

A photograph of yellow cosmos flowers against a clear blue sky. A small black bee is flying in the upper center. The image is split horizontally into a top blue section and a bottom white section.

WRIGLEYS
— SOLICITORS —

Trusts for injured children

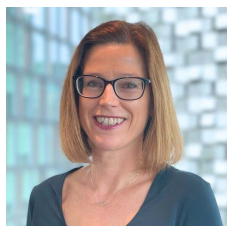
Wrigleys' Court of Protection & Personal Injury Trust team specialise in all aspects of trusts for vulnerable people



Trusts for injured children

Your Team

Wrigleys has a specialist Court of Protection & Personal Injury Trust Team, who specialise in asset protection and putting in place the appropriate arrangements, including Trusts when people under 18 have been injured.



Jane Netting
Partner



Lisa Eato
Legal Director



Charlotte Dyson
Partner



Lynne Bradey
Partner



Tom Mundy
Solicitor



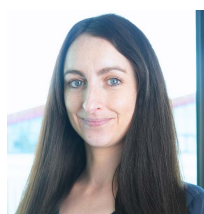
Tracy Sladen
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Isabel McIver
Solicitor



June Thompson
Court of Protection
and Trust
Administration Team
Leader

About Wrigleys Solicitors

Wrigleys Solicitors LLP is a market leader in 'asset protection' services for private individuals. Amongst other things, this includes dealing with complex Wills, Trusts, matters involving the Court of Protection, inheritance tax planning, administration of a deceased's estates, elder care and property related issues.

Wrigleys is highly rated for its ability to meet the needs of its clients in the independent 'Chambers & Partners' and 'Legal 500' guides to the legal profession.

'The COP team at Wrigleys is diligent, knowledgeable, approachable and above all they care deeply about their clients' welfare'

Legal 500

Introduction

Also known as ‘Trusts for children receiving damages’ or ‘CPR 21.11 Trusts’, trusts for injured children are an alternative solution for holding damages awards made to children under 18 years old.

Traditionally the Courts have opted to keep the funds “in Court”. This has become less attractive in the last few years as a result of very low interest rates.

Wrigleys often advise personal injury solicitors and clients to apply for the funds to be held outside of Court in a private trust.

This guide provides a little more detail about the options to consider.

How Wrigleys can help to set up a Trust for a child (or minor) receiving damages

Establish a trust and trust document.

Prepare supporting documents to submit to Court for a private trust application.

Attend Court as a witness when required to explain the private trust proposal.

Act as a professional trustee working closely with your client and their family to ensure the funds are held in the child’s best interests.

Enhance the schedule of loss by providing a witness statement of the past and future costs of the professional trustee’s involvement (irrespective of who that trustee is).

A child (or minor) receiving a compensation award

Dependent upon the amount of the award, it is up to the Judge whether they have discretion to release the final award (usually a relatively small sum) to the child’s parent(s) or Legal Guardians. If there is to be a substantial sum to be awarded, then the options are:

- The money is placed in the Court Funds Office until the child reaches 18 when the Court will then pay the money out to them directly as they have become an adult.
- A Trust can be declared on behalf of the child and approved by the Judge in the High Court.

It is important to note that if the funds are held in the Court Funds Office (up to the child reaching 18) then each time the child requires any funds, for their benefit then an application will need to be made by their parent(s) or their Legal Guardian. The Judge will then consider the request and release the funds accordingly. Whilst the money will earn interest at the Court Funds Office they can on occasion be invested and it is important to consider whether in terms of administration, this may cause delay or frustration for the child and his or her family.

When a child is injured and is to receive a compensation award

It is important to note that a Trust for a child can only be put in place (and declared by the proposed Trustees) if the child is likely to have the necessary capacity, to handle their own financial affairs, at the age of 18. A medical opinion will need to be obtained to determine and confirm that “on the balance of probability” the child will have capacity, at 18 to handle their own financial affairs.

If this is the case, then a Trust is able to be put in place, and declared on the child’s behalf (subject to the approval of the High Court Judge) until the child is aged 18.

If the child will not have the relevant capacity at age 18, then a Trust cannot be put in place and those closest (usually the child’s family and also those assisting with litigation), will need to consider applying to the Court of Protection for the appointment of a Deputy.

Putting in place a Trust

If it is decided that it would be best for the Proposed Trustees (who can be family or Professional) to declare a Trust for the child, to hold any interim payments and also the final compensation award (up to the age of 18), an application will need to be made to the litigation Court, for the Judge to approve the Trust Deed.

A Trust is declared under Civil Procedure Rule 21.11.

If required, Wrigleys will put together the Trust application paperwork. This will include:

- A draft Trust Deed
- A Guide to the terms of the Trust and also the advantages, together with a financial report (prepared by an Independent Financial Adviser) supporting the advantages of holding the money in Trust, whilst the child is a minor as opposed to holding the money in the Court Funds Office.
- A detailed Witness Statement to support the application.

It is important to note that Wrigleys will not be party to any litigation proceedings. We will need to liaise closely with the litigation firm in order to lodge the application with the High Court. We work closely with the litigator accordingly to ensure that an Order is made by the Judge, approving the Trust (and of course assisting with any queries) for the Trust to subsequently be executed.

Choice of Trustees

There will need to be a minimum of two proposed Trustees, to declare the Trust on behalf of the child. This is a legal requirement.

The choice of Trustees can be close family of the child, guardians and/or a professional.

It is important to consider appointing a Professional Trustee if the child's interim payments or final compensation award is to be a substantial sum as the Judge may insist on a professional being appointed and involved, up to the age of 18.

A Bare Trust and what happens at age 18

If the child is deemed to be mentally capable, at the age of 18 then the Judge only has jurisdiction to put in place a Bare Trust arrangement pursuant to the Judicial Handbook.

A Bare Trust will ensure that the Trustees are legally holding money on behalf of the child up to the age of 18 to administer and invest in the child's best interests. Upon reaching 18 and becoming an adult, the child may decide to wind up the Trust, and ask for the balance of the Trust fund to be transferred to them directly.

It is usually the case that even after reaching 18, the child (now adult) keeps the trust in place for the security and the familiarity of the Trust administration and advantages that the trust continues to offer. For instance, the trust will continue to:

- Offer protection to the child (now an adult) in terms of vulnerability and/or exploitation;
- Assist with administering the award (which can often be daunting in itself); and
- Protect any means tested benefits and the possibility of means tested care and support.

If you need any further advice in relation to putting in place this type of Trust arrangement for a child who is due to receive money as a result of a personal injury claim or would like us to assist in dealing with a Trust application, or acting as Trustee going forward please do not hesitate to contact our specialist team.

Advice to clients about Wrigleys as Trustee

Wrigleys are able to act as a Professional Trustee. When Wrigleys act as Trustee, rather than appointing an individual as Deputy (i.e. a solicitor or partner), we appoint the firm's Trust Corporation, Wrigleys Trustees Limited.

One of our specialist solicitors will meet with you to discuss your circumstances and the management of your trust. They will consider matters of a legal nature, or which require a degree of expertise. They will usually meet you once a year for an annual review meeting. They can meet you more often if your circumstances require.

Wrigleys' Trust and Court of Protection Administration Team

If you wish us to assist with administration of your trust, the day to day administration of your trust would be dealt with by our specialist team, headed by Lisa Eato, also a Director of Wrigleys Trustees Limited. Our team is also supported by Isabel McIver and June Thompson.

Typically one Paralegal from our Trust Administration Team will work closely with you and any co-trustee on a day to day basis. Your dedicated paralegal is usually the first point of contact for queries regarding trust administration.

Our Trust Administration team also includes qualified specialists who deal with tax issues (including preparation of Tax Returns) and the preparation of Annual Trust Accounts.

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The information in this document is necessarily of a general nature, specific advice should be sought for specific situations.

If you have any queries or need any legal advice please feel free to contact Wrigleys Solicitors

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