

Kent County Council

Direct Payments Factsheet #3

Independent Living Trust

1. Who is this factsheet for?

This factsheet is about Independent Living Trust is produced by Families and Social Care. If it does not give you all the information you need, please contact us, our details are at the end of this factsheet

2. What is an Independent Living Trust?

This is a specific type of trust, a legal entity and managed by trustees. They do not have to be registered with the Inland Revenue. They are sometimes called 'user controlled trusts'. Such a trust ensures that the individual is at the heart of the decision-making and that their choices and preference direct the decision making.

An Independent Living Trust is **not** the same as one which promotes substitute decision-making. It is a tool to enable people to maintain independent living, choice and control – the individual directs the decisions that such a Trust makes and becomes involved as much as possible in the process e.g. attending trust meeting .

3. When is a trust used?

A Trust is often used where people make choices and indicate preference through things such as body movements, gestures, vocalisation, behaviour and emotions. A Trust may also be set up for people who have progressive impairments and may, one day, be less able to manage their support without a Trust e.g. someone with dementia or extended 'crises' periods of mental ill health. One member of a Trust may be the employer of the recipient's Personal Assistants / carers.

Trustees can offer a formal support network to assist any person using Direct Payments.

Money which goes into the fund, will always belong to the individual and is managed with and for them by trustees and the process is open to scrutiny. The agency who gives the money will often have the right to reclaim money back from the Trusts such as a Local Authority reclaiming back Direct Payments. This is another way in which an Independent Living Trust differs from other types of Trust.

4. What about appointeeship and power of attorney.

Appointeeship is a scheme run by the Department for Work and Pensions . A form can be filled in, to set this up, to collect and manage an individuals benefit money. The power only extends to Department for Work and Pension benefits like Income Support and not to other money, such as a Direct Payment, and is not usually monitored in any way.

Power of attorney - the powers of the attorney are appointed by the individual themselves. These powers remain in place when a person loses capacity if the power was made as an Enduring Power of Attorney (rather than just Power of Attorney).

Once the person has lost capacity an Enduring Power must be registered to give the attorney the right to make decision about finance on the individual's behalf but not to make decisions regarding health care or personal welfare.

If consent to receiving a Direct Payment has not been given, before the power is activated (registered), then a Direct Payment can not be given. A Direct Payment may continue if the person was already receiving Direct Payments before the powered was registered (activated on loss of capacity) with the Court.

5. Can I set up a trust?

Yes if:

- The aim is to enable the individual to maintain choice and control according to the principles of independent living.
- The individual and their preference direct the decision making of the Trustees
- The individual and their supporters feels it will be a good idea to enable independent living – KCC do not set up trusts themselves or become Trustees.
- The trust is not being set up to gain legal control over the individual or control their decision making.

6. What are the steps involved?

Your Direct Payment Coordinator can provide information on each of these steps.

1. Getting people involved and finding 3-8 Trustees

A successful trust will have a dedicated group of people to share the enjoyment and the work. They will get to know how to work out what the individual likes and dislikes and how to interpret their individual preferences.

The group usually consists of more people than just family and can include neighbours, friends, peers or anyone else who may have got to know the individual through perhaps social hobbies or community groups for example. School friends, siblings and people of the same age (if over the minimum age of 18) may also become trustees.

Trustees will also need to know about their legal duties

2. Gather up information to help agree the principles and how the trust will operate
3. Create a Trust Deed and where necessary, get a solicitor's advice.
4. Open a bank account for a Trust
5. Start the Direct Payment

If you have any concerns or questions you can contact the Direct Payment Support Team:
Telephone: 0300 333 5758 or email: direct.payments@kent.gov.uk
Or you can find more information on: www.kentdp.co.uk