



Charles Badenach - principal, private client adviser, Shadforth Financial Group

Charles Badenach is a principal and private client adviser for the Shadforth Financial Group and winner of the Financial Planning Association Pre-Retirement Planning 2010 Value of Advice award. He previously worked in the legal profession with a major law firm and has been admitted as a

practitioner of the Supreme Court of Tasmania and the High Court of Australia. A representative of the Shadforth Financial Group, he is an associate member of the Financial Planning Association of Australia and the Law Society of Tasmania. He is involved in numerous community and industry based bodies both as a trustee or board member including Shadforth's Limited Board of Advice.

GUARDIAN OF ADVICE

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This case-study looks at the financial advice given to Tim (20) who when he was just eight years old suffered severe injuries from a car accident in which his mother was killed.

While a police investigation into the accident found the other driver negligent, it took 12 years before Tim received a compensation payout due to the uncertain prognosis he faced at the time and the inability to quantify.

Today Tim lives with his father Bob and continues to experience numerous symptoms that still interfere with his daily living activities.

While they were in the process of negotiating the legal claim, Tim's lawyer recommended that he and his father Bob approach private client adviser Charles Badenach from the Shadforth Financial Group.

"They sought advice at this stage as they wanted to model their cash flows based on various lump sums they were expecting to receive," said Badenach.

"This advice enabled Bob and his lawyer to consider whether a sum was reasonable given Tim's future lifestyle needs, while allowing me to gain a deeper understanding of the core issues in the case," he said.

After Tim finally received monetary settlement of around \$4 million, Bob sought additional advice on how he could manage Tim's money on his behalf.

Given that Tim is completely dependent on the income from his settlement money, Bob also sought advice to ensure his current lifestyle is sustainable.

"As the settlement money, by a default position is managed by the Public Trustee, the first step in the process was to make an application to the Guardianship and Administration Board - seeking an order that would allow Bob to be an administrator of Tim's money," said Badenach.

In the lead-up to the Guardianship and Administration Board hearing, Badenach assisted with the preparation and submission of investment policy and Statement of Advice documents required to make their final decision.

"I also addressed the board on why Tim's father was a suitable administrator as well as explaining to them what safeguards we'd have in place to ensure the money was properly managed over the initial administration period of three years being sought," he said.

After a prolonged process, Tim's father (Bob) was appointed as administrator of his son's affairs for a period of three years.

However, Bob's administrator appointment was subject to several stringent conditions including the appointment of Badenach for three years to help develop a strategy that would achieve Tim's future financial objectives and manage the portfolio.

After the board hearing, the advice continued through to implementation of the financial strategy.

Table 1: Summary of Tim's objectives

Objective	Detail	When
Maintain current lifestyle	Target a net income of \$70,000 per annum to maintain Tim's current lifestyle	Now
Wealth creation	Build Tim's assets to ensure he is financially secure in the future	Now
Education expenses	Provide funding for Tim's ongoing educational requirements	Ongoing
Ongoing care	Provide funding for Tim's ongoing care, including, but not limited to: <ul style="list-style-type: none"> ● Physiotherapy and further medical rehabilitation ● Future operations and associated medical assistance ● Assistance in the home. 	Ongoing
Future medical requirements	Be in a position financially to take advantage of any future medical advancements that may include operations or treatments that will enhance Tim's quality of life	Future
Future lifestyle requirements	Tim to be in a position to live a long and fulfilling life. This may include, but is not limited to: <ul style="list-style-type: none"> ● Purchasing a home; and a ● Holiday. 	Future
Becoming independent	Build towards Tim becoming as independent as possible.	Now
Asset allocation	Determine whether Tim can meet his short and long term goals by investing in a growth portfolio.	Now

Strategic decisions

After reviewing the complexities of Tim's case, Badenach found that superannuation was an option under the personal injuries provision.

"This provision allows amounts to be contributed to superannuation over the usual thresholds providing a number of pre-conditions are met in a personal injury situation."

In considering the various superannuation options available, with Bob it became clear to Badenach that he wanted an active involvement in the management of the money on his son's behalf.

Consequently, a self managed superannuation fund was established as the primary investment structure.

Given the significance of any potential error with the contribution caps, Badenach worked with Tim's lawyers to address the requirements of section 292-95 of the ITAA 1997.

As one of the requirements of the personal injuries provision that is set out in this section, Bob and Tim had to make a contribution within 90 days of the later of the following:

- The day on which the client received the personal injury payment
- The day on which the agreement for settlement of the personal injury payment was entered into
- The day on which the court order for the personal injury payment was made

"As the court order was made in December 2011 and the money paid in February 2012 but the Guardianship and Administration Board hearing was not until March 2012 there was some uncertainty as to when the 90 day period started to run from," he explained.

In order to avoid any potential issues Badenach obtained a legal opinion confirming that the 90 day period ran from the 31 March 2012.

The second requirement of section 292-95 of the ITAA 1997 was that only part of the damages claim that related to the compensation payment could be contributed to superannuation under the personal injury provision.

"In this case the actual judgment did not break down the settlement into 'specific damages' and as such it was difficult to quantify what portion of the settlement would satisfy the SIS legislation," he said.

To ensure that Tim didn't contravene this provision Badenach obtained letter of advice from Tim's lawyers confirming the breakdown of the payments.

He said to protect Tim from an unlikely contributions cap issue the monies were deposited to superannuation in two tranches.

- Personal Injury sum \$3.4 million
- Non Concessional Contributions
- \$150,000 before June 30 2012
- \$450,000 in July 2012
- By making the non concessional contributions over two financial years Badenach was able to bring forward the averaging provision and remove the threat of an excess contributions issue.
- The third requirement of section 292-95 of the ITAA 1997 was to obtain two reports from medical practitioners confirming that he was eligible to make a contribution under this provision.
- Tim was able to satisfy this requirement without any issue.
- By meeting a condition of release once the funds were contributed to superannuation Tim could also obtain access to his money.
- A regular income stream was set up in the form of an account based pension to meet Tim's income needs and the funds were paid to him as a tax free income stream.
- With Tim's minimum pension this was paid into a cash management account in his name and it is from this account that Tim's day to day needs are met.
- As the balance in the non superannuation account accumulates, Badenach expects the funds to be invested in Australian shares paying fully franked dividends.

Achieving objectives

In proceeding with the strategy, Badenach said he had to consider Tim's objectives of investing in a tax effective environment with a growing income stream which also provided the flexibility to make changes where necessary - for example to purchase a modified home for him in due course.

"This strategy has provided Bob with a tax effective structure in which to manage his son's damages claim over the long term to ensure that he has a fulfilling and meaningful life."

But Badenach admits that he encountered a few obstacles during the case given the unusual circumstances and needs of his client.

“The main difficulty was that this was an instance where we needed to think outside the square.

“It was an unusual and tragic case that required a strategy that managed competing interests.

“Working with my clients and their lawyers over a long period during the legal proceedings enabled me to gain a deep understanding of their objectives, needs and circumstances which were very unique given the extent of the injuries,” he added.

Client wellbeing after advice

After receiving financial advice, Tim now receives a tax free income stream which is held in a tax free environment.

“As a result of Bob now being the administrator of Tim’s funds, it gives him the ability to have a degree of control over his son’s underlying investments.

“Nevertheless, Tim attends all meetings with his father in regard to his funds which helps him gain an understanding of the financial aspects of his own life.

“This was one of the requirements requested by the Guardianship and Administration Board,” added Badenach.

Fee structure

Badenach and his team worked with Tim, his father and the legal team for over six months before the strategy was finalised.

During this period, Tim was charged on a fee for service basis based on the work undertaken up to the investment of the funds.

After the strategy was implemented, Badenach now charges Tim a fixed annual fee.

“In return we provide him with our ongoing review service that includes a comprehensive half yearly review as well as liaising with the Guardianship and Administration Board on an ongoing basis,” said Badenach.

The fixed fee is indexed annually with average weekly ordinary time earnings and the engagement period is for three years.

However, Badenach said this will be reviewed when they re-appear before the Guardianship and Administration Board in 2015. **FS**