

Coffin Mew Solicitors – Wills, Trusts & Probate

Guidance for Beneficiaries and Trustees

Trusts & Trustees

What is a trust?

“A trust” is a relationship that is recognised and enforceable in the courts. Where there is an award of compensation for a personal injury a trust arises for the injured person when that award is put under the control of other persons (the trustees).

What must the trustees do?

The trustees must look after the award (which becomes the “trust fund”) for the benefit of other persons (the beneficiaries). In some cases there may be just one trustee and one beneficiary but the sole trustee cannot be the sole beneficiary or else there is not a trust relationship.

How must the trustees act?

When the trustees are appointed they agree to act in the interests of the beneficiaries and not themselves. This is why it is called a “trust”. They are entrusted to look after the trust fund for the beneficiaries.

In the case of a personal injury trust the beneficiaries can benefit in the way set out in the document (the trust deed). Some trusts are imposed by law and do not need a trustee but personal injury trusts should have a trustee to make sure all the terms are clear.

The compensated person is expected to be the main beneficiary of a personal injury trust even if there are other potential beneficiaries.

Who should not be a trustee?

- A person under 18. It may also be too much responsibility for young people over 18.
- Undischarged bankrupts and those with monetary arrangements with creditors.
- People with current money troubles or with a history of money troubles.
- People in prison or who have or may soon be convicted of offences involving dishonesty.
- People with a conflict of interest with the compensated person or others in the trust.
- People with serious health problems who may be unable to fulfil their duties at any time.
- People who live outside the UK or may do so.
- People who are in any way concerned that they might be unable or unwilling to fulfil their duties as trustee

What are the powers of the trustees?

The trustees have certain powers over handling of the trust fund. These are set out in the trust deed. Trustees do not have any power to go beyond the terms of the trust deed unless they are included within the general law. Most things a person would want to do with their own money can be done by the trustees for the benefit of the beneficiaries. For example, they can, upon taking appropriate advice, open and operate a bank account, invest money, buy and insure property and purchase help and assistance for the beneficiaries.

Trustees may sometimes need to take legal advice. That is funded by the trust fund and not from their own pockets unless the trustees do something wrong. That is called committing a ‘breach of trust’. Trustees are liable for losses due to ‘breach of trust’ out of their own pockets, so taking legal advice is important. Trustees can also obtain help from other professionals, such as accountants for completing tax returns and independent financial advisers or stockbrokers for investment of the trust fund. Again, that is at the expense of the trust so far as it is necessary to the smooth running of the trust.

What are the duties of the trustees?

A trustee must:-

- Disclose any circumstances where there might have been a conflict of interest with the beneficiary. For example if the beneficiary owes the trustee money this should be disclosed.
- Not to act in conflict with the interests of the beneficiaries or profit from their role as a trustee.
- Ensure they know what the terms of the trust are and that they are carried out.
- Ensure that they do not act beyond the terms of the trust and its power.
- Ensure that good trust records and accounts are kept and pay tax due on time.
- Take independent financial advice. This does not preclude the use of common sense or a trustee's own professional investment expertise. The trustees must also ensure that the advice taken is in accordance with the Trustee Act 2000. The ultimate decision over what to invest in is the trustees' decision. It cannot be delegated.
- Act impartially and fairly between any multiple beneficiaries and those who are beneficiaries now and those who will be in the future. This is a general rule but in the case of a personal injury trust the compensated beneficiary would expect to be the main beneficiary for life. That is allowed for under the powers of the trustees.
- Take reasonable care. Professional trustees must take more care than others.
- Act jointly. Trustees should not normally delegate functions to each other. Trustees are jointly liable for mistakes and should therefore act together.
- Not charge. Only professional trustees can claim more than out of pocket expenses.
- Ensure that beneficiaries are kept fully informed. This avoids disputes.

Beneficiaries

How can a beneficiary of a personal injury trust benefit from the money in trust?

1. You can receive the benefit of money/investments in the trust. That is on top of your being able to keep means tested benefits.
2. If the capital and income paid to you from your trust means that the money you have in your own name (or in your partners' name or when your joint capital is added together) is more than is allowed by the benefit rules then your means tested benefits will be reduced or stopped altogether until your capital or income drops below the limit again. This means that only relatively small payments may be made directly to you from time to time out of capital. At present it would usually be a benefits disadvantage to have over £6,000 in capital in your own or joint names
3. Although you may not receive large amounts into your own account there is nothing to stop the trustees buying things for your use.

The Personal Injury Trust and other issues

What are the other advantages of having a personal injury trust?

There are important ways in which a compensated person can benefit from the trust apart from financially:-

- The trustees can look after a property in the trust even if you cannot. That may be particularly important later in life.
- Your trustees can help share the burden of sorting out your paperwork which naturally arises when the money is invested.

In essence these additional advantages of the trust should give you better peace of mind.

What about tax?

1. As most personal injury trusts are 'bare trusts', any income derived from the trust fund will be deemed to be yours and will be taxed at your normal tax rate.
2. The income from the trust will need to be declared on your own personal tax return. If you do not receive one at the moment, you will need to request one. We can do that for you. We can assist with tax returns and tax repayment claims each year.
3. It is important to note that an independent financial adviser may advise on a way of generating income so it is not subject to income tax or at least defers it or minimises it. This may, for instance, be by the use of 'investment bonds'.
4. Payments of capital from the trust fund to you are not subject to income tax.
5. Gains in value (between purchase of trust assets and sale) are subject to capital gains tax but as you will have an interest in your own trust, your own personal capital gains tax allowance should be available to set against them.
6. There are special rules relating to the purchase/sale of residential properties. It would be prudent to allow us to deal with that for you as we should be able to eliminate capital gains tax issues by dealing with such matters in a special way. Capital gains tax is a complex area and before any trust assets are sold, advice should be taken. Note that some payments of assets out of the trust where there has been a gain in value (even if the assets are not sold) can trigger a charge to capital gains tax. Again take advice before you do anything. The same applies upon the possible breakup of the trust after death.

7. When you die inheritance tax is payable if your assets including the value of the trust fund and certain gifts made by you within 7 years of your death exceed a certain amount called the 'nil rate band'. That is currently £325,000.00 in the tax year 2010 to 2011. The rate of inheritance tax is 40% on the value above the nil rate band threshold. We can help with this if it is an issue.

What about investment of money while it is in the trust?

Your trustees will have power to invest the money as they see fit but the trustees must take independent financial advice. This firm can make a recommendation and a referral to an independent financial adviser if you wish.

Can the Government change the rules?

The Government can change the benefits rules, tax rules and trust laws at anytime.

The arrangements we put in place are very flexible so many changes can be accommodated easily. You should keep in touch with us. Advice and guides may be issued from time to time.

What happens about the money after I die?

The funds would usually form part of your estate. You will need to draw up a Will to say who your estate is to go to. Please ensure that this is done as soon as possible. Do not forget that we can help you and family members with preparation of your Wills and also with trusts and tax advice generally.

Family members who might want to benefit you upon their death will need to amend their own Wills to avoid you losing benefits upon direct receipt of funds from them. They can still benefit you but a standard Will is not appropriate and they will need to include appropriate trust provisions for you.