

# Trusts for vulnerable, disabled, and injured beneficiaries



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## Key considerations

- Who is your client?
- Defining vulnerable (or not)
- Law Society of Scotland - B1.5 Vulnerable Clients Guidance
  - Influence and undue influence
  - Red flags and indicators
- An illustrative case: *Smyth v Rafferty* 2014 Scot (D) 14/10 or 2014 CSOH 150

## Key considerations

- Powers of Attorney, Guardianships, and Intervention Orders
- OPG and its role when it comes to trusts
  - Seeking OPG authority / approval
  - OPG guidance on trusts
- Local Authorities, Governmental departments, and other considerations
- The growing reach of Compliance...

## The Key Consideration

- The vulnerable beneficiary



## Trustees – getting it right

- Composition and numbers:
  - The settlor?
  - The beneficiary?
  - Family members?
  - Trust Co?
- Duties and Powers – how much does the trustee understand?
- Taking ‘ownership’ of the trust
- Management and administrative support
- Look a little further down the road!

## Types of trust

- Trusts that form a socially beneficial function
- “Trusts for vulnerable beneficiaries”:
  - 23-45 and Sch 1A Finance Act 2005
- Trusts for the injured
  - PI Trusts (it’s what’s inside that counts)
- Trusts for the vulnerable
  - most of the above and more...
  - ends inform the means

## (“Old”) A&M Trusts

- Overview
- S.71 IHTA 1984
- Qualifying trusts created before 22 March 2006
- Post 22 March 2006 and 6 April 2008
- Tax and awareness



## Bereaved Minors Trusts

- Overview – entitlement at 18
- ss71A – 71H IHTA 1984
- Administration
- Tax treatment
- Objectives, circumstances, and alternatives

## Disabled Persons' Trusts

- ss89 – 89C IHTA 1984 – scope of application
- Qualification of the beneficiary and the trust
- Taxation – an evolution of complexity
- The beneficial Income Tax and CGT treatment
  - Election;
  - Application; and
  - Practicalities
- IHT and the annual limit for distributions

## Disabled Persons' Trusts

- Most efficacious in every way?
  - Social benefit
  - Benefits driven qualification
  - Interplay among taxes
- Accumulation with estate on death
- Protective element
- Self-settlement (and an intro to the PI Trust)

## Personal Injury Trusts

- Defined by what it holds
- Informed by what is required:-
  - Means-tested benefits
  - Exposure to cost of care
  - Administration and assistance
- Self-settled so not tax-efficient but choice of trust has its implications
- 52-week disregard but can be formed at any time
- Disabled Trust as PI Trust – necessary or optimal?

## Practical Points

- Is a trust for a vulnerable person what that vulnerable person needs?
- Increased transparency and trusts for the vulnerable
- Use of trusts in Wills



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