

Discretionary Trust use in personal injury litigation

Lump sum damages will almost always result in the loss of means tested benefits. By contrast setting up a Discretionary Trust has a number of advantages. **It is important that the trust is set up either as a term of the compromise of the action or as soon as possible after the Order is made.** The possibility of a Discretionary Trust should therefore be discussed early on in negotiations.

Advantages

- Flexibility - the flow of income and capital is controlled by the Trustees.
- Trust capital is not taken into account when calculating means tested benefits. In some cases the capital does not form part of the client's estate for Inheritance Tax purposes.
- Income is not taken into account in calculating means tested benefits in some cases. This depends on the nature of the payments, eg payments for food, clothing, footwear and residential care will affect eligibility.

Disadvantages

- Money doesn't belong to the client in his/her own right.
- Administration, eg Tax Return and Accounts every year.
- Unless it is a "Disabled Persons Trust" there are charges to Inheritance Tax every 10 years when capital is released. However, these are very modest and only affect Trusts with a value of over £285,000 at present. One of the conditions for a "Disabled Persons Trust" is that the client receives the cost component of disability living allowance at the middle or highest rate. There are other conditions to be fulfilled.

Procedure

- At least two Trustees are required.
- At least one or two other beneficiaries should be included in the class of beneficiaries to comply with the discretionary conditions. The client can be the primary beneficiary.
- Even if there is an existing trust in place for the client it is better to set up a separate one for these purposes.

For further information please contact Helen Robertson at hrobertson@vwl.co.uk.

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