

**PERSONAL INJURY TRUSTS  
FOR MINORS  
THE CHANCERY PERSPECTIVE**

Richard Dew



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# TO DISCUSS:

- A. Trust or other, the choices
- B. Nature of the Trust
- C. *OH v Craven*: the advice
- D. Provisions of the Trust
- E. Tax and Means-Tested Benefits (some pointers)



# A. Trust or other, the choices

- Court Funds Office
- Deputyship (requires COP jurisdiction)
- Direct to child / litigation friend / solicitor
- Trust



## B. Nature of the Trust

- Generally no power to settle a minor's property
- So necessarily a 'bare trust'
- Availability of other powers including s32 Trustee Act 1925
- Now common to 'add' administrative powers, including trustee appointment, charging, investment etc.

*Allen v Distillers Company (Biochemicals) Ltd* [1974] QB 384

*D v O* [2004] 3 All ER 780

*OH v Craven*



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## C. *OH v Craven* [2016] EWHC 3146

- The role of the Court on applications for approval / payment out.
- Necessity to demonstrate a “free and informed decision ... by the applicant”
- Presumption of undue influence by the solicitor
- Requirement (over £1m) of advice from Chancery Counsel for +5 yrs to advise in writing (at firm’s expense)



## C. *OH v Craven* [2016] EWHC 3146

Advice to include:

- Identity of the trustee, need for professional, that does not need to be a member of the firm giving the PI advice
- Trustee charging clause
- Investment and other powers (and use of STEP powers)
- Tax and means-tested benefits



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## D. Provisions of the Trust

- Trustees and Trustee Replacement
- Trustee Charging
- Investment
- Conflicts of Interest
- Exclusion of s31 Trustee Act 1925



## D. Provisions of the Trust

Use of the STEP Standard Provisions? Consider:

- Very wide investment powers (anywhere in the world and unsecured loans)
- Ability to apply income to parent or guardian and no duty to enquire as to use
- Conflicts of interest clause
- Trustee remuneration clause
- Exclusion of liability





# E. Taxation and Means-Tested Benefit

## Tax

- Bare trust = the minor's property. Should be tax 'neutral'.
- Wider, post 18, trust may qualify as disabled/VP trust with same effect.

## Benefits

- Generally, the proceeds of a PI award are ignored for benefits, whether held in a trust or by CFO.



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