

FACTSHEET

Personal Injury



Guide to personal injury compensation trusts

After an accident, most of us simply want to put the past behind us and move on with our lives, but what if the severity of your injury is such that you're unable to work and you rely on means-tested benefits?

If so, you may need to think about protecting your entitlement by placing your damages award into a compensation trust.

So what is a compensation trust?

Quite simply, it protects – or separates out – your compensation so that you can continue to claim means-tested benefits.

Your entitlement to means-tested benefits, such as income support, job seekers allowance and housing benefit, is calculated by looking at your income and savings.

If you receive compensation for your injury, you'll continue to receive your state benefits for a grace period of up to 12 months.

However if you don't put your compensation into a trust, you may find that you're no longer entitled to certain benefits once the 12 months grace period has ended.

The only way in which you can ensure that your benefits aren't reduced or withdrawn entirely after this 12 month period is by establishing a compensation trust.

The Department of Work & Pensions (DWP) must be notified when compensation has been received. If a trust has been created by us, we'll write to tell them of your change of circumstances and to advise them that the trust means your benefits will be unaffected.

The trust will not only protect any means tested benefits that you receive currently, it will also protect monies if you're likely to receive more benefits in the future.

This could include a requirement for residential care when you get older as money held in a compensation trust is protected against being used for this purpose.

Can anyone set one up?

If you've been awarded damages as a result of an accident or injury, then you can set up a compensation trust. Only compensation money can be added to the trust.

A compensation trust isn't a legal loophole. It's actually a legitimate way in which to 'ring fence' your compensation so that it's disregarded for means-tested benefits. We recommend setting up your compensation trust early, ready for final damages or your interim payment.

How do I set up a trust?

In order to set up a compensation trust, we prepare a trust deed and you need to appoint at least two people to act as trustees, although one of these can be you.

Trustees are responsible for managing the trust on your behalf and can include a family member or a professional, such as a solicitor.

You can't select anyone who is under 18, living outside the UK or someone who is an undischarged bankrupt or in a voluntary arrangement with creditors.

Your trust is created by signing a 'trust deed', which you and your trustee(s) sign. We'll store the original version for you and send you certified copies.

Does the trust restrict how I can spend my compensation award?

The trust isn't intended to fund your day-to-day living costs as these should be met by your means-tested benefits. This could include your utility bills, food, council tax and accommodation.

You decide who the trustees will be and it's their job to look after the compensation award on your behalf.

Your trust money will be kept separate from your own funds, however, apart from your day-to-day living costs, you're not restricted to how you spend it, and you can decide how much to spend, when and upon what, subject to your trustees' authorisation.

So if you want to put it towards a new car or a holiday, that's your decision and you can do that. The trust will pay for it.

If you don't need the money immediately, it can be invested by the trustees for the longer-term. However if you're awarded a significant sum, we would advise seeing a financial adviser.

What powers do the trustees have?

The powers of the trustees are set out in the trust deed. They can't go beyond these terms unless they are included within general law.

Trustees can carry out fairly routine tasks on your behalf. For example, they can open a bank account, invest money, insure your property and pay for any assistance you need.

Continued...

Guide to personal injury compensation trusts

Trustees may also need to take legal advice, funded by the compensation trust fund. This is particularly important because if a trustee makes a mistake, it's deemed to be a 'breach of trust' and the trustee is liable for any losses from their own pocket.

They can also instruct other professionals using funds from your compensation trust, such as an accountant for help completing tax returns, for example.

What happens to any money in the trust after I die?

Any funds in trust will form part of your estate, so it's important that you write a Will to ensure that it's distributed as you intend.

Family members who might want to leave you funds upon their death will need to change their own Wills to ensure that you don't lose your benefits if you inherit from their estate. A standard Will is not appropriate in this case.

We can help you and your family write Wills and Lasting Powers of Attorney (LPAs) that protect your financial interests.

Further information

We always recommend that interim payments and final damages are paid into a compensation trust.

For further help and guidance, call our specialist team on **0117 325 2929**.

www.barcankirby.co.uk

