



Trust deeds

Fact sheet no. BDL14 SCOT Trust deeds

April 2017

This fact sheet tells you how a trust deed can be used to deal with your debts. A trust deed is a legal agreement between you and your creditors to pay back part of what you owe, usually over **five years**. This fact sheet explains the main things you need to know to help you decide if a trust deed might be a suitable option for you.

Use this fact sheet to:

- find out if you may be eligible to apply for a trust deed;
- see when we can help you to apply for a trust deed;
- understand how a trust deed is set up; and
- find out the main advantages and disadvantages of a trust deed.

What is a trust deed?

Bankruptcy is not the only solution for people with serious debt problems. A 'trust deed' is a voluntary agreement with your creditors (the people you owe money to) to repay part of what you owe them. It is less formal than bankruptcy and may also avoid some of the legal restrictions which follow from being made bankrupt.

A trust deed may involve transferring valuable things that you own (known as your 'assets') to a trustee so that they can be sold to raise money to pay to your creditors. A trust deed will often involve you making a contribution from your income. If you set up a trust deed on or after **28 November 2013**, it will last for at least **four years**. After this time you will no longer be liable for the debts included in the trust deed. This is called being 'discharged'.

Providing it meets certain conditions, a trust deed may be recorded in the Register of Insolvencies as a 'protected trust deed'. This prevents your creditors from taking further action against you to get their money back, as long as you stick to the terms of the trust deed. See the later sections **How is a protected trust deed different to a trust deed?** and **How does a trust deed become a protected trust deed?** for more information.

Extra advice:



think carefully

Think very carefully before signing a trust deed. There may be other options for dealing with your debts. Business Debtline can advise you on what you can do in your circumstances. **Contact us for advice.**



Advantages of a trust deed

- If a creditor agrees to the terms of the trust deed, the debt you owe them is 'frozen' at the start of the arrangement. As long as you keep to the terms of the trust deed, no further interest will be added to the debt. Once the trust deed has been set up, they should direct most correspondence to the trustee rather than to you.
- You can still have a bank account. This is usually an instant access account, where you can use a cash card, but you do not get a cheque book, cheque card or an overdraft facility. **Contact us for advice.**
- If you are an employee, you can still continue to be employed in most cases. (It is always a good idea to check your contract of employment to make sure that a trust deed will not affect your job.)
- You may still be able to hold public office, although some public bodies may have their own rules preventing this.
- Any monthly payments you have to make based on your drawings may be increased or decreased if your circumstances change.
- You may be able to enter into a trust deed without putting your home at risk. See the later section **Does the trust deed have to include all my assets?** for more information.
- You may still be able to continue to trade. If you have included business debts in your trust deed you may be able to keep trading without the added pressure of dealing with your creditors.

Information:

INFO

letters from creditors

Under the rules in the **Consumer Credit Act 1974**, your creditors will usually have to keep sending you annual statements, as well as arrears and default notices in a set format. This will happen even when you enter into a trust deed. Don't worry, this does not mean that there is a problem with your trust deed. If you receive other letters from your creditors demanding payment, **contact us for advice.**

Disadvantages of a trust deed

- You may lose your business banking facility. Some banks may withdraw your business account if you enter into a trust deed. You may also find it difficult to open a business account with another bank. If you are struggling to open a business bank account, **contact us for advice.**
- You may have to cease trading. There are some circumstances where entering into a trust deed can affect your ability to continue to trade. See the later section **Can I continue to trade?**
- Only the creditors who agree to the terms of your trust deed are bound by the arrangement, unless it becomes 'protected'.
- If you do not cooperate with the trustee, they can try to make you bankrupt.
- You cannot continue to be the director of a limited company unless your trustee agrees and unless the rules of the limited company allow you to enter into a trust deed.
- Some public bodies, such as councils, may have rules that prevent you from holding office with them.
- Your credit reference file will be affected. This could make it more difficult to take out further credit during and after the trust deed. Also, some suppliers may not want to trade with you. See the later section **What will happen to my credit rating?** for more information.



- Some business leases include a clause which allows your landlord to end your lease if you enter a trust deed. Check your lease to see if it includes a clause like this. **Contact us for advice.**
- A trust deed cannot include certain debts. See the next section **What debts cannot be included in a trust deed?**

What debts cannot be included in a trust deed?

A trust deed cannot include debts such as:

- fines, penalties, compensation and forfeiture orders imposed by any court;
- any debt that has been incurred through fraud;
- student loans;
- any obligation to pay maintenance to an ex-spouse due under a court order (not Child Support Agency arrears or Child Maintenance Service arrears);
- money owed to a creditor whose debt is secured on your property (such as a mortgage or secured loan); and
- limited company debts, unless you have given a personal guarantee.

Information:

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rent arrears

If you live in rented property, any rent arrears that you build up before your trust deed can be included in your list of creditors. If it becomes protected, these arrears will be written off at the end of the trust deed. However, your landlord can still take action to evict you from your home, although not all landlords will act upon this right. For this reason, in some situations, your trustee may allow you to include payments to your rent arrears in your outgoings. **Contact us for advice.**

How is a protected trust deed different to a trust deed?

Only those creditors who agree to the terms of the trust deed are bound by it. This means that those creditors who do not agree could still take further action against you, such as applying to make you bankrupt. However, if your trust deed becomes protected, even those creditors who do not agree to its terms cannot take further action against you.

See our fact sheet:

Diligence - how creditors can enforce debts.



Extra advice:



legal action by creditors

If a creditor has already taken legal action against you for a debt you owe, they may have started 'diligence'. Diligence means enforcement action, such as making deductions from your wages or freezing money in your bank account. New diligence cannot be carried out against you once the trust deed becomes protected. If your trust deed is not yet protected, you can apply for diligence to be put on hold for **six weeks**. This is called a 'moratorium' on diligence and can give you time to try to get your trust deed protected. **Contact us for advice.**



How does a trust deed become a protected trust deed?

The trustee writes to all your creditors enclosing a notice of the trust deed and advising them that the trust deed is to become protected. Your trust deed will usually become protected unless there are objections from enough of your creditors.

Creditors who do not reply to your trustee within **five weeks** are treated as if they have agreed. To stop your trust deed becoming protected:

- at least **half** of your creditors must object; or
- creditors who between them hold at least **one third** of your total debt must object.

If your trust deed becomes protected, your debts will be frozen so that no further interest is added to them, as long as you stick to the terms of the arrangement.

The **Accountant in Bankruptcy** (AiB) is responsible for personal insolvency issues in Scotland. From **28 November 2013**, the AiB has the power to look at your case and stop your trust deed from becoming protected. This will only happen if there is a good reason, such as your essential outgoings being a lot higher than you need. If the AiB does stop your trust deed from becoming protected, you can appeal. Speak to your insolvency practitioner or **contact us for advice**.

Extra advice:



bankruptcy

If you do not tell your trustee about a creditor and they are not sent notice of the trust deed, that creditor could try to make you bankrupt during the **five week** notice period. However, if they do not do this and your trust deed becomes protected, they will be bound by the terms of the trust deed. Creditors who do get notice of the trust deed are also able to try to make you bankrupt during the **five week** notice period.

Information:

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repayment period

If you can repay your debts in full within **four years** or less, you will not be able to set up a protected trust deed.

What happens if my trust deed fails to become protected?

- One or more of your creditors could make you bankrupt.
- You can make yourself bankrupt if you owe at least **£1,500** and have not been bankrupt in the last **five years**.
- You can make offers to pay your creditors informally or set up a debt management plan (DMP).
- You could set up a debt payment programme under the Debt Arrangement Scheme (DAS).

See our fact sheet:

Bankruptcy.





Who can be appointed 'trustee' and how will I pay their fees?

The trustee must be a qualified insolvency practitioner (IP). In certain circumstances, National Debtline can refer you to an insolvency practitioner from our special panel. A [list of alternative insolvency practitioners](#) can be obtained from the [Institute of Chartered Accountants of Scotland](#). See the **Useful contacts** section at the end of this fact sheet.

The trustee will charge fees for setting up and administering your trust deed. The fees are usually about **£4,000** or more. If your trust deed is set up on or after **28 November 2013** these fees will be paid out of the monthly instalments you pay or through sale of any assets you have. Your trustee will not be able to charge you any fees before the trust deed is set up. If you already have a trust deed and it was set up before **28 November 2013**, the rules about the fees you are charged may be different. **Contact us for advice.**

If you use an IP from Business Debtline's special panel, we will receive part of the fee they will charge you. This is for the work we have carried out collecting information about your circumstances. We will use any payments we receive to support our ongoing charity work of giving help and advice to people with debt problems.

Your trustee's fees can be checked by the 'Accountant in Bankruptcy' (AiB). The AiB can check that the work you have been charged for was necessary and that it was recorded properly. The AiB cannot change the hourly rate that your trustee charges for the work they do.

Who can apply for a trust deed?

You need to owe at least **£5,000** to all your creditors before you are allowed to apply for a trust deed. If you want to be referred on to an insolvency practitioner by Business Debtline, you will usually need:

- at least **£8,000** of debt;
- at least **two** different debts;
- at least **£150 per month** surplus household income to pay into the trust deed; and
- to be able to pay back at least **10p** for every **£1** you owe to your creditors.

This is only a guide to the criteria you usually need to meet. Business Debtline may still be able to refer you to an insolvency practitioner if your circumstances fall outside of these criteria. **Contact us for advice.**

From **28 November 2013** the following rules also apply to new trust deeds.

- If your income is made up of only benefits, you cannot set up a trust deed.
- If you work but also receive some benefit income, the amount you pay under the trust deed cannot be more than the amount you earn each month.

Information:

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couples and trust deeds

If you and your partner both want to do a trust deed, you will both usually need to meet these criteria. This means that if you complete a joint budget sheet, you will usually need a surplus income of at least **£300 per month**. **Contact us for advice.**



Trust deeds and partnerships

A partnership (or firm) is a separate legal entity to its partners. A firm can enter into a trust deed and it is treated in the same way as an individual (or sole trader) trust deed. A partnership trust deed is first entered into by the firm and then its individual partners and only the debts of the firm are included. Some or all of the firm's partners can enter into individual trust deeds alongside the partnership trust deed. If there is a conflict of interest the trustee may refer you to another insolvency practitioner. **Contact us for advice.**

Trust deeds and limited companies

A limited company is a separate legal entity to its directors and members. A limited company cannot enter a trust deed. Directors can enter into trust deeds for their own personal debt but they cannot continue to be director of a limited company. If you or your company are struggling to pay its debts, **contact us for advice.**

Does the trust deed have to include all my assets?

For a trust deed to become protected, it must transfer everything you own, except certain essential items and your current income, to the trustee. You will usually be able to keep basic household items. You may also be able to keep a car that you reasonably need. Property which is transferred to the trustee may be sold whenever it is in the interests of your creditors to do so. **Contact us for advice** about whether your belongings are likely to be treated as assets in a protected trust deed.

Information:

INFO

section 10 trust deeds

If you meet certain criteria, you can propose a trust deed to your creditors where your home will not be treated as an asset. This type of trust deed is known as a **section 10** trust deed.

What will happen to my business assets?

If you are a sole trader any business assets that you own are owned by you personally rather than the business itself. This means that if you enter into a trust deed your trustee can take control of your business assets to try and keep the business going. The trustee can also transfer and sell those assets if they feel that this will get more money for your creditors. Your trustee can also transfer ownership of your business assets to stop you from selling them yourself whilst you are in the trust deed. **Contact us for advice.**

Trust deeds and partnership assets

Because a partnership is a separate legal entity to its partners, any assets are owned by the firm itself. This means that if you enter into a partnership trust deed your trustee can take control of the firm's assets and try to keep the business going. The trustee can also transfer and sell those assets if they feel that this will get more money for your creditors. The individual assets of the partners are not taken into account at this point. Your trustee can also transfer ownership of the firm's assets to stop you from selling them yourself whilst the firm is in the trust deed.



What extra conditions do I have to meet to get a section 10 trust deed?

A **section 10** trust deed will be possible where:

- there is at least one secured creditor (like a mortgage or secured loan) on your home; and
- before the trust deed is granted the secured creditor agrees not to make a claim for any of the money you owe them.

You will not be discharged from your secured debts and will still need to pay them in the usual way. If you do not keep up these payments, the secured creditor can try to make you bankrupt, which could put your family home at risk.

A **section 10** trust deed can become protected in the normal way. However, if your home has equity in it and you exclude it as an asset, creditors may be more likely to object to the trust deed becoming protected. In practice, very few **section 10** trust deeds are granted.

If your trust deed fails to become protected because you have excluded your home from the proposal, you can put forward another proposal in which your home is included as an asset.

Will my home be affected if I can't get a section 10 trust deed?

If you cannot get a **section 10** trust deed and you live in mortgaged accommodation, your home could be at risk of being sold. This is usually a last resort. To prevent this, a third party, such as a family member or friend, may be able to buy out your 'interest' in your home from the trustee. Alternatively, you may be able to arrange to re-mortgage your home or extend your trust deed by making payments for a longer period. If these options are not available and your spouse lives in the family home, he or she must agree to the sale. If one of your children lives in the family home, you must agree to allow the sale. If agreement is not given, the trustee has to apply to the sheriff court for an order allowing your home to be sold. The court can either:

- grant the order (possibly with conditions);
- refuse to grant the order; or
- postpone granting an order for up to **three years** to allow you and your family to find somewhere else to live.

Can I have a trust deed even if I have no assets?

It is possible to have a trust deed even if you have no assets. You will need to be able to make regular payments from your monthly income. These payments will need to be high enough to persuade your creditors to agree to the terms of the trust deed. See the earlier section **Who can apply for a trust deed?**

Can I continue to trade?

Your trustee will decide whether you can continue trading. Your trustee can stop you from trading and grant permission for someone else to take over the running of the business. They can also sell the business. Your trustee may allow you to continue to trade if they feel that your creditors will receive more money this way. **Contact us for advice.**

If the trustee feels that you should continue to trade, they may allow you to take on the majority of the running of the business. Any important decisions that you make may need to be approved by your trustee. **Contact us for advice.**



What must I do once the trust deed has been signed?

- You must cooperate with the trustee and comply with the terms of the trust deed.
- You may be required to make monthly payments from your earnings.
- The trustee will deal with your creditors directly. You should pass on any paperwork to the trustee.

If you do not cooperate with your trustee or keep to the terms of the trust deed, the trustee can petition for your bankruptcy. They may do this if they think it would be in the best interests of your creditors.

Information: deductions from earnings

INFO

If you are an employee, your trust deed was set up on or after **28 November 2013** and you miss at least **two payments**, your trustee can take future payments directly from your earnings.

What if my circumstances change during the trust deed?

Check the terms and conditions of your trust deed. The terms and conditions will usually tell you what may happen if your income goes up or down, or if you gain new assets.

If your income goes up, your trustee may ask you to pay more money into the arrangement. If your income goes down, the trustee may allow you to reduce or stop making your payments for a temporary period. If you gain new assets, your trustee may be able to sell them to raise money to pay your creditors.

Warning: bankruptcy risk



If you do not keep to your obligations under the trust deed, you may not be able to consider other options to deal with your debts and your trustee may apply to make you bankrupt.

When will I be discharged from my debts?

You will usually be discharged after **four years**, but some trust deeds can last for longer. This information will be included in the terms of the trust deed. If the trust deed does not become protected, your discharge will only be binding on those creditors who agreed to the arrangement. If the trust deed becomes protected, your discharge will be binding on all your creditors.

Do I get my property back when I am discharged?

Once you have transferred your assets to your trustee, it becomes their duty to sell them for the benefit of your creditors. The trust deed continues to operate after your own discharge as long as there are assets for the trustee to manage or turn into money for your creditors. However, if you get a **section 10** protected trust deed, your home will not be treated as an asset as long as you stick to the terms of the trust deed.



What will happen to my credit rating?

If the trust deed becomes protected it will appear in the 'Register of Insolvencies', which is the public register. Credit reference agencies hold information about trust deeds and protected trust deeds for a period of **six years**. This can make it difficult or more expensive to get further credit.

See our fact sheet:
Credit reference agencies and credit reports.



How do I complain about my trustee?

If you are unhappy with your trustee, the first step is to raise your concerns with them. It is usually best to do this in writing.

If you have complained to your trustee and you are not happy with their response, contact their professional body. All trustees must be members of a professional body and your trustee should give you their details.

The Accountant in Bankruptcy (AiB) can investigate complaints against trustees and they are able to give instructions to your trustee if they do not believe they have acted properly. If you are considering making a complaint against your trustee, **contact us for advice**.

Remember:
role of the trustee



Your trustee is the person who will decide whether or not you have met your obligations and whether you will be discharged from your debts when the trust deed ends.

Useful contacts

Accountant in Bankruptcy

Phone: 0300 200 2600

www.aib.gov.uk

The Institute of Chartered Accountants of Scotland

Phone: 0131 347 0100

www.icas.com

The Law Society of Scotland

Phone: 0131 226 7411

www.lawscot.org.uk

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Business Debtline endeavour to keep our fact sheets as up-to-date as possible, however, we cannot be held responsible for changes in legislation or for developments in case law since this edition of the fact sheet was issued.

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