

East Sussex County Council and East Sussex Clinical Commissioning Groups (CCGs) Policy for personal budgets for children and young people aged 0-25 with special educational needs and disabilities with an Education, Health and Care Plan or undergoing an Education, Health and Care needs assessment

1. Background

1.1 This policy relates to the duties of East Sussex County Council and the East Sussex Clinical Commissioning Groups under the following:

- Children and Families Act 2014 (section 49)
- The Special Educational Needs (Personal Budgets) Regulations 2014 (1652)
- The SEN Code of Practice 2014.

1.2 A personal budget can be requested for:

- children and young people with an Education, Health and Care plan (EHCP)
- children and young people undergoing an Education, Health and Care needs assessment

The purpose of a personal budget is to cover aspects of the provision needed to meet the outcomes set out in the plan. The County Council and/or CCGs must agree that this provision can be offered as a personal budget.

1.3 Within an overall context of diminishing resources within East Sussex County Council, the local authority will offer personal budgets in line with statutory guidance and as flexibly as possible. However, it will not be possible for use of personal budgets to increase the total overall resource that is available to support families.

1.4 Personal budgets are only one approach to supporting a child or young person with special educational needs (SEN) and disabilities to achieve their aspirations. They are most effective when best use is also made of all the other support, activities and opportunities that exist.

1.5 Personal Education budgets will only be available where the child or young person:

- is eligible for an EHCP
- requires additional and individual funding to meet their SEN

Personal budgets through social care and health are available to those children and young people who have an assessed need and who are eligible to receive a social care service or Continuing Healthcare/Continuing Care.

1.6 This policy applies to any child or young person with SEN, who has an EHCP and where a personal budget has been requested and agreed.

1.7 The aim of personal budgets is to increase a child's or young person's independence. This is done by giving them and/or their parent(s) control over the way they are supported. Direct payments are cash payments made instead of specified services from the local authority or health services. The payment must be sufficient to enable the recipients to purchase the support set out in the EHCP to achieve the outcomes in the plan. Direct payments entail increased responsibility for the recipients.

1.8 This policy covers the following:

- direct payments
- third party arrangements
- notional budgets where an organisation other than the County Council holds the funds

It relates only to personal budgets provided through an EHCP. It does not cover other types of personal budgets or direct payments such as:

- health or social care personal budgets where the child or young person does not have an EHCP
- personal transport budgets

2. Ways of having a personal budget

2.1 There are four ways of having a personal budget:

i. A direct payment

Individuals receive the cash to contract, purchase and manage services themselves.

ii. An arrangement with the local authority, school, or college

The local authority, school or college holds the funds and commissions the support specified in the plan. This is sometimes called a notional budget.

iii. Third party arrangements

The personal budget is paid to and managed by an individual or organisation on behalf of the child or young person.

iv. A combination of the above.

3. Scope of Personal Budgets

3.1 Personal Education budgets will usually be agreed only if the child's or young person's support needs are **additional** and **individual** over and above the provision normally provided or able to be provided by the educational setting. For a personal budget for SEN provision this will be the 'top up' or 'element 3' funding. If the child or young person is, or will be, attending a special school or specialist college it may not be possible to offer a personal budget. This is because all of the funding is normally required to make the provision within

the school or college. In certain circumstances, where a creative solution to provision is required, a mainstream school or college may agree for some funding from its budget (made up of elements 1 and 2) to be included in the personal budget.

3.2 A personal budget **may not include the costs of the school place.**

3.3 A personal education budget is normally only agreed if the following criterion are met:

- the child or young person is attending the educational setting or apprenticeship named in the EHCP
- The local authority agrees that it would support the child or young person to achieve the educational outcomes specified in the EHCP.

There may be a small number of cases where a personal education budget is agreed to support the child's or young person's reintegration into the named school or college.

3.4 A personal budget for health is currently available to children and young people who are entitled to Continuing Healthcare or Continuing Care. More information on Personal Health Budgets can be found [here](#).

3.5 A personal social care budget will be available for children and young people with disabilities who have an assessed need and where individual funding is required to provide family support or a short break.

4. Recipients of direct payments

4.1 Direct payments relating to an Education, Health and Care Plan may only be made if the recipient appears to the local authority to:

- be capable of managing direct payments without help or with such help as is available to them
- be over compulsory school age
- have the mental capacity under the Mental Capacity Act 2005 to agree to direct payments and secure the agreed provision
- not be prohibited by the Regulations from receiving the agreed provision

4.2 A child with a Child Protection Plan can have a social care personal budget agreed if it would meet the aims of the Child Protection Plan. If agreed, the budget would be included in the Child Protection Plan agreed by the multi-professional Core Group meeting. It would also be included in the relevant section of the EHCP.

4.3 The following persons may not receive direct payments:

- i) a person who is subject to a drug rehabilitation or alcohol treatment requirement. The requirement can have been imposed by a community order or by a suspended sentence order.
- ii) a person who is released on license subject to a license condition requiring the offender to undertake offending behaviour work to address drug-related or alcohol related behaviour.
- iii) a person who is required to submit to treatment for their drug or alcohol dependency. This can be by a community rehabilitation order or a community punishment and rehabilitation order.
- iv) a person who is subject to a drug treatment and testing order.

- v) a person who is subject to a youth rehabilitation order which requires them to submit to drug treatment, drug testing, or to treatment for intoxicating substance.
- 4.4 Parents will have control of the direct payments for the child or young person whilst they are of compulsory school age. The young person themselves has this responsibility if they are over compulsory school age, as long as they have the mental capacity to undertake this. Mental capacity is defined in the Mental Capacity Act 2005.
- 4.5 The local authority will only make direct payments where a request has been made. The authority must also be satisfied that the recipient will:
- use the payment to secure the agreed provision in an appropriate way
 - act in the best interests of the child or young person when securing the agreed provision
- 4.6 Where a young person becomes over compulsory school age, the local authority will confirm whether they consent to receive direct payments. The young person can request that the direct payments continue to go to their parent or nominee.

5. Requesting a personal budget, including direct payments

5.1 The local authority, where it maintains or is preparing an EHCP, will make the following information accessible:

- i) the provision for which a personal budget may be available;
- ii) details of organisations that provide advice and help on personal budgets; and check guidance information is up to date;
- iii) the conditions that must be met before direct payments may be made.

5.2 The young person/their parent may request a personal budget, including direct payments, at any time while:

- a draft EHCP is being prepared
- an EHCP is being reviewed
- an EHCP is being reassessed

5.3 The local authority recognises and supports the flexibility that personal budgets give. At the same time, it must consider and balance the positive impact on the individual against the adverse impact it may have on services for children and young people with an EHCP that can no longer be funded by the local authority because funding has been reassigned to personal budgets.

5.4 A personal budget request will only be agreed where there is strong evidence demonstrating it will meet the outcomes set out in the EHCP.

5.5 Where the local authority agrees to direct payments as part of a personal budget, it will provide the recipient with information about:

- how the direct payment is to be administered
- what it is to be used for

The recipient will be party to a direct payments contract which sets out the terms and conditions of managing the budget.

5.6 The local authority **must seek the agreement** from the headteacher, principal or early education provider for any goods or services through direct payments to be used or provided on a school's, college's, or early years education setting's premises.

6. Monitoring and review of personal budgets

6.1 The local authority will monitor and review the use of the personal budget, at least annually. This will include compliance with the direct payment conditions.

6.2 The recipient may request that the local authority reviews the direct payments. The local authority will consider this request and decide whether to undertake the review.

6.3 After the review, the local authority may do the following:

- change the recipient of the direct payments
- change the amount of the direct payments
- require the recipient not to secure a service from a particular person
- ask for further information from the person
- stop making the direct payments

6.4 Where the local authority decides to reduce the amount of a direct payment, it will provide reasonable notice and will set out the reasons for its decision. The recipient may ask the local authority to reconsider its decision. If reconsidering, the local authority will consider the representations made by the recipient. If the recipient is a nominee, the child's parent or the young person can also make representations. The local authority will provide written reasons of its decision.

6.5 The local authority may need repayment of all or part of the direct payments if:

- the circumstances of the child or young person have changed in a manner which affects the appropriateness of the provision

- all or part of the direct payments have not been used to secure the provision
- theft, fraud, or another offence may have occurred in relation to the direct payments
- the child or young person has died

6.6 The local authority will stop making direct payments if:

- the recipient has notified the local authority in writing that they no longer consent to receiving direct payments
- the recipient falls under the list of people who are not allowed to have direct payments
- the direct payments have not been used to secure the agreed provision
- the provision can no longer be made through direct payments
- the recipient has failed to comply with the conditions for direct payments

6.7 Given the limited resources, the local authority will need to monitor the impact of personal budgets on other services for children and young people with an EHCP. The local authority may stop making direct payments if they are no longer meeting outcomes, or if it becomes incompatible with the efficient use of its resources. The local authority will give notice in writing of its decision to stop making direct payments. The recipient may request reconsideration of this decision.

7. Where there is disagreement about the provision of a personal budget

- 7.1 It will not always be possible to offer a personal budget as part of the EHCP. Parents and young people will be offered early information about the purposes and extent of personal budgets and their implications. If a personal budget in relation to an EHCP has not been agreed following a request, the young person/their parent will be notified of the reasons for this decision in writing.
- 7.2 If the local authority refuses a request for a direct payment for special educational provision, the local authority must set out their reasons in writing. They must also inform the young person/their parent of their right to request a formal review of the decision. If the young person/their parent provides subsequent representations, the local authority must consider them. The authority must also notify them of the outcome, in writing, setting out the reasons for their decision.
- 7.3 Where the disagreement relates to the special educational provision to be secured through a personal budget, the child's parent or the young person can appeal to the First-tier Tribunal (SEN and Disability). This is the same as any other disagreement about provision to be specified in an EHC Plan.

Approved by Lead Member Children's Services 6th October 2014

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