

Support in managing your direct payments

Your care assessor or support officer has a duty to ensure your direct payments are set up safely and can be managed effectively with minimal risk to yourself or others. You may be able to manage your direct payment yourself with no support, or you may need some or significant support. This should be given careful consideration when you have a direct payment. Having the right level of support in place will mean that your direct payment will work better for you. This is particularly important if you are planning to employ staff using your direct payments. Do you feel confident to take on the responsibilities and manage this yourself? There are options as follows:

Support Network

You may decide to set up a support network, providing name(s) and contact(s) of person(s) who can be contacted on your behalf, to discuss matters should this be required. This option still leaves you in ultimate control and with full responsibility. This option is purely to provide you with support and guidance along the way, at times when you may need it. For example, this could mean having an authorised signatory if you are unable to sign, or to understand fully what you are signing.

Nominated Representative

As long as you are able to express your wish to have a direct payment and understand what this means, you may choose to nominate a person to take on the responsibility of being an employer, or manage your direct payments on your behalf. You can still have input into how the support is working for you, but the nominated person would act as the employer and, as such, would be required to make any decisions and maintain overall responsibility of the direct payment and your care/support. The nominated person should always act with your best interests at heart. There is no associated paperwork to complete or sign.

Trust

Setting up a trust is similar to nominating a representative, however, in such cases a commitment is made by two or three people (referred to as trustees). You can still have input into how the support is working for you, but the trust would act as the employer and, as such, would be required to make any decisions and maintain overall responsibility of the direct payment and your care/support. Therefore, trustees cannot be employees as well. Again, the trust should always act with your best interests at heart.

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 signatures. A trust deed needs to clearly state the purposes it is being set up for and the powers of the trustees.

If Norfolk County Council funds your care/support, the trust must also complete, sign and date the direct payment Terms and Conditions document to confirm they agree to use the money to meet the services required by you, and that they agree to the terms of Norfolk County Council's provision of Direct Payments.

Equal Lives can supply sample documents. These can be used by deleting the word 'sample', or trustees can seek legal advice and create documents themselves. If the trustees wish to seek independent advice, then the documents can be shown to an independent solicitor.

Best Interest Person (if Norfolk County Council funds your care/support)

Following a Mental Capacity Assessment, if an individual is found not to have the capacity to consent to a direct payment, a Best Interest Person will be identified by the care assessor to receive the direct payment on the individual's behalf. This is usually a family member who has Power Of Attorney. This allows the individual the benefit of having a direct payment.

Note: employment should not begin until the nominated person, trust or Best Interest Person is in place to successfully manage the employment situation. Whoever acts as the employer should be present at interviews so that employees are aware of who their employer will be.

If you require further information or would like this factsheet in an alternative format you can contact us by calling: 01508 491210, by emailing: info@equallives.org.uk, or by writing to: Equal Lives, 15 Manor Farm Barns, Fox Road, Framingham Pigot, Norfolk, NR14 7PZ