

Staffordshire County Council  
Directorate of Social Care and Health  
Direct Payments Project Board

# Direct Payments in Staffordshire

*Gives you flexibility, choice and control in the way  
your services are delivered*

## Setting up a Trust Fund to manage your payments

(April 2007)



If you would like a copy of this leaflet in larger print, on audiotape, in Braille, or in a different language, please contact our helpline on 01785 276900.

## IMPORTANT INFORMATION

Please Read Very Carefully

This document is intended to be a brief guide only. Every effort has been made to ensure that it is as accurate and up to date as possible, having regard to current statutory requirements at the time of printing. However, the County Council does not accept any responsibility for any error or discrepancy in the document, or any liability for loss or damage arising from reliance by any person on any part of this document.

Furthermore, it is your responsibility to consider obtaining appropriate independent legal advice about the contents of this guide and its application to your personal circumstances, or otherwise about the way in which the County Council has carried out any financial assessment in relation to your care arrangements.

Nothing contained in this document shall restrain, restrict or interfere with the ability of the County Council to exercise its powers, duties, functions and discretions in accordance with any relevant enactments and regulations and also any applicable guidance issued by the Secretary for Health from time to time.

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# Setting up a Trust Fund for Direct Payments

## 1. Why set up a Trust Fund?

Some people may find it difficult to manage their own money or arrange care without support. Setting up a trust fund is a way of enabling a person to benefit from the choice and control that direct payments bring.

A group of people who are prepared to act on behalf of a direct payment recipient can take on the responsibility of managing the money and organising the care. The direct payment recipient cannot be one of the Trustees but, as the person getting the care, should be central in any planning meetings and have their wishes respected.

Trust funds can also help people who are only able to demonstrate their wishes through their behaviour, as Trustees can know the person well enough to make choices that meet their wishes. You may find it useful to read this leaflet in conjunction with our leaflet 'Direct Payments – Information for Practitioners, Service Users and Carers'.

## 2. What is a Trust?

A trust is a commitment made by two or more people (referred to as Trustees) to manage someone else's money for a specific purpose, in this case for that person's benefit. The commitment is made using a written agreement called a 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 (DP10) can be found at the end of this leaflet (Appendix 2).

### **3. Informing the Inland Revenue about the existence of a Trust**

In the vast majority of cases it is not usually necessary to inform the Inland Revenue about the creation of a trust. However should you need to inform the Inland Revenue, (a solicitor or accountant will be able to advise you), you should contact the Inland Revenue at the address shown below and request a form 41G (Trust) which then needs to be completed and returned to:

Inland Revenue Trusts, Huntingdon Court, 90 – 94 Mansfield Road, Nottingham NG1 3HG. Tel: 0115 911 6500

From 1st December 2003 it is no longer a requirement for the trust deed to be 'stamped' by the Inland Revenue.

### **4. Can a Solicitor set up the Trust?**

Yes, we can arrange a one-off payment for the Trustees to arrange to see a solicitor to set up a trust for a direct payment.

### **5. Who should the Trustees be?**

Ideally there should be three Trustees who should be drawn from family members, and wider contacts such as friends and neighbours, or people who have worked with the direct payment recipient and know them well. If someone's ability to understand about direct payments only extends to expressing their preferences through their behaviour, the Trustees will need to know them very well to be able to act on their behalf. However, they must always have that person's interests at the heart of any decisions that are made. To ensure objectivity it is also strongly recommended that a third Trustee is drawn from a wider circle of contacts.

Trustees have a number of duties imposed upon them by law:

- 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
- they 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.

## **6. What will the Trustees need to do?**

To set up a trust fund, the Trustees need to draw up a constitution and trust deed.

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 (DP9) at the end of this leaflet (Appendix 1).

Once this is done, the trust deed can be drawn up. The sample deed (DP10) at the back of this leaflet (Appendix 2) can be used, and personalised as necessary. Staffordshire County Council's Legal Department will check the trust deed.

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

The Trustees will be responsible for purchasing support and/or recruiting carers, and all the other responsibilities that go with being an employer. The Rowan Organisation will provide advice and information about recruiting and employing personal assistants.

## **7. Steps to setting up the Direct Payment using a Trust**

- Assessment by social care practitioner.
- Confirm that the service user consents to a direct payment.
- Confirm that the service user can manage the payment with or without assistance e.g. by making his wishes known to Trustees to be appointed.
- Funding agreed, subject to fairer charging (DP3).
- Decide who the Trustees will be.
- Decide the aims of the Trustees.
- Make a constitution (DP9).
- Draw up a trust deed (DP10).

- Check the documents with an independent solicitor if wished.
- Send the documents to Staffordshire County Council's Direct Payments Support Team to be checked by the Legal Department.
- Open a bank account (DP2).
- Sign direct payments agreement with the Council (DP1).
- Recruit carers.
- Meet regularly as Trustees to review care and financial arrangements.
- Meet at regular intervals with social care practitioner/care co-ordinator to review care arrangements.

The following appendices contain a sample Constitution (DP9) and a sample Deed (DP10).

**Appendix 1: A sample Constitution (DP9)**  
*(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. To 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.)*

The Trustees will ensure that the funds administered by the Group will be used solely for the purposes set out in the support plan that has been drawn up for

\_\_\_\_\_

The Trustees and direct payment recipient will meet regularly to review the care that has been arranged for \_\_\_\_\_ and make changes as necessary.

The Trustees will take responsibility for recruiting and supervising carers, and ensuring that \_\_\_\_\_ is happy with the care that is being provided.

*Individual tasks e.g. supervision, writing cheques and completing monitoring forms may be delegated to one Trustee, who shall 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?

**Signatures:** All should sign this

## Appendix 2: A sample Trust Deed (DP10)

**This Independent Living Trust** is made the (day) of (month and year) by:

Name and address of Trustee \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Hereinafter to be called "the Trustees"

**The Trustees** agree to act on behalf of \_\_\_\_\_

Of (address) \_\_\_\_\_  
\_\_\_\_\_.

To help him/her manage the money provided to him/her under the Health and Social Care Act 2001 (*repealing the Community Care (Direct Payment) Act, 1996*) to enable him/her to purchase his/her own care and live independently.

**An account** has been opened at \_\_\_\_\_ Bank ("the Account") which will be specifically and only used for the direct payments.

**Staffordshire County Council** will make the payments into the account every month, following a reimbursement claim. 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".

**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) **The Trustees**, from the date of this deed, 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 \_\_\_\_\_ 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) **The Trustees** will hold the Trust Fund, subject to the provision of clause 2, 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) **The remaining Trustees** will appoint an additional member if the number of Trustees falls below three. 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 reasonably incurred under this deed or for any judgment other than arising out of his or her own wilful and individual fraud 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.)*

Each Trustee will be personally liable for the misappropriation of any part of the Trust Fund for which he/she is solely or jointly responsible.

**IN WITNESS where of 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 the Said *(Name)* \_\_\_\_\_

In the presence of *(name of witness)* \_\_\_\_\_

**SIGNED** as a deed by the Said *(Name)* \_\_\_\_\_

In the presence of *(name of witness)* \_\_\_\_\_

**SIGNED** as a deed by the Said *(Name)* \_\_\_\_\_

In the presence of *(name of witness)* \_\_\_\_\_

## 8. Useful Contacts

### **The Council's Direct Payments Support Team**

Staffordshire Social Care and Health Directorate  
PO Box 11, Walton Building, Martin Street,  
Stafford ST16 2LH (Post to: Social Care & Health,  
Wedgwood Building  
Tipping Street  
Stafford ST16 2DH)

Telephone: 01785 854493 or 854494

Fax: 01785 854497

Email: [direct.payments@staffordshire.gov.uk](mailto:direct.payments@staffordshire.gov.uk)

or by contacting the individual team members direct.

Lynne Hodge, Team Leader, on tel. 01785 854494  
Lynne Stretton, Admin. Support on tel. 01785 854493  
Scarlett Bunn, DP Advisor on tel. 01785 854495  
Katie Ball and Angela Outram, DP Advisors on tel.  
01785 854496

### **Rowan Organisation**

(Direct Payments Support Contractor for Staffordshire)

Rowan House, Lime Tree Courtyard,  
Main Road, Ratcliffe Culey, CV9 3PD

**Freephone** helpline: 0800 7831755

**Minicom:** 0800 917 8897

**Fax:** 01827 718932

**Email:** [Staffordshire.referrals@therowan.org](mailto:Staffordshire.referrals@therowan.org)

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Direct Payments Project Board

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Comments regarding this document are welcomed and should be sent to the above address.

April 2007