, the estate will be distributed according to the intestacy laws that are legally binding.

What happens if the recipient of the award is unable to make their own decisions?

In the case of a child, the Court will normally need to approve the setting up of an appropriate trust to safeguard the funds until the child reaches the age of 18.

If the recipient has lost mental capacity it is likely that in order to make decisions on their behalf, the Court of Protection (CoP) will need to become involved. The CoP will then decide upon the most appropriate way of management of the persons affairs. A "deputy" may be appointed to safeguard and invest the funds on behalf of the recipient and it will be regarded for "benefits disregard" in the same way as under the usual "bare trust".

Tax?

Money held within a PI Trust is normally taxed in the same way as if you were holding the money yourself.

In conclusion

There are generally very few situations where a PI Trust would not prove to be a good first step.
When someone is likely to receive a substantial award there are always well meaning "lay" people who will have a bright idea about how the monies should be invested/spent. Investing award monies into a business, an unsuitable property or any other random idea can be fraught with problems.
The whole point of the award is to help the recipient replace lost income and the proceeds of the award may have to last for decades, but once it has been spent there is no going back. This is why having responsible, experienced people acting solely on behalf of the award recipient is the most prudent action to take.

AV Trinity will be happy to introduce you to an appropriately qualified solicitor who can set up a Personal Injury Trust to protect your interests.

Contact us

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