
PERSONAL INJURY TRUSTS

If you receive an award of compensation in respect of a personal injury, you are able to protect both your current and future entitlement to certain State Benefits, Local Authority assistance and/or other sources of state assisted help by placing your award into a Personal Injury Trust.



Personal Injury Trusts Frequently Asked Questions

What is a Personal Injury Trust?

A Personal Injury Trust is a legally binding arrangement for holding and managing funds received as a consequence of an injury.

A Personal Injury Trust will be managed by two or more Trustees, or a Trust corporation. The Trustees should make decisions together about the management of the funds, including any payments made out of those funds.

A Personal Injury Trust can protect the interests of very young, old, disabled or otherwise vulnerable people, and ensures that the beneficiary retains their entitlement to means tested benefits and local authority care.

A minimum of two Trustees must authorise all transactions within the Trust, providing protection against inappropriate use of funds. The appointed Trustees will also have to sign to authorise any changes in relation to the administration on the Trust.

Nestor offer the simplest type of Trust called a 'Bare Trust' and this is often the most appropriate for Personal Injury funds. In this type of Trust, the money still belongs to the person who made the claim and they can close the Trust at any time if they wish.

Nestor also assists with the opening of a Trust bank account.

The benefits of a Personal Injury Trust

Funds held in the Trust are disregarded when assessing eligibility for some means tested state benefits and services. Therefore, you (and your partner if you claim benefits together) can continue to receive these benefits in the future.

A Trust will also protect entitlement to local authority funding for the costs of living in a residential care home and, depending on the local authority, care provided in your own home.

A Personal Injury Trust helps to define and 'ring fence' the funds that have arisen from a Personal Injury, keeping them separate from other assets. This can assist if your circumstances change and you become entitled to means tested benefits and care services in the future.

What funds can go into a Personal Injury Trust?

The benefits rules allow funds to be disregarded from affecting means tested benefits if they arise 'as a consequence of a Personal Injury'. Only monies derived from a Personal Injury can be put into the Trust.

This means that Personal Injury Trusts can be used to protect:

- Personal Injury awards
- Compensation received from the Criminal Injuries Compensation Authority (CICA)
- Compensation from the Motor Insurers' Bureau
- An Armed Forces Compensation Scheme award
- Payments from other government compensation schemes
- Payments from accident or travel insurance
- Payments from a professional negligence claim paid to compensate for a previously undervalued Personal Injury claim

The above list is not exhaustive.

Sadly, funds from fatal cases or an inheritance, cannot be placed into a Personal Injury Trust.

The 52-week rule for the first payment following an injury

The first payment received following a Personal Injury is disregarded for the first 52 weeks, when assessing entitlement to means tested benefits and services.

This might be the first interim payment from a Personal Injury claim, a payment from an accident insurance policy, or even a capital payment from a charity.

This disregard does not apply to any later payments.

It is usually sensible to set up a Personal Injury Trust as soon as possible, regardless of the 52-week rule, because any money left over will be taken into account as regards eligibility for means tested benefits and care services, once the 52-week period comes to an end.

Role and responsibilities of the Trustees

It is necessary to appoint Trustees - there should be at least two Trustees. They must each be over 18 years of age and mentally capable of fulfilling their responsibilities. Most people choose friends or family members as their Trustees.

The Trustees chosen must be able to work well together and act in the best interests of the person for whom the funds are held. A minimum of two Trustees must:

- Co-sign cheques / authorise withdrawals from the Trust bank account
- Co-sign any instructions required in relation to changes on the Trust
- Keep appropriate audit trails of Trust expenditure and income
- Assist with any tax requirements in relation to the Trust, if required

Do the Trustees have to act on my wishes?

Your Trustees are required to take your wishes into account, but they do not have to act upon them. Their main obligation is to act in your best interests. If you believe your Trustees are no longer doing this, and are breaching the terms of the Trust, you can consider replacing them.

Trusts for people without capacity

In order to make decisions for someone who lacks capacity, an application must be made to the Court of Protection (CoP). A CoP judge will then have to decide the most appropriate method for management of the person's financial affairs.

A deputy will usually be appointed in order to manage another's property and financial affairs.

This is usually preferred to the establishment of a Personal Injury Trust, because a deputy is required to report to the Office of the Public Guardian (OPG).

This requirement provides assurance that the person lacking capacity will have their best interests looked after. Funds held by a deputy will also be disregarded for means tested benefits and services, in the same way as funds held in a Trust.

Although in these cases a Trust is not required, Nestor can assist with deputy bank accounts and investments.

Setting up a Personal Injury Trust

What do Nestor Do?

Nestor will provide the legal document - your Trust Deed. We will also assist with establishing an appropriate Trust bank account for your award to be placed in, if required.

If appropriate, Nestor will write to your benefit paying office, informing them that a Trust has been established and that any funds held in the Trust must be disregarded accordingly.

Nestor also have a Welfare Benefit Adviser who can assist with:

Benefit Review Service - Inclusive of creating a Personal Injury Trust or a stand-alone service

- Checking current benefit entitlement to ensure that it is correct
- Identifying eligibility for any additional benefits or services

New Claim Application Service

- Completing application forms for new claims to benefit
- Completing medical assessment forms
- Includes advice on supporting documentary evidence
- Completing authority forms for representation whilst the claim is being processed

Appeals

- Includes preparation of written advice
- Gathering and collating supporting evidence
- Liaising with third parties including Solicitors, GP's and the relevant Benefit Agencies

Tribunals

- Preparation for Tribunals
- Presenting supporting evidence and representation at Tribunals

Please contact us if you would like to know the costs of any of the above services.

How long does it take to set up the Trust?

As a general rule we would say that the process takes around 4 – 5 weeks from receipt of our Trust application form. Please read the below explanation to understand the steps and progression of setting up the Trust and accompanying Trust bank account.

The process relies on postal correspondence, and we must have your signature and those of all the Trustees on all documentation.

The procedure

One of Nestor's Directors will speak with you to discuss the viability of a Personal Injury Trust. We will send you a letter confirming the advice given and enclosing our Trust Application Form.

Upon receipt of the completed and signed Trust Application Form, we will contact your solicitor for specific information relating to your case which will allow us to draft the Trust Deed.

Once this information is received, Nestor will arrange the Trust Deed and partially complete the bank application forms. These will be posted to you for completion and signing, by yourself and your Trustees. We will also request identification documents to verify your identity at this stage, if required.

Once the completed documentation and identification documents (if required) are received, we will check and process it before sending the paperwork onto the bank.

The bank has a 10-working day lead time from when they receive the fully completed documents to open the account.

Nestor cannot guarantee that the bank will successfully open an account, and we have no control over their decisions. We will be able to assist with an alternative bank account should your application fail.

Once the account is open we will inform your solicitor, who can then either send a cheque in the name of the Trust to Nestor (we will then send it onto the bank) or they can arrange an electronic transfer directly into the Trust account.

Please note that a cheque will take 5 working days to clear into the account once the bank receives it.

Your solicitor will be able to tell you how long their electronic transfer will take. Usually this would be 1 – 3 working days.

After a Personal Injury Trust is set-up

How can I access my Trust fund once the account has been set-up?

The main method is for your Trustees to sign one of the cheques from your Trust account chequebook, made payable to you and to be paid into your own personal current account. You can then use the facilities attached to your personal account to spend the money. You can do this every so often to top-up the funds readily available to you. However, you should ensure that these payments into your personal current account do not ever take your household capital above the allowable limit of £6,000, as the funds will not be disregarded once they are outside the trust.

Your Trustees can also write a cheque out directly to a person or company where you are paying for a service or product.

Please note that a minimum of two Trustees' signatures are required to authorise all withdrawals from the Trust.

The Trustees can also set up telephone banking services which will allow for payments to be made faster than a cheque if required. Again, a minimum of two Trustees will need to authorise any payments over the phone. Usually one Trustee would contact the bank, and after being taken through the appropriate security details, request the payment to be made. The bank will then call a second Trustee to authorise that payment request. Both Trustees must know their security information, and must know the full details of the transaction taking place.

If moving money into your personal account, you should vary the amounts, and the length of time that elapses between each payment, so that they are irregularly spaced and for irregular amounts. Otherwise, the authorities that administer your benefits may treat regular transactions as income.

Although payments from a Personal Injury Trust are disregarded as income for the period to which they relate (for example, a month if they are paid monthly), any amount left at the end of that period then becomes capital. If this residual capital accrues to a level in excess of £6,000, it will lead to a reduction in means-tested benefit, or if allowed to accumulate further, complete loss of benefit entitlements. This is because those funds will be outside the Trust.

How can my Trust Fund be invested?

A Trust bank account is initially opened to receive and hold your personal injury payment(s). The account gains interest, however, you may wish to 'invest' these funds in other financial products to gain a better rate of return.

The funds you pay into this main 'holding' account can go on to be invested in a wide range of assets (i.e. share portfolios, bonds, savings accounts, property etc) as long as these investments/assets: -

- allow investment from a Trust, and
- can be registered in the name of the Trust.

These investments will then be held in the name of the Trust, rather than in your own name. However, these further investments will still belong to you because you are the sole 'beneficiary' of the Personal Injury Trust. Any interest or income generated from these investments can then be paid back into the main Trust bank account, thus they are still disregarded for means-tested benefits/ community care funding purposes.

We recommend that your Trustees appoint a professional financial adviser to help with investments, preferably one who specialises in the investment of personal injury awards. Our financial advisers can fulfil this role, and details of their fees are available on request.

Any initial consultation with our advisers is totally no obligation and free of charge.

What happens if I get divorced?

As you will be the beneficial owner of the Trust, the assets within the Trust will normally be treated in the same way as any other capital asset when the financial arrangements are negotiated. However, you should discuss this with a family solicitor as you can always argue that the funds held in Trust derive from a personal injury to you and that the compensation had been awarded to you and not associated to your marriage.

What happens in the event of my death?

Your Personal Injury Trust will 'dissolve' and the funds and assets within the Trust will form part of your normal Estate. Your Estate will then usually be distributed in accordance with the terms of your Will; however, a Personal Injury Trust does sometimes require a Grant of Probate to be obtained. It will depend on the remaining balance in the Trust account at that time.

A Grant of Probate is a legal document that is required to administer the Estate of someone who has died. Once this document has been obtained, the Executors can then deal with all the legal, tax and administrative duties involved in Estate administration.

When someone dies and they have a legally valid Will in place, the Will should name one or more Executors. These are the people who have been chosen to administer the Estate by the person who died. The Executors will usually be the people named on the Grant of Probate, and this will grant them legal authority to administer the Estate, and therefore the Trust account.

If the deceased didn't leave a legally valid Will, inheritance law will determine the appropriate person to administer the Estate, and this would usually be the next of kin. This person is called the Administrator and instead of a Grant of Probate, they may need to obtain a Grant of Letters of Administration. The process to do this is similar to obtaining a Grant of Probate.

If you die without a valid Will, your Estate will be distributed according to the rules of intestacy. This is not in keeping with most people's wishes, and we therefore recommend that you have an up-to-date Will. We suggest you seek specialist legal advice about this.

Please bear in mind that any subsequent beneficiary of your Will that is a means-tested benefit claimant will not have this capital disregarded, despite it originally being derived from a personal injury payment and previously having been held in a Personal Injury Trust.

Nestor's ongoing service and support

Nestor will continue to be the main point of contact throughout the lifetime of the Trust. You will need to contact Nestor if any of the following changes are required:

- Changing Trustees
- Changing addresses
- Changing contact details
- Changing principle contacts

Nestor will draft the paperwork and instructions that are required to make these changes on the Trust where required, we will also liaise with the bank to ensure the same changes are made to your Trust bank account.

Nestor will also support the executors of your estate in the event of your death and help with arranging the appropriate paperwork required by the bank to close the Trust account and transfer the remaining funds accordingly.

You can contact us at any time if you have any questions relating to your Trust, Trust bank account, investments, or benefit services.

The information contained in this brochure is for illustrative purposes only and should not be relied upon. This brochure is for general guidance only and represents our understanding of law, HMRC and benefit legislation and practice as at June 2020. Tax and Benefit legislation/ regulation is liable to change.

Please note that the Financial Conduct Authority do not regulate Personal Injury Trusts, Deposit Accounts, Taxation and Trust Advice.

Nestor is a trading style of Nestor Financial Group Limited which is Authorised and Regulated by the Financial Conduct Authority. FCA Reg No: 592783.
Registered in England & Wales Reg No: 08201442. VAT Registration: 855355994.

A full list of directors is available at our offices for inspection. We take great care to ensure that Nestor complies fully with the guidelines set by the regulatory bodies within the Financial Services industry. No information contained in this publication should be construed as an offer or invitation to invest.
