



Trusts

emgsolicitors

Supporting Clients. Protecting Assets. **Changing Lives.**

At EMG Solicitors we have a dedicated team who specialise in trusts: providing advisory, inception and administration services. In particular, the team frequently work on cases that involve a vulnerable beneficiary, however these include varying degrees of need.

We work with individuals who are capacitous but they themselves recognise the benefits of professional advice and support in relation to the management of their financial affairs, all the way through to those who have issues with capacity and the trust is a requirement of the Court.

What is a trust?

A trust is usually an arrangement whereby two or more people (the trustees) hold assets in their names, but they can't use those assets for their own benefit. Instead the right to benefit from the assets belongs to someone else (a beneficiary).

Trusts & Trust Administration

There are different types of trust which can be used for a variety of reasons: to protect assets, provide for young or vulnerable family members or for inheritance tax planning.

They typically allow the settlor (the person who is setting up and paying money into trust) to retain more control over assets, when compared with just giving them away, and can give flexibility as to who ultimately benefits from the trust assets.

Our team will create solutions tailored to meet all of your needs in the most tax efficient way.

We can help with all aspects of trust administration including budgeting, tax returns, investments (after receipt of independent financial advice), decision making, liaising with you, your family and friends and any trust related invoice and payroll requirements. We work together to ensure all of our advice and service is in the beneficiary's best interests.



Who can be a trustee?

The settlor (the person who creates the trust) will decide who the trustees will be but it is recommended that there are at least two trustees. The settlor can be a trustee but they cannot act alone. They can choose to have their solicitor as a trustee, but an additional cost for this service applies. It is important for the settlor to choose someone who they trust to act in the beneficiary's best interests. Ideally, this should be someone independent, such as a friend, although the settlor could also appoint a member of the family if they prefer.

Trust Administration

Being a successful trustee can be a daunting task that can be very time consuming, and require specialist knowledge. Our solicitors can advise trustees to ensure they keep on top of their duties and administer the trust correctly.

The requirements relating to trust law are complex and trustees can often be overwhelmed with the duties they face. They could end up failing to meet HMRC reporting requirements or face a claim from beneficiaries.

Our team of experts can support you with:

- Trust administration & management
- Tax returns and compliance tasks
- Preparing trust accounts
- Advice to ensure legal and tax obligations are met
- Advice on the legal powers and responsibilities of trustees
- Acting as professional trustees

Types of Trust

Many of our clients have received a compensation payment and/or are living with life changing injuries or disabilities. There are three types of trust that could be beneficial in these circumstances, a bare trust, a trust for vulnerable beneficiaries and a discretionary trust.

A 'bare trust' - is one where the beneficiary has the absolute right to the capital and assets within the trust, as well as the income generated from these assets (once they attain 18 years of age). The assets within the trust will form part of the beneficiary's estate and when they die these assets will pass under their Will, or via the rules of intestacy if a Will has not been executed. The benefit of holding funds from a personal injury compensation claim (to give an example) in a bare trust is that the settlement monies will still be the settlor's to do with as they please (in accordance with any trustee view) but the funds will be ring-fenced and excluded from any means-tested benefits eligibility assessment.

A 'trust for vulnerable beneficiaries' - is one that is set up for either someone under 18 whose parent has died or a disabled person.

A 'discretionary trust' - is one where the trustees can make certain decisions about how to use the trust income, and sometimes the capital. Legal ownership of the assets passes to the trustees though and the assets no longer form part of the settlor's estate.

Depending on the trust deed, trustees can decide:

- what gets paid out (income or capital)
- which beneficiary to make payments to
- how often payments are made
- any conditions to impose on the beneficiaries

Discretionary trusts are sometimes set up to put assets aside for:

- a future need, like a grandchild who may need more financial help than other beneficiaries at some point in their life
- beneficiaries who are not capable or responsible enough to deal with money themselves

Personal Injury Trusts

When an individual has been awarded compensation as a result of a personal injury claim, their entitlement to claim means-tested benefits, tax credits and state funded awards and services can be affected unless it is paid into a personal injury trust or held by a deputy appointed by the Court of Protection.

If the injured party is capable of managing their finances and affairs, our experts can offer them the peace of mind that their finances are secure with a personal trust service to guide them through the legal and procedural requirements. We will draft the necessary trust deed and keep all parties fully up to speed throughout the process. We can also liaise with the Department for Work and Pensions (DWP) or other statutory agencies on their behalf, including in relation to an appeal.

If a professional trustee is required, or preferred, we can ensure the finances are secure and administered effectively. We will explain any technical details and will do this in an easy to understand way. We will provide guidance through each and every step.

The important thing is enabling any injured party to use their compensation as it was intended and to improve their quality of life following injury. As experts in the long-term management of damages awards, EMG Solicitors treat clients fairly and provide access to life-long practical solutions.

Are there any disadvantages to a personal injury trust?

Some control over the damages will be lost as decisions regarding their investment and management must be made by the trustees. The trustees are under a duty to act in the beneficiary's best interests but cannot be compelled to use the money in a particular way.

However, the injured party (whether a trustee or not) will still be able to have a say in how the monies are used. In addition, because the trustees are holding the money for them as a beneficiary, if they are not happy with the way the trustees are managing the trust they can demand that the monies are returned to them (although the benefit and social care advantages detailed above will be lost if this happens) or look to utilise alternative trustees.

'Great service and all staff are so friendly, Emma Gaudern is a trustee for my son and has been for many years, always available for me when I need joint decisions and very fair...cannot fault the service I receive from this firm, and always someone at the end of the telephone...thank you guys.'

What can be done with the money in a trust?

The trustees need to be careful about payments being made to any beneficiary on a regular basis as they could be treated by the DWP or local authority as income and this could affect any entitlement to benefits or means tested social care. From time to time, the trustees can pay out a lump sum to a beneficiary, but this needs to be carefully considered and managed to ensure your ongoing entitlement to benefits is maintained wherever possible (given this will typically be one of the main reasons the trust was inception to begin with). See more information on this in the 'pitfalls' section below.

The trust fund can also be used to make one-off purchases such as a car, furniture or a holiday. However, the trustees should pay directly for such items and not give the money to the beneficiary to pay for them unless capital thresholds have been considered.

The current rules state that, usually, if the beneficiary has more than £6,000 in capital this will reduce their entitlement to means tested benefits. If they have more than £16,000 in capital they will not be entitled to means tested benefits at all until their personal capital falls below this sum, so personal cash balances need to be managed carefully. The limits are slightly different for social care eligibility, the lower and upper limits are £14,250 and £23,250 respectively.

Please note that different capital limits also apply if the beneficiary or their partner are over 60 or if they are in residential care or a nursing home. If the beneficiary thinks that this may apply to them, they should contact the DWP or seek advice from a benefits specialist to find out what the applicable limits are. We can also refer them to our specialist advisors should this be necessary.

The injured party is the only person who can benefit from the money held on trust during their lifetime. However, the trust can be structured so that the trustees can make modest gifts to family and friends if that is what has been directed by the settlor.

The trustees can also fund various outgoings including the costs of regular services, such as carer's wages.



Trustees' duties

Trustees must act legally. Under the law they have certain duties which include:

1. To observe the terms of the trust;
2. To act unanimously (this means that both trustees must agree before a transaction regarding the trust can take place);
3. To ensure trust funds are appropriately invested;
4. To protect the beneficiary's interests;
5. To keep records and accounts (bank statements will suffice if these show all trust transactions, but these should be annotated where it is not clear what the money has been taken out of the trust for);
6. To act with honesty and integrity; and
7. To not allow their personal interests to get in the way of making decision in the beneficiary's best interests.

'Their friendly and approachable manner means I pick up the phone without hesitation in the knowledge that I will receive excellent quality and totally correct advice. I would have no hesitation in recommending this firm...'

Managing Tax

The trustees should not need to pay tax to HMRC provided that income tax on the trust investments is deducted at source. Tax is deducted at source on investments such as building society and bank accounts, investment bonds, unit trusts and shares. The trustees should also try to ensure they are utilising all of the available personal tax free allowances when undertaking investments, taking into consideration the beneficiary's personal circumstances, including whether they are earning their own income or have assets outside the trust. If the trustees are unsure about whether they need to pay tax, they should take appropriate advice. We can help you find an independent financial advisor should you need help with this.

All the income of the trust will usually be treated as the beneficiary's for income tax purposes, and so if they have to fill in a tax return, they will need to declare the trust income as theirs. Similarly, if any assets belonging to the trust (such as investments) are sold at a gain (i.e. sold for more than they were bought for), the beneficiary should declare the gain on their tax return and may have to pay capital gains tax on it.

If HMRC do send the beneficiary or the trustees a tax return, it must not be ignored, otherwise the beneficiary and the trustees could be liable to a fine of at least £100 plus interest.

To find out if you need to complete a self assessment return you can visit www.gov.uk/check-if-you-need-tax-return

What happens after the trust has been set up?

Once the trust has been set up, we suggest that for peace of mind, we write to the DWP to report the creation of the trust and explain why it is disregarded when assessing eligibility for means tested benefits. If we are not required to write to the DWP directly, we can provide a letter template instead.

We can also inform HMRC, if necessary.

What happens when you die?

Unless the trust deed says otherwise, any money left in the trust when the beneficiary dies will be dealt with as part of their estate and will pass either under their Will or under the intestacy rules, depending on which take effect (i.e. whether they have made a valid Will or not).

What if you change your mind?

The beneficiary can request of the trustees that the trust is wound up and all the capital contained within it is appointed out to them. However, they will then run the original risk of losing their entitlement to means tested benefits and social care.

'I would have no hesitation in giving this firm 100% for level of service. They are professional and friendly whenever I contact them. The response times are excellent, e-mails are very often answered same day or if not same day always within a couple of days. Once instructed, they carry out the work efficiently and quickly and I receive regular updates on progress and had never had to chase them. The knowledge this firm has is excellent, they have always given accurate advice to whatever question I have asked or help I have needed, they know the processes within the Court of Protection and give excellent advice guiding me through these procedures. They know their business inside out. They work as a team, so whoever you speak to is able to help, you do not get passed about and each member of the team is very knowledgable. I would rate them as excellent value for money...'

'EMG Solicitors provide a professional service whilst always keeping the clients at the centre. They are skilled in working with challenging and complex clients. They think outside the box and approach complex problems in a logical and pragmatic way. I am most impressed by the team approach and the respect they have within the company and for other professionals.'

- The Legal 500, The Guide to the UK's Best Law Firms

EMG Solicitors are Top Tier ranked in 'Personal Tax, Trusts & Probate'
Legal 500 2022 North edition

'I would like to once again express my gratitude for all you do for me behind the scenes...to help me finally be living the right life.'

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