

Adult Social Care

Setting up a trust fund for Direct Payments



Coventry City Council



Updated May 2023

● What is a Direct Payment?

A direct payment is the sum of money that Coventry City Council will pay directly to you, so you can buy and arrange your own care and support, instead of the Council arranging it for you.

Direct payments are part of the Government's Personalisation agenda, which puts you central to the support you receive, helping you live as independently as possible and giving you more choice and control

If you want more information please read our Direct Payments policy at http://www.coventry.gov.uk/downloads/download/922/direct_payments

● Why set up a trust fund to receive a Direct Payment?

If you find it difficult to manage your own money or arrange care without some support, setting up a trust fund is one way of enabling you to benefit from the choice and control you can receive from having a direct payment.

A group of people known as Trustees, act on your behalf to manage money received as a direct payment and organise your care and support. You decide who will act as your Trustees and you are involved in the planning meetings to arrange your support.

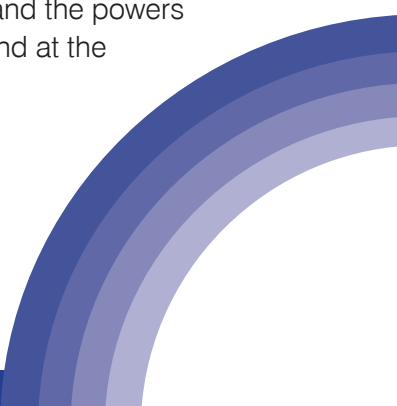
Trust funds are also helpful if you can only demonstrate your wishes through behaviour; facial or vocal expressions, as Trustees would know you well enough to make the right choices to meet your wishes.

● What is a trust?

A trust is a commitment made by two or more people (Trustees) to manage your money and in this case your direct payment funding. The commitment is made using a written agreement called a deed. The trust deed creates legal duties and responsibilities for the Trustees.

Your name and those of your Trustees will be written on the deed. All the Trustees must sign the document, and an independent witness must also add their signature to make the agreement official.

A trust deed must clearly state the reason it is being set up and the powers being given to the Trustees (a sample trust deed can be found at the end of this leaflet).



● Can a solicitor set up the trust?

The Council can arrange a one-off payment of up to £200 for the Trustees to arrange to see a solicitor to set up a trust for a direct payment.

● Who should the trustees be?

Ideally you should have three Trustees chosen from a selection of:

- Family members
- Friends
- Neighbours
- People who have worked with you/know you well

If you can only express your preferences using behaviour and gestures, the Trustees must know you very well to act on your behalf.

It is important that all Trustees have your interests at heart. To make sure this is the case, it is advisable that the third Trustee is chosen from a wider circle of contacts eg an independent advocate.

● What duties do the trustees have?

The law states that Trustees must fulfil certain duties to you:

- to exercise their powers in your best interest
- not to profit personally or cause loss to the trust fund due to conflicts with their own interests
- to comply with the terms of the trust

The most important thing is that all the Trustees are committed to making the trust work for you.



● What do the trustees need to do?

Firstly, the Trustees must meet and come to an agreement concerning:

- how to meet your eligible needs and outcomes
- the aims of the group of Trustees
- how the trust will be run

These ideas can be drawn up into a constitution (official contract), which ensures the group is clear about its purpose.

This constitution should include things like who is responsible for:

- paying carers
- the supervision of carers
- completing monitoring forms

(There is a sample constitution at the end of this leaflet.)

Once the Trustees have put together the constitution, the trust deed can be drawn up. The sample deed at the back of this leaflet can be used and personalised as necessary. The Trustees can choose to have these documents checked by a solicitor.

After this has been done, and the amount for the direct payment has been agreed with the Council, prepaid card or managed account must be set up and only used for your care and support. All Trustees must sign an agreement with Coventry City Council.

One or more of the Trustees will have responsibility for managing the direct payments and organising care, e.g. from an agency and/or by employing carers/personal assistants. If staff are employed, the Trustee/s in charge will have all the other responsibilities of an employer, eg wages, tax, rotas, timesheets etc.

Your employment liability insurance provider and Penderels Trust can provide advice and information about employing carers/personal assistants, as well as sample adverts, job descriptions, applications forms, and statement of employment particulars. They can also offer ongoing help and advice about recruitment and employment.

You can contact Penderels Trust by the following methods:

Call: 024 7651 1611

e-mail: coventry@penderelstrust.org.uk



How do I find out more?

There is a range of leaflets and information on the Council website explaining the different topics covered by Direct Payments. You can also speak to your allocated worker or contact:

Adult Social Care Direct
email: **ASCdirect@coventry.gov.uk**

Tel: 024 7683 3003

Constitution document example

The purposes of this Group of Trustees are:

To solely serve the needs and wishes of

That each member will make a personal commitment to

and establish and maintain a relationship with him/her.

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 funds administered by the Group of Trustees will be used to achieve the outcomes outlined in the care or support plan which has been drawn up for.....

The Trustees and direct payment recipient will meet regularly to review the care or support that has been arranged for.....and adjust as necessary.

The Trustees will take responsibility for recruiting and supervising carers; arranging care, support or activities; purchasing equipment or adaptations; and ensuring that.....
.....
is happy with the care being provided.

Individual tasks, eg 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:

Steps to setting up the Direct Payment using a Trust

- Assessment by the allocated worker, eg social worker, community care worker, occupational therapist, etc
- Funding agreed
- Decide who the Trustees will be
- Decide the aims of the Trustees
- Submit financial records and supporting documents to the Council
- Make a Constitution
- Draw up a trust deed
- Check the documents with an independent solicitor if wished
- Open a bank account/prepaid card for care and support only
- Sign a Direct Payments agreement with Coventry City Council
- Recruit personal assistants/arrange care or support as required
- Meet regularly as Trustees to review care and financial arrangements
- Meet at agreed intervals with your allocated worker to review care arrangements

Membership

How many Trustees there will be, how one can resign, how new Trustees can be appointed.

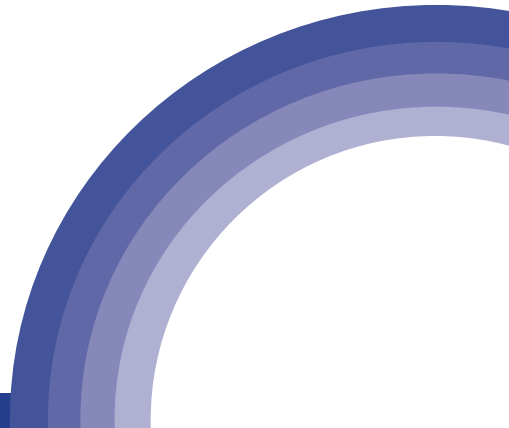
Meetings

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.

All should sign this.



Trust Deed example

This declaration of trust is made theday of / / 20.....

by

and

hereinafter together to be called 'the Trustees'.

Whereas

1. The Trustees wish to provide care and support for

.....

of.....

('The Beneficiary'), by means of a Direct Payment under the health and Social Care Act 2001.

2. To that end an Account has been opened at

.....

.....under the name of the

.....Trust

3. Further sums will be credited to the said Account by various agencies and institutions and in particular by Coventry City Council and the Independent Living Fund.

4. The money in the said Account and any accretions thereto are hereinafter called 'the Trust Fund'.

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



Now this deed witnesses as follows

1. As from the date of this deed the Trustees shall hold the Trust fund and the income thereof upon trust to apply the trust fund and the income thereof for the care and support of the Beneficiary by making such payments as they, in their absolute discretion, shall think fit in order to maintain the Beneficiary by a Direct Payments scheme.
2. Trustees shall ensure as far as possible that any decisions made are based on the preferences expressed in whatever way by the Beneficiary.
3. The Trustees shall hold the Trust Fund and the income thereof upon the said trusts until the death of the Beneficiary or until s/he shall cease to be maintained by a Direct Payment scheme, whichever shall first occur, whereupon the Trust fund shall be returned to Coventry City Council and any other contributors to the Trust Fund on a proportional split with each funding authority and the user.
4. Subject to the provisions of the clause 3 hereof and to the payment of all outgoing and obligations of the Trustees, the Trust Fund and the income thereof shall be held by the Trustees on trust for the Beneficiary.
5. The power of appointing a new Trustee or new Trustees shall be vested in the Trustees or the survivor of them.
6. The number of Trustees shall not be less than two individuals at any time and if at any time the number of Trustees shall fall below two, immediate steps shall be taken to appoint a new or additional Trustee or Trustees so as to constitute at least two persons as Trustees.
7. The Trustees shall have the power to employ hire engage dismiss and pay out of the Trust fund persons/carers to provide support and assistance to the Beneficiary and/or to contract with a suitable agency for the provision of support and care services for the benefit of the Beneficiary by a Direct Payment scheme.
8. 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 recovered against and paid by such Trustee other than liability loss expense or judgment arising out of his or her own willful and individual fraud, wrong doing or neglect.
9. The Standard Provisions of the Society of Trust and Estate Practitioners (First Edition) shall apply with the deletion of paragraph 5, Section 11 Trust of Land and Appointment of Trustees Act 1996 (Consultation with Beneficiaries) shall not apply.

Signed as a Deed and delivered by the

Said (name)

In the presence of:

Witness

Name:

Address:

.....

.....

Post code:

Occupation:



○ Contact Adult Social Care Direct

Call **024 7683 3003**

or email ascdirect@coventry.gov.uk

or visit www.coventry.gov.uk/health-social-care

Speech impairment, deaf or hard of hearing? You can call using Next Generation Text (also known as Text Relay and TypeTalk): **18001 024 7683 3003**

If you require this information in another language or format, please email ascdirect@coventry.gov.uk

Jeśli potrzebujesz zawartych informacji w innym języku lub formacie, prosimy o wiadomość e-mail na adres ascdirect@coventry.gov.uk

ਜੇਕਰ ਤੁਹਾਨੂੰ ਇਹ ਜਾਣਕਾਰੀ ਕਿਸੇ ਹੋਰ ਭਾਸ਼ਾ ਜਾਂ ਫਾਰਮੈਟ ਵਿੱਚ ਚਾਹੀਦੀ ਹੈ, ਤਾਂ ਕਿਰਪਾ ਕਰਕੇ

ascdirect@coventry.gov.uk 'ਤੇ ਈਮੇਲ ਕਰੋ

اگر آپ کو یہ معلومات کسی دوسری زبان یا فارمیٹ میں درکار ہوں تو براۓ مہربانی ascdirect@coventry.gov.uk پر ای میل کریں۔

إذا اردت الحصول على هذه المعلومات بلغة أو تنسيق آخر، يرجى إرسال بريد إلكتروني إلى: ascdirect@coventry.gov.uk

Dacă aveți nevoie de aceste informații într-o altă limbă sau format, vă rugăm trimiteți email la: ascdirect@coventry.gov.uk

እዚ ሓበሬታ ብኸልእ ቋንቋ ወይ ቅርጺ እንተደሊኹም ብኢመይል ከትጽሕፉ ትኸእሉ ኢኹም፡፡ ascdirect@coventry.gov.uk

