



Of course, not naming the Trustee as a beneficiary means that he or she can not benefit from the funds at all and, on a practical level, that may not suit the Trustee if he or she has a reduced earning capacity as a result of the accident. This type of Trust is subject to the ten year anniversary and exit charges referred to in a previous paragraph. However, if there is any Inheritance Tax payable on the death of the Trustee (only if he or she is named as a potential beneficiary) then the IHT already paid will be deducted from this final liability. The main advantage of a PIDD is that it will not affect the means-tested benefits that the Trustee receives. Of course, it may be that the Trustee is not receiving any such benefits- otherwise the Trust could perhaps be classed as a TDP instead!

This area of law is complex and this brief summary is not intended to be in any way exhaustive. If you have received compensation in respect of a successful personal injury action it is imperative that you obtain the correct advice as how best to deal with your pay-out. We would be pleased to advise you on the practical implications of setting up these Trusts and Inheritance Tax and Capital Gains Tax implications. Please contact us if you would like any further information.

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Personal Injury Trusts

...ACHieve peace of mind!



If you are unlikely enough to be involved in an accident, you may have been able to successfully claim compensation for the harm that was caused to you. If the injuries that you have sustained are serious and permanent this can be a substantial amount of money to assist with your on-going care needs and to reflect the fact that your earning capacity has been affected in the long-term. After the end of the litigation process, the next consideration is exactly what can be done with this money?

One option is to put the lump sum into what is known as a "Personal Injury Trust" so that it can be managed and invested for the person who has suffered harm. This is a generic term used for a number of different types of Trust which will be discussed more fully below. There are important Inheritance Tax and Capital Gains Tax implications in setting up different types of Trust which need to be reviewed carefully before the appropriate type of Trust is selected. A person who sets up a Trust is called a "Truster."

The first type of Trust is a Trust for a Disabled Person (under Section 89 of the Inheritance Tax Act 1984.) The legislation defines the term "disabled" which largely rests on a person being mentally incapable of managing his or her affairs or receiving Attendance Allowance or Disability Living

Allowance. A person who is likely to become "disabled" can also set up such a TDP if a medical practitioner can provide the necessary documentation to certify this. In addition, it is important to ascertain if a disabled (or likely to become disabled) person has an actual interest in the Trust. An example of an actual interest would include an absolute life-time right to receive the income of the Trust. In contrast, if the Trust was fully discretionary the disabled person would have no absolute right to receive anything from the Trustee: he or she would have to rely on the Trustees to make appropriate payments from the Trust Fund. Such a Trust could not be classed as a TDP. However, there is a "half-way house"

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whereby a disabled beneficiary of a supposedly Discretionary Trust can be deemed to have an actual interest in the Trust if at least half of the Trust Fund applied during the life time of the disabled person was for his or her benefit. This type of Trust would then be classed as a TDP.

If the Truster is classed as disabled or likely to become disabled and has an actual or deemed actual interest in the TDP, the Trustees will benefit from the full annual Capital Gains Tax exemption (currently £10,100). Trustees of a purely Discretionary Trust benefit only from half of the annual exemption (i.e. £5,050.) Additionally, payments into a TDP are not immediately chargeable to Inheritance Tax and, indeed, are not chargeable at all if the Truster survives for seven years after making the transfer. However, if the Truster had an actual or deemed interest in the TDP, then, on his or her death, the whole value of the Trust is aggregated with the value of his or her estate.

Any available tax-free allowance (the "Nil Rate Band") is "shared" between the TDP and the Truster's estate. In so much as the combined assets exceed this threshold, a 40% liability to Inheritance Tax is incurred. However, other Inheritance Tax charges are avoided (such as the ten year anniversary charges and "exit" charges incurred when property leaves the Trust.)

"If the Trust does not fall into the TDP category (perhaps because the Truster is not so severely disabled as to qualify for Attendance Allowance or Disability Living Allowance) there is the alternative option of putting the compensation payment into a Personal Injury Discretionary Trust.."

The first issue to remember with a PIDT is that any compensation payment into the Trust over the current Nil Rate Band will immediately incur a 20% Inheritance Tax charge. Secondly, where the Truster is named as one of the potential beneficiaries under a PIDT on his or her death the whole value of the Trust Fund would be added to his or her estate. This is because, although not having an actual interest in the Trust, the fact that the Truster has retained even a potential interest in the Trust is sufficient for HM Revenue & Customs to count it as "a gift with reservation."

