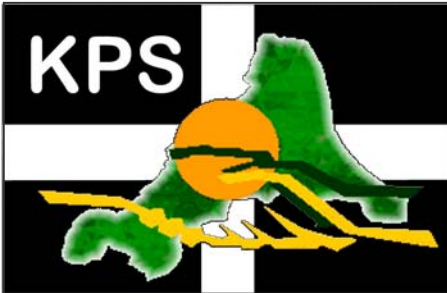


# Declaration of Trust

Kernow Positive Support

SPECIALISED HIV INFORMATION,  
SUPPORT, RESPITE & RETREAT

GOVERNING DOCUMENT



# **DECLARATION OF TRUST**

## **‘Governing Document’**

The 27<sup>th</sup> day of November 2003 by:

David N. Solly  
William V. Sloan  
Robert F. Cooper  
(“the first trustees”)

The first trustees hold a sum of money on the trusts declared in this deed and they expect that more money or assets will be acquired by them on the same trusts.

### **1. ADMINISTRATION**

The charitable trust created by this deed (*“the charity”*) shall be administered by the trustees. (*In this deed, the expression “the trustees” refers to the individuals who are the trustees of the charity at any given time. It includes the first trustees and their successors. The word “trustee” is used to refer to any one of the trustees.*)

#### **1.1. NAME**

The name of the charity is KERNOW POSITIVE SUPPORT (KPS) (*“the charity”*) but the trustees may change the charity’s name from time to time. Before doing so they must obtain the written approval of the Charity Commissioners for England and Wales (*“the Commission”*) for the new name.

### **2. OBJECTS AND FURTHERANCE OF THE CHARITY**

The trustees must apply the income of the charity in furthering the following objects (*“the objects”*)

2.1 The charity is established for:

- 2.1.1 The relief of sickness and distress of persons affected by HIV/AIDS and their families and carers by the provision of advice, information, care support and counselling services.
- 2.1.2 The provision of education and training to members of the public in the needs of persons living with HIV/AIDS, and in the better understanding with a view to promoting a better understanding of the disease.

**3. in furtherance of such objects but not otherwise the charity may:**

- 3.1 employ and pay any person or persons (*not being a member of the trustees as hereinafter defined*) to supervise, organise and carry on the work of the charity and make all reasonable and necessary provision for the payment of pensions and superannuation to or on behalf of employees and their surviving spouses and other dependants.
- 3.2 provide a counselling service in the area for people with AIDS and any apparently related similar or consequent diseases or conditions and their partners relatives and dependants and for persons diagnosed as being HIV positive and their partners relatives and dependants.
- 3.3 provide for the relief in cases of financial distress or other need or distress of people with AIDS their partners relatives and dependants in the area by a befriending service operated by trained volunteers to offer continuing counsel and advice guidance and support.
- 3.4 provide and maintain an ongoing training programme for volunteer provided by the charity.
- 3.5 establish homes hospices services and places of resort and refuge in order to give help medical attention and nursing to those who are HIV-positive those people with or affected by AIDS and any apparently related symptoms.
- 3.6 mobilise encourage, foster and maintain the interest and support of the public charity and in any similar charitable institution whether in the area or not assist in establishing new similar associations and the fostering of cooperation.
- 3.7 assist in establishing new similar associations, other similar charitable institutions, other similar Local Authorities, Hospital Authorities and National Health Service Authorities whether in the area or not.
- 3.8 bring together in conference representatives of organisations, Government departments, statutory authorities and individuals.
- 3.9 promote and carry out or assist in promoting and carrying out research, surveys and investigations and publish the useful results of such research, surveys and investigations.
- 3.10 Arrange and provide for, or join in arranging and providing for, the holding of exhibitions, meetings, lectures, classes, seminars and training courses.
- 3.11 collect and disseminate information on all matters affecting such objects and exchange such information with other bodies having similar objects whether in this country or overseas.

- 3.12 undertake, execute, manage or assist any charitable trusts, which may lawfully be undertaken, executed, managed or assisted by the charity.
- 3.13 procure to be written and print, publish, issue and circulate gratuitously or otherwise such papers, books, periodicals, pamphlets, information website on the internet or other documents or films or recorded tapes as shall further such objects.
- 3.14 purchase, take on lease or in exchange, hire or otherwise acquire any property and any rights and privileges necessary for the promotion of such objects and construct, maintain and alter any buildings or erections necessary for the work of the charity.
- 3.15 make regulations for any property, which may be so acquired.
- 3.16 subject to such consents as may be required by law, sell, let, mortgage, dispose of or turn to account all or any of the property or assets of the charity.
- 3.17 accept gifts and, subject to such consents as may be required by law, borrow or raise money for such objects on such terms and on such security, as shall be thought fit.
- 3.18 procure contributions to the charity by personal or written appeals, public meetings or otherwise provided that the charity shall not undertake any permanent trading activities in raising funds for its charitable objects.
- 3.19 invest the money of the charity not immediately required for such objects in or on such investments, securities or property as may be thought fit, subject nevertheless to such conditions (*if any*) as may for the time being be imposed or required by law.
- 3.20 support other charities in furthering the said objects or any of them do all such other lawful things as are necessary for the attainment of such objects.

#### **4. APPLICATION OF CAPITAL**

- 4.1 At their discretion, the trustees may spend all or part of the capital of the charity in furthering the objects.

## **5. POWERS**

In addition to any other powers they have, the trustees may exercise any of the following powers in order to further the objects (but not for any other purpose):

- 5.1 to raise funds. In exercising this power, the trustees must not undertake any substantial permanent trading activity and must comply with any relevant statutory regulations;
- 5.2 to buy, take on lease or in exchange, hire or otherwise acquire property and to maintain and equip it for use;
- 5.3 to sell, lease or otherwise dispose of all or any part of the property belonging to the charity. In exercising this power, the trustees must comply as appropriate with sections 36 and 37 of the Charities Act 1993;
- 5.4 to borrow money and to charge the whole or any part of the property belonging to the charity as security for repayment of the money borrowed. The trustees must comply as appropriate with sections 38 and 39 of the Charities Act 1993 if they wish to mortgage land owned by the charity;
- 5.5 to co-operate with other charities, voluntary bodies and statutory authorities and to exchange information and advice with them;
- 5.6 to establish or support any charitable trusts, associations or institutions formed for any of the charitable purposes included in the objects;
- 5.7 to create such advisory committees as the trustees think fit;
- 5.8 to employ and remunerate such staff as are necessary for carrying out the work of the charity;
- 5.9 to do any other lawful thing that is necessary or desirable for the achievement of the objects.

## **6. STATUTORY POWERS**

Nothing in this deed restricts or excludes the exercise by the trustees of the powers given by the Trustee Act 2000 as regards investment, the acquisition or disposal of land and the employment of agents, nominees and custodians.

## **7. DELEGATION**

- 7.1 In addition to their statutory powers, the trustees may delegate any of their powers or functions to a committee of two or more trustees. A committee must act in accordance with any directions given by the trustees. It must report its decisions and activities fully and promptly to the trustees. It must not incur expenditure on behalf of the charity except in accordance with a budget previously agreed by the trustees.
- 7.2 The trustees must exercise their powers jointly at properly convened meetings except where they have:
- 7.2.1 Delegated the exercise of the powers (*either under this provision or under any statutory provision*), or
- 7.2.2 Made some other arrangements, by regulations under clause 21,
- 7.3 The trustees must consider from time to time whether the powers or functions which they have delegated should continue to be delegated.

## **8. DUTY OF CARE AND EXTENT OF LIABILITY**

When exercising any power (*whether given to them by this deed, or by statute, or by any rule of law*) in administering or managing the charity, each of the trustees must use the level of care and skill that is reasonable in the circumstances, taking into account any special knowledge or experience that he or she has or claims to have (*"the duty of care"*).

No trustee, and no one exercising powers or responsibilities that have been delegated by the trustees, shall be liable for any act or failure to act unless, in acting or in failing to act, he or she has failed to discharge the duty of care.

## **9. APPOINTMENT OF TRUSTEES**

- 9.1 There must be at least three trustees. Apart from the first trustees, every trustee must be appointed for a terms of 10 years by a resolution of the trustees passed at a special meeting called under clause 15 of this deed.
- 9.2 In selecting individuals for appointment as trustees, the trustees must have regard to the skills, knowledge and experience needed for the effective administration of the charity.
- 9.3 The trustees must keep a record of the name and address and the dates of appointment, re-appointment and retirement of each trustee.

9.4 The trustees must make available to each new trustee, on his or her first appointment:

9.4.1 a copy of this deed and any amendments made to it;

9.4.2 a copy of the charity's latest report and statement of accounts;

## **10. ELIGIBILITY FOR TRUSTEESHIP**

10.1 No one shall be appointed as a trustee:

10.1.1 if he or she is under the age of 18 years; or

10.1.2 if he or she would at once be disqualified from office under the provisions of clause [11] of this deed.

10.2 No one shall be entitled to act as a trustee whether on appointment or on any re-appointment as trustee until he or she has expressly acknowledged, in whatever way the trustees decide, his or her acceptance of the office of trustee of the charity.

## **11. TERMINATION OF TRUSTEESHIP**

A trustee shall cease to hold office if he or she:

11.1 is disqualified from acting as a trustee by virtue of section 72 of the Charities Act 1993 or any statutory re-enactment or modification of that provision;

11.2 becomes incapable by reason of mental disorder, illness or injury of managing his or her own affairs;

11.3 is absent without the permission of the trustees from all their meetings held within a period of six months and the trustees resolve that his or her office be vacated; or

11.4 notifies to the trustees a wish to resign (but only if enough trustees will remain in office when the notice of resignation takes effect to form a quorum for meetings).

## **12. VACANCIES**

If a vacancy occurs the trustees must note the fact in the minutes of their next meeting. Any eligible trustee may be re-appointed. So long as there are fewer than three trustees, none of the powers or discretions conferred by this deed or by law on the trustees shall be exercisable by the remaining trustees except the power to appoint new trustees.

### **13. ORDINARY MEETINGS**

The trustees must hold at least two ordinary meetings each year. One such meeting in each year must involve the physical presence of those trustees who attend the meeting. Other meetings may take such form, including videoconferencing, as the trustees decide provided that the form chosen enables the trustees both to see and to hear each other.

### **14. CALLING MEETINGS**

The trustees must arrange at each of their meetings the date, time and place of their next meeting, unless such arrangements have already been made. Ordinary meetings may also be called at any time by the person elected to chair meetings of the trustees or by any two trustees. In that case not less than ten days' clear notice must be given to the other trustees.

The first meeting of the trustees must be called by the Secretary or, if no meeting has been called within three months after the date of this deed, by any two of the trustees.

### **15. SPECIAL MEETINGS**

A special meeting may be called at any time by the person elected to chair meetings of the trustees or by any two trustees. Not less than four days' clear notice must be given to the other trustees of the matters to be discussed at the meeting. However, if those matters include the appointment of a trustee or a proposal to amend any of the trusts of this deed, not less than 21 days' notice must be given. A special meeting may be called to take place immediately after or before an ordinary meeting.

### **16. CHAIRING OF MEETINGS**

The trustees at their first ordinary meeting in each year must elect one of their number to chair their meetings. The person elected shall always be eligible for re-election. If that person is not present within ten minutes after the time appointed for holding a meeting, or if no one has been elected, or if the person elected has ceased to be a trustee, the trustees present must choose one of their number to chair the meeting.

The person elected to chair meetings of the trustees shall have no other additional functions or powers except those conferred by this deed or delegated to him or her by the trustees.

## **17. QUORUM**

- 17.1 Subject to the following provision of this clause, no business shall be conducted at a meeting of the trustees unless at least one third of the total number of trustees at the time, or two trustees (*whichever is the greater*) are present throughout the meeting.
- 17.2 The trustees may make regulations specifying different quorums for meetings dealing with different types of business.

## **18. VOTING**

At meetings, decisions must be made by a majority of the trustees present and voting on the question. The person chairing the meeting shall have a casting vote whether or not he or she has voted previously on the same question but no trustee in any other circumstances shall have more than one vote.

## **19. CONFLICT OF INTEREST**

A trustee must absent himself or herself from any discussions of the trustees in which it is possible that a conflict will arise between his or her duty to act solely in the interests of the charity and any personal interest (including but not limited to any personal financial interest).

## **20. MINUTES**

The trustees must keep minutes, in books kept for the purpose or by such other means as the trustees decide, of the proceedings at their meetings. In the minutes the trustees must record their decisions and, where appropriate, the reasons for those decisions. The trustees must approve the minutes in accordance with the procedures, laid down in regulations made under clause 21 of this deed.

## **21. GENERAL POWERS TO MAKE REGULATIONS**

The trustees may from time to time make regulations for the management of the charity and for the conduct of their business, including:

- 21.1 the calling of meetings;
- 21.2 methods of making decisions in order to deal with cases or urgency when a meeting is impractical;
- 21.3 the deposit of money at a bank;

- 21.4 the custody of documents; and
- 21.5 the keeping and authenticating of records. *(If regulations made under this clause permit records of the charity to be kept in electronic form and requires a trustee to sign the record, the regulations must specify a method of recording the signature that enables it to be properly authenticated.)*
- 21.6 The trustees must not make regulations which are inconsistent with anything in this deed.

## **22. ACCOUNTS, ANNUAL REPORT AND ANNUAL RETURN**

The trustees must comply with their obligations under the Charities Act 1993 with regard to:

- 22.1 the keeping of accounting records for the charity;
- 22.2 the preparation of annual statements of account for the charity;
- 22.3 the auditing or independent examination of the statements of account of the charity; and
- 22.4 the transmission of the statements of account of the charity to the Commission.
- 22.5 the preparation of an annual report and its transmission to the Commission.
- 22.6 the preparation of an annual return and its transmission to the Commission.

## **23. REGISTERED PARTICULARS**

The trustees must notify the Commission promptly of any changes to the charity's entry on the Central Register of Charities.

## **24. BANK ACCOUNT**

Any bank or building society account in which any of the funds of the charity are deposited must be operated by the trustees and held in the name of the charity. Unless the regulations of the trustees make other provision, all cheques and orders for the payment of money from such an account shall be signed by at least two trustees.

## **25. TRUSTEE NOT TO BENEFIT FINANCIALLY FROM THEIR TRUSTEESHIP**

Unless expressly authorised by the Commission to do so, no trustee may buy goods or services from the charity, or sell goods or services to the charity or receive remuneration, or receive any other financial benefit from the charity or from any trading company owned by the charity.

## **26. REPAIR AND INSURANCE**

The trustees must keep in repair and insure to their full value against fire and other usual risks all the buildings of the charity (*except those buildings that are required to be kept in repair and insured by a tenant*). They must also insure suitably in respect of public liability and employer's liability.

## **27. EXPENSES**

The trustees may use the charity's funds to meet any necessary and reasonable expenses which they incur in the course of carrying out their responsibilities as trustees of the charity.

## **28. AMENDMENT OF TRUST DEED**

28.1 The trustees may amend the provisions of this deed, provided that:

28.1.1 no amendment may be made to clause 4 (*Application of Income*), clause 8 (*Duty of care*), clause 25 (*Trustees not to benefit financially from their trusteeship*), clause 29 (*Dissolution*) or this clause without the prior consent in writing of the Commission; and

28.1.2 no amendment may be made whose effect is that the charity ceases to be a charity at law.

28.2 Any amendment of this deed must be made by deed following a decision of the trustees made at a special meeting.

28.3 The trustees must send to the Commission a certified copy of the deed effecting any amendment made under this clause within three months of it being made.

## **29. DISSOLUTION**

The trustees may dissolve the charity if they decide that it is necessary or desirable to do so. To be effective, a proposal to dissolve the charity must be passed at a special meeting by a two-thirds' majority of the trustees. Any assets of the charity that are left after the charity's debts have been paid (*'the net assets'*) must be given:

- 29.1 to another charity (*or other charities*) with objects that are no wider than the charity's own, for the general purposes of the recipient charity (or charities);  
or
- 29.2 to any charity for use for particular purposes which fall within the charity's objects.

The Commission must be notified promptly that the charity has been dissolved and, if the trustees were obliged to send the charity's accounts to the Commission for the accounting period which ended before its dissolution, they must send the Commission the charity's final accounts.

## **30. INTERPRETATION**

In this deed, all references to particular legislation are to be understood as references to legislation in force at the date of this deed and also to any subsequent legislation that adds to, modifies or replaces that legislation.

**The Kernow Positive Support (KPS) 'DECLARATION OF TRUST' was officially adopted at a trustee meeting held on 21<sup>st</sup> January 2004.**

**This 'Principle Deed' was duly amended by recommendation by the Charity Commission at a meeting held by the trustees on 1<sup>st</sup> June 2004 ("*Commission*"), and changes submitted to the Commission on 2<sup>nd</sup> June & 5th July 2004.**

*Kernow Positive Support (KPS) attained registered charitable status on 16th July 2004 from the Commission for England and Wales. Charity No. 1104947*