

Compensation and Trusts in relation to Housing Grants Information for Renovator Users November 2012

Quite often those seeking a Disabled Facilities Grant (DFG) may have been the victims of a medical, road traffic or other accident and may be in receipt of compensation in respect of that accident. Such compensation may be held in trust. In other cases, those being means-tested for DFG may benefit from some other form of trust.

How should these be treated?

Where it is known that a compensation claim is planned or is in progress

Under section 51 of the Housing Grants Construction and Regeneration Act (HGCRA) a local authority may, where it is aware that an applicant is involved in a compensation claim which may make an award for adaptations, impose a condition on the applicant that they take reasonable steps to pursue that claim and to repay the grant from the proceeds of such a claim.

To do so an authority will need “the consent of the Secretary of State”. Although this sounds demanding, in reality the consent will be granted on behalf of the minister by the official who oversees the scheme at the Department for Communities and Local Government, and would be unlikely to be refused.

In practice, this is not an action often taken by authorities, as grants are usually claimed after, rather than before or during, any compensation claim.

Where the person being means-tested benefits from personal injury compensation held in trust

In a case where the person being means-tested has received a substantial sum in personal injury compensation this will usually be held in a trust.

Any capital held in the trust fund is ignored as *capital* under Schedule 4, paragraph 14 of the Housing Renewal Grant Regulations (HRG Regs). However, this is not the case if any of the award was “for carrying out works to which the application relates”. In practice it may be difficult to argue that some portion of the capital can therefore be taken into account, as even where an award includes an amount for adaptations this is usually in general terms, rather than in respect of specific works.

In addition, any regular payments made to the disabled person by the trust are ignored as *income* under Schedule 3, paragraph 71 of the HRG Regs.

Where the person being means-tested benefits from other forms of compensation

Where someone receives payments under a court order for “any accident, injury, or disease suffered by the person” then such payments are specifically excluded as *income* under Schedule 3, paragraph 71 of the HRG Regs. There is no similar exclusion in relation to capital, although one might think there should be. In practice, if someone receives a lump sum compensation payment which is not of a size to merit setting up a trust fund, that would therefore need to be taken into account as capital.

Where the person is a child under 18

There are specific provisions in paragraphs 46 and 47 of Schedule 4 of the HRG Regs to exclude as capital any sum administered by the courts in respect of a child under 18, where that sum is payable as compensation for an injury to that child or in respect of the death of the child's parents.

As DFGs for children and young people are not means-tested this exemption will rarely need to be applied.

Trusts generally

Where the person being means-tested is the beneficiary of a trust it will rarely be the case that the capital in the trust can be taken into account as capital. The most common form of trust is a discretionary trust, where the trustees decide when and if any money from the trust should be made available to the beneficiary/beneficiaries. As such, it cannot be said that the capital is that of the beneficiary, or even that it is capital "available upon application" to them.

Any lump sum payments actually received from the trust may count towards the relevant person's capital. Any regular payments may count as income, although it may not be unreasonable to regard such payments as "charitable or voluntary payments", of which the first £20 per week is ignored.

The Legislation

HGCRA s.51

Conditions as to repayment in case of other compensation, &c.

51. - (1) Where a local housing authority approve an application for a grant they may, with the consent of the Secretary of State, impose a condition requiring the applicant to take reasonable steps to pursue any relevant claim to which this section applies and to repay the grant, so far as appropriate, out of the proceeds of such a claim.

(2) The claims to which this section applies are-

(a) an insurance claim, or a legal claim against another person, in respect of damage to the premises to which the grant relates, or

(b) a legal claim for damages in which the cost of the works to premises to which the grant relates is part of the claim;

and a claim is a relevant claim to the extent that works to make good the damage mentioned in paragraph (a), or the cost of which is claimed as mentioned in paragraph (b), are works to which the grant relates.

(3) In the event of a breach of a condition under this section, the applicant shall on demand pay to the local housing authority the amount of the grant so far as relating to any such works, together with compound interest as from such date as may be prescribed by or determined in accordance with the regulations, calculated at such reasonable rate as the authority may determine and with yearly rests.

(4) The local housing authority may determine not to make such a demand or to demand a lesser amount.

HRG Regs Sch 3

71. Any payment-

(a) from a trust whose funds are derived from a payment made in consequence of any personal injury to a relevant person;

(b) under an annuity purchased-

(i) pursuant to any agreement or court order to make payments to a relevant person; or

(ii) from funds derived from a payment made, in consequence of any personal injury to a relevant person; and

(c) (not falling within (a) and (b) above) received by virtue of any agreement or court order to make payments to a relevant person in consequence of any personal injury to that person.

72. Any payment ordered by a court to be made to the relevant person or the relevant person's partner in consequence of any accident, injury, or disease suffered by the person or a child of the person to or in respect of whom the payments are made.

HRG Regs Sch 4

14. -(1) Subject to sub-paragraph (2), where the funds of a trust are derived from a payment made in consequence of any personal injury to the relevant person, the value of the trust fund and the value of the right to receive any payment under that trust.

(2) Any value to which sub-paragraph (1) applies shall be disregarded under this paragraph to the extent only that it does not represent funds or a payment which are for carrying out works to which the application relates.

46. Any sum of capital administered on behalf of a person by the High Court or the County Court under rule 21.11(1) of the Civil Procedure Rules 1998, or the Court of Protection, where such sum derives from-

(a) an award of damages for a personal injury to that person; or

(b) compensation for the death of one or both parents.

where the person concerned is under the age of 18.

47. Any sum of capital administered on behalf of a person in accordance with an order made under Rule 43.15 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 or under Rule 131 of the Act of Sederunt (Rules of the Court, consolidation and amendment) 1965, or under Rule 36.14 of the Ordinary Cause Rules 1993, or under Rule 128 of the Ordinary Cause Rules where such sum derives from-

(a) an award of damages for a personal injury to that person; or

(b) compensation for the death of one or both parents.

where the person concerned is under the age of 18.