

Personal injury trusts and older people

LYNNE BRADEY examines the application of personal injury trusts for older clients, specifically in the context of the changes to the rules in October 2006.

When thinking about personal injury trusts, our minds often turn to children or working-age adults who need or want to retain their entitlement to Income Support, Housing Benefit and Council Tax Benefit. Yet personal injury trusts can be just as relevant in the context of older clients.

Put simply, a personal injury trust is a trust that contains money received as a consequence of personal injury. The trust can be a discretionary or life interest trust, but the most common trust arrangement these days is a bare trust. This is the simplest type of trust for the injured person to understand. Under its terms, the only person who can benefit is the injured person. Income Tax, Capital Gains Tax and Inheritance Tax are assessed on the injured person themselves, rather than on a tax return issued to the trustees. All the injured person's own tax exemptions can be utilised.

For practitioners considering using a discretionary trust, or indeed any other type of trust which is now a relevant property trust following the Finance Act 2006, it is important to check that the amount of money which is being placed into the trust now, or will be placed into the trust later, does not exceed the nil-rate band for Inheritance Tax. If it does, the injured person will receive an unexpected

and certainly unwanted bill from the tax man for 20 per cent Inheritance Tax on the amount above the nil-rate band, and you may well find yourself on the receiving end of a negligence action. No such complications apply to bare trusts.

A bare trust can be revoked at any time, at the request of the injured person. However, it may be that the injured person will want to use a different type of trust, afraid either that they may be tempted to break the trust under pressure

from gold diggers, or that they themselves may be vulnerable to making rash decisions, perhaps if a medical condition deteriorates or an addiction re-surfaces.

What are the advantages of the personal injury trust?

As well as the immediate benefit and care-related advantages, there can be other good reasons for money being placed in a personal injury trust. The injured person may have no experience of handling a large sum of money and dealing with the responsibilities that come as a result. They may feel that they are financially naïve and would be easy prey for those who offer to invest their money, but take a hefty profit for themselves. There may be concerns that people will come out of the woodwork and ask them for money. Trustees can be a useful barrier against this.

For the purposes of long-term care, under the National Assistance (Assessment of Resources) Regulations Schedule 4 paragraph 10, which deals with capital disregards, "any amount which would be disregarded under paragraph 12 of schedule 10 to the Income Support Regulations (Personal Injury Trusts)" is disregarded.

Schedule 10 paragraph 12 of the Income Support (General) Regulations 1987 states that "where the funds of a trust are derived from a payment made

Even if a client has lost capacity, it is possible to make an application to the Court of Protection for a trust to be set up, although the Attorney or Receiver may feel that lodging the personal injury money with the Court will do the job just as well.

