

DIRECT **Payments** from

SUFFOLK SOCIAL CARE SERVICES

*“Enabling people to have greater power,
choice and independence
in their lives”.*



Setting up a Trust Fund

Why set up a trust fund?

Some people who choose to use direct payments find it difficult to manage their own money, or arrange their own care, without some support. Setting up a trust fund is a way of enabling someone in this situation to benefit from the choice and control that direct payments bring. A group of people who are prepared to act on their behalf, can take on the responsibility of managing the money and organising the care. The person getting the direct payment cannot be one of the trustees, but as the person getting the care, should be central in any planning meetings, and their wishes always consulted. The person may only be able to demonstrate their wishes through their behaviour, and this makes it very important that at least two of the trustees should know them well. It is also strongly recommended that someone from a wider circle of contacts be appointed a trustee, to ensure objectivity.

What is a trust?

A trust is a commitment made by three or more people (referred to as Trustees), to manage someone else's money. The commitment is made using a written agreement (deed). The Trust Deed creates legal duties and responsibilities for the Trustees. All the trustees, and the person for whom the trust is being made, are named. The group of trustees must sign the document, and someone who is independent from the trust must witness their signatures. A trust deed needs to clearly state the purposes it is being set up for, and the powers of the trustees. A sample trust deed can be found at the end of this leaflet.

Who should the trustees be?

The trustees should be drawn from family members, and wider contacts such as friends and neighbours, or people who have worked with the person and are now prepared to help on a friendly basis.

Having trustees who are drawn from a wider basis than family members can help to provide safeguards for the direct payment recipient. Ideally there should be a minimum of three trustees. If someone's ability to understand about direct payments only extends to expressing their preferences through their behaviour, the trustees will need to act on their behalf. However, they must always have that person's interest at the heart of any decisions that are made.

Trustees have a number of duties imposed upon them by law. For example, they must always exercise their powers in the best interests of the direct payment recipient, they must not profit personally or cause a loss to the trust fund due to a conflict with their own interests, and must comply with the terms of the trust.

The most important thing is that all the trustees must be committed to making the trust work for the person who is at the centre of it.

What will the trustees need to do?

The first thing that needs to be done is to meet and decide what the aims of the group are, and how it will be run. These ideas can be drawn up into a constitution, which will ensure that the group is clear about their purposes. It should include such things as who will be responsible for paying carers, for their supervision, and for completing the monitoring forms, and PAYE. There is a sample constitution at the end of this leaflet.

Once this is done, the trust deed can be drawn up. The sample deed at the back of this leaflet can be used, and personalised as necessary. If the trustees wish to obtain independent advice on the trust, the documents can then be shown to an independent solicitor. Suffolk County Council legal department will also check them, from the local authority's point of view.

After this has been done, and the amount of direct payment has been agreed with Social Care Services, a bank account must be set up that is only going to be used for the direct payment. Social Care Services will require all the trustees to sign an agreement with the County Council.

The trustees will be responsible for recruiting carers, and all other responsibilities that go with being an employer. Suffolk PASS (personal assistance support scheme) is able to offer help and advice about recruitment and employment. They can be contacted on 01473 620200, Unit E, Bristol Court, Betts Avenue, Martlesham Heath Business Park, Ipswich IP3 3RY.

Steps to setting up the Direct Payment using a Trust.

- Assessment by Social Worker
- Funding agreed
- Decide who the trustees will be
- Decide the aims of the trustees
- Make a constitution
- Draw up a trust deed
- Check the documents with an independent solicitor if wished
- Send the documents into Suffolk County Council Direct Payments Team to be checked
- Open a bank account
- Sign direct payments agreement with Social Care Services
- Recruit carers
- Meet regularly as trustees to review care and financial arrangements
- Meet at regular intervals with Social Worker to review care arrangements

Sample Constitution

(Don't forget, this is only a guide, to help you get started).

The purposes of this Group of Trustees are:

- a. To solely serve the needs and wishes of
- b. That each member will make a personal commitment to
,
and establish and maintain a relationship with him/her
- c. To actively and sensitively advocate as necessary for
in different aspects of his/her life.

(these are just examples of areas that can be covered, and it is up to each group of trustees to decide what should be included).

2. The funds administered by the Group of Trustees will be used solely for the purposes set out in the care plan that has been drawn up for
3. The Trustees and direct payment recipient will meet regularly to review the care that has been arranged for and adjust it as necessary.
4. The Trustees will take responsibility for recruiting and supervising carers, and ensuring that
..... is happy with the care that is being provided.
5. Individual tasks, e.g. supervision, writing cheques, completing monitoring forms may be delegated to one trustee, but they will remain accountable to the other trustees.

It is a good idea to now draw up a list of responsibilities of the group, which could come under the general headings of:

Membership – How many trustees there will be, how one can resign, how new ones can be appointed.

Meetings – How often these should happen, who should run them, how many trustees need to be present to be able to make decisions.

Duties of trustees – for instance, will one person have overall responsibility for managing the money and keeping the records, whilst another takes responsibility for supervising staff.

Sample Trust Deed

This Independent Living Trust is made the [day] of [month and year] by:

name and address of trustee

ditto

ditto

Hereinafter to be called **“the Trustees”**

1) The Trustees agree to act on behalf of

Of (address)

To help them manage the money provided to them under the Community Care (Direct Payment) Act 1996 to enable them to purchase their own care and live independently.

2) An account has been opened at

Bank

(**“the Account”**), which will be specifically and only used for the direct payments.

3) Suffolk County Council will make the payments into the account on a 4 weekly basis.

The assessed contribution must be paid from’s personal money into the Account as a contribution towards the personal care. The money in this account and any accruals will hereafter be called **“the Trust Fund”**.

4) The Trustees wish to declare the trusts on which they hold the Trust Fund and the income thereof.

(This means that the trustees accept responsibility for the money that is held in the Trust Fund)

This deed witnesses as follows:

- 1) From the date of this deed, the Trustees shall hold the Trust Fund and the income from it upon trust for the care and support of and make payments from it, in their discretion, to support in an Independent Living Scheme.
- 2) The Trustees shall hold the Trust Fund for this purpose until such time as ceases to live independently, or dies, whichever occurs first.
- 3) Subject to the provisions of clause 2, the Trust Fund will be held by the Trustees and all obligations and outgoings will be met by them.
- 4) The Trustees, or the survivor of them, shall have the power to appoint a new Trustee or Trustees.
- 5) If the number of Trustees falls below three, the remaining Trustees will appoint an additional one. If the number of trustees falls below two, immediate steps will be taken to appoint a new Trustee so that there is a minimum of two Trustees at any time.
- 6) A Trustee shall be entitled to exoneration and indemnity from the Trust Fund for any liability loss or expense incurred under this deed or for any judgment other than arising out of his or her own wilful and individual fraud, wrongdoing or neglect.

(This means that if the trustees are sued because the Trust Fund becomes liable for something [e.g. employment claim, damage to property etc.] the trustees should be able to recover any financial loss from the Trust Fund)

IN WITNESS whereof the parties hereto have hereunto set their hands as a Deed the day and year first before written. *(This is a standard phrase that must be used).*

SIGNED as a deed by

Said [NAME - please print]

Signature

Address

.....

In the presence of [name of witness]

SIGNED as a deed by

Said [NAME - please print]

Signature

Address

.....

In the presence of [name of witness]

SIGNED as a deed by

Said [NAME - please print]

Signature

Address

.....

In the presence of [name of witness]



We offer a telephone interpreting service. To use it, phone 01473 583000. Leave your name, language and telephone number and a translator will call you back.

我們設有電話傳譯服務，如欲使用，請撥電 01473 583000，留下你的姓名、所用語言和電話號碼，便會有翻譯員回電你的。

টেলিফোন অনুবাদ সেবা একটি বিনামূল্যে সেবা। এটি ব্যবহার করতে হলে 01473 583000 নম্বরে ফোন করে আপনার নাম, ভাষা এবং ফোন নম্বর রাখুন এবং টেলিফোন নম্বর অনুসরণ করে একজন অনুবাদকারী আপনাকে ফোন করবেন।

If you would like this booklet on tape, in large type or in Braille, please phone 01473 584006.

For more information contact:
Direct Payments Team
Endeavour House, Ipswich. Telephone 01473 264853

Visit our award winning website www.suffolkcc.gov.uk

September 2004 - 2nd Edition SC/0403/3

Printed by Suffolk Design & Print, St Paul House, County Hall, Ipswich IP4 1LX. Tel: 01473 584212