

Cabinet

7 December 2017

Education, Health and Care Plans – Personal Budget and Direct Payments Policy

Recommendations

That Cabinet approves the Personal Budget and Direct Payments Policy for children and young people with Education, Health and Care plans.

1.0 Purpose

- 1.1 It is necessary for the local authority to develop a personal budget policy in order to meet the requirements of the SEND Code of Practice 2015 for children with Education, Health and Care plans.
- 1.2 The attached policy document (Appendix) has been approved by the Special Educational Needs and Disabilities (SEND) Programme Board. It has been developed by a multi-agency group including representatives of special schools, health, social care and Warwickshire Parent Carer Forum.

2.0 Personal Budget Policy

- 2.1 The policy document outlines the position of the local authority with regard to requests for personal budgets for education provision for the first time. This is based on the stipulations of the SEND Code of Practice.
- 2.2 The policy references existing personal budget policies for social care and Clinical Commissioning Groups. No change is made to these policies through this document. However, personal budgets from social care and health should be recorded on the EHC plan where they are approved.
- 2.3 The document outlines what the personal budget may and may not be used for, in accordance with legislation, and the different types of delivery methods for personal budgets. The administration processes that sit behind this policy are being developed by officers.

Background papers

None

	Name	Contact Information
Report Author	Pat Tate - Service Manager - Vulnerable Learners	pattate@warwickshire.gov.uk tel:01788 338130
Head of Service	Chris Malone	chrismalone@warwickshire.gov.uk
Joint Managing Director	Monica Fogarty	monicafogarty@warwickshire.gov.uk
Portfolio Holder	Councillor Colin Hayfield	colinhayfield@warwickshire.gov.uk

The report was circulated to the following members prior to publication:

Local Member(s): N/A

Other members: Councillors Dahmash, Morgan, Roodhouse, Williams, Hayfield, C.Davies

Appendix

Personal Budget and Direct Payments Policy: Relating to Children and Young people aged 0-25 with Special Educational Needs and their Families

APPENDIX

Personal Budget and Direct Payments Policy

*Relating to Children and Young people aged 0-25 with
Special Educational Needs and their Families*

1. Background - Why do we need a policy on personal budgets and direct payments?

- 1.1. The following policy relates to the duties of Warwickshire County Council under the Children and Families Act 2014 and the statutory guidance set out in the Special Educational Needs and Disability Code of Practice (SEND CoP) 0-25 years January 2015.
- 1.2. The policy has been developed by a group including parents, schools, health providers, commissioners in social care and education. The policy applies to any child or young person who has an Education, Health and Care (EHC) Plan and is relevant where a personal budget or direct payments have been requested or where direct payments have been agreed. Following the new SEND CoP parents and young people are supported to have much greater choice and control over how their education, health and care needs are met and by whom. Working with the commissioners in local authorities and health authorities, parents and young people have a range of new freedoms and flexibilities, including the option to take a personal budget, where they are eligible to do so.
- 1.3. The Children and Families Act 2014 gives an automatic right to parents and young people to request a personal budget from the local authority, which will set out how much money is required to secure aspects of the provision outlined in the plan. Parents and young people then have the opportunity to request that direct payments be made to them so that they can lead in commissioning of some or all of the provision identified and set out within the child or young person's EHC Plan.
- 1.4. Under the new legislation local authorities must set out a clear policy on personal budgets so that parents and young people are clear on the scope and the approach. Therefore, this policy aims to set out:
 - What a personal budget is
 - How to request a personal budget
 - The process for deciding on a personal budget
 - The circumstances in which direct payments can be made
 - How the funding will be made available
 - Description of services that lend themselves to the use of personal budgets and direct payments.

2. What is a personal budget?

- 2.1. A personal budget is: "an amount of money identified by the local authority to deliver provision set out in an EHC plan where the parent or young person is involved in securing the provision". The funds can be held directly by the

parent or young person, or may be held and managed on their behalf by the local authority, school, college or other organisation or individual and used to commission the support specified in the EHC Plan (SEND Code of Practice 2014, p178).

- 2.2 Personal budgets are designed to pay for the elements of provision that the law states (and, where relevant, that local authorities and the NHS have agreed) can be offered as a personal budget. The aim of personal budgets is to increase independence and choice by giving parents and young people control over who delivers the provision that it is agreed children and young people need to receive through an EHC Plan.
- 2.3 A personal budget will only cover aspects of the support provision that can be individually commissioned, either by the parent or young person or by another person or the local authority, on the child or young person's behalf. The personal budget is not necessarily all of the resources that are available to support a child or young person, just the amount that can be used flexibly to support the special educational needs of the child /young person. It cannot be used to fund the costs of a school placement, including Age Weighted Pupil Unit (AWPU) payments for mainstream schools, planned place / additional place funding for special schools or fees for independent schools.
- 2.4 Where provided, Section J in the EHC Plan will set out information about the personal budget. Section J will not necessarily list all the costs relating to supporting a child or young person. It will set out how the Personal Budget will be used to deliver an agreed provision and meet agreed outcomes. It will detail arrangements about any direct payments

3. Who is eligible for a Personal Budget?

- 3.1 A local authority that maintains an EHC plan, or is securing the preparation of an EHC plan, for a child or young person must prepare a personal budget for him or her if asked to do so by the child's parent or the young person

See Appendix 1: Who would be excluded from holding a personal budget?

4. When can a parent or young person request a personal budget?

- 4.1 The request for a personal budget can be made either:
 - when an EHC Plan is being drafted; or

- when an EHC Plan is being reviewed/ re-assessed as part of the statutory process.

5. What is the process for requesting a personal budget?

- 5.1 When a statutory assessment of SEN commences, the personal budget and direct payments processes will be discussed with the child's parents or young person to see if this is something they may be interested in pursuing, if appropriate. The benefits and responsibilities of having direct payments, or utilising one of the other methods of exercising control over a personal budget, will be explained by the EHC Plan Coordinator. An indicative amount will be estimated, if possible, at as an early a stage as possible. Parents / the young person can request which aspects of their plan they would like to exercise control over through direct payments or otherwise, via written feedback, and/or clear records of minutes, as part of the draft EHC Plan process, and letters to parents / young people containing the draft EHC Plan should make clear that this can be requested.
- 5.2 A request can also be made when an Education, Health and Care Plan is being reviewed/ reassessed, and this will also be made clear to parents.
- 5.3 Some families may already be accessing personal budgets / direct payments in terms of care and or personal health budgets, and these will continue throughout the statutory process and be referenced, as relevant, in the final EHC Plan.
- 5.4 At the point of the nomination of the name of the school/ college the aspects of a personal budget that could be part of a plan will be discussed and outlined. If, for example a parent/ young person wanted to use a personal budget to pay for support staff in school/ college this discussion should occur at an early stage as possible, since these staff can only be used in schools/ colleges with the clear agreement and permission of the school head teacher or college principal. Any staff employed to work in schools / colleges would have to follow that institution's code of conduct, for instance in regard to health and safety regulations, safeguarding, and other core policies. It is likely however that they would be regarded as employees of, or contractors for, either the parents / young person (if direct payments are provided) or the local authority or other nominated person (if the personal budget is being operated by them on behalf of the child / young person).

6. What will be included in a Personal Budget?

6.1 The full costed provision funded through the personal budget element will be clearly set out in Section J of the EHC Plan. The EHC provision will be costed, with a view to value for money (e.g. not costing more than services provided directly). Services that are supplied as part of a block contract or are within Universal or Targeted services would not normally be offered as a personal budget because of value for money considerations. This would also apply to other areas where it is difficult to disaggregate an individual cost from an overall amount, or where doing so would have an adverse impact on services provided or arranged by the local authority for other EHC Plan holders, or would not be an efficient use of the local authority's resources (Code of Practice 9.106). Throughout the statutory assessment there will be a cycle of assess-plan-do- review to ensure it meets value for money requirements.

6.2 A personal budget may be provided where a child or young person requires individual tailored support that goes beyond universal and targeted services. If agreed the following aspects could be included:

6.3 *Education*

6.3.1 Educational funding overview: Mainstream schools and colleges receive funding to support children and young people as follows:

- Element 1- standard placement funding. (A personal budget cannot be used to purchase the cost of standard placement funding)
- Element 2 – an amount of money to provide up to £6,000 (government prescribed threshold) per pupil per annum of targeted support that the school provides
- Element 3 – the amount of money provided by the Local Authority to meet higher level individual needs as 'top up' to Element 1 and 2.

6.3.2 This could include parts of, or all of element 3 of the High Needs budget, held by the local authority. In general, only High Needs (element 3) funding held by the local authority would form part of a personal budget for education. Which parts of this funding will be included will depend on the type of provision is being provided for the child or young person. In accordance with the above, services that are supplied as part of a block contract or are within Universal or Targeted services would not normally be included, neither would other provision where funding for one child cannot be disaggregated, if doing so would have an adverse impact on service provided or arranged for other EHC Plan holders, or where doing so would not be an efficient use of the local authority's resources. It is therefore not always possible for a school or college to release element 3 funding into a Personal Budget because it may be part of the existing overall provision.

A local authority may not make direct payments in respect of any goods or services which are to be used or provided in a school or post-16 institution without the written consent of the head teacher / principal. At the discretion of the head teacher/college principal a personal budget could include all/parts of element 2 funding.

6.3.3 In the circumstances of a request for a personal budget comprising aspects of the resources allocated to support a student by a college/ school through their budget (ie. a school or college mainstream budget or additional needs budget - termed element 2), this must occur at as an early stage as possible. The school/college will have discretion and it is likely that this would only be agreed by the school/ college in certain circumstances where a creative solution to provision is required and employment of staff, for the reasons set out in 6.3.2 above, would also require consent of the head teacher / principal.

6.3.4. In specialist educational placements (special schools, resource centres, specialist colleges, specialist training providers) there is a commissioned place (Element 1 and 2) plus any Element 3 “top-up” funding the learner needs above that. In these settings the ability to disaggregate costs of particular parts of provision are likely to be limited and will depend on individual circumstances.

6.4 *Health*

6.4.1 Since October 2014 families of children eligible for Continuing Care (CC) as defined by the National Framework for Children and Young People’s Continuing Care have had a “right to have” a personal health budget. In the case of children this refers to the element of their care package that would normally be provided by the NHS once they become CC eligible and not the elements of their package provided by social care or education. In principle, the amount of money that would have normally been spent on NHS services as part of a child or young person’s Continuing Care package (except those services excluded as outlined in regulations) could be available to use as a personal health budget. Any agreed budget must be of a sufficient amount to ensure the health and wellbeing outcomes required for a child or young person can be realistically met.

6.4.2 The local Clinical Commissioning Group policies for personal health budgets are available at:

<http://www.southwarwickshireccg.nhs.uk/Health-Services/Personal-Health-Budgets>

<http://www.warwickshirenorthccg.nhs.uk/NHS-Care/Personal-Health-Budgets>

<http://www.coventryrugbyccg.nhs.uk/Health-Services/Personal-Health-Budgets>

6.4.3 Information about NHS Children's Continuing Care can be found at:

<https://www.gov.uk/government/publications/children-and-young-peoples-continuing-care-national-framework>

Information from NHS England about Personal Health Budgets can be found at:

[http://www.personalhealthbudgets.england.nhs.uk/library/Resources/Personalhealthbudgets/2014/Personal health budgets right to have guidance.pdf](http://www.personalhealthbudgets.england.nhs.uk/library/Resources/Personalhealthbudgets/2014/Personal%20health%20budgets%20right%20to%20have%20guidance.pdf)

6.5 *Social Care*

Children and young people are eligible for social care personal budgets when they need support beyond targeted and universal services. The budget could include funding arising from the assessed needs of the child in need and individual funding necessary to provide the family of a disabled child with a short break or family support. The social care policy is published separately at www.warwickshire.gov.uk/send .

6.6 *Travel Assistance*

If requested, and only when eligible under legislation or the transport policy to receive transport assistance, 'direct travel payments' can be provided on a 'cost per mile' basis. As this does not form part of education, health or social care it will not be referenced specifically within the EHC Plan.

Direct travel payments will only be given when financially viable and when no existing transport is in place. Should a more cost effective method of transport become available, the Local Authority reserves the right to withdraw the direct travel payment. Direct travel payments are subject to audit, and terms and conditions must be adhered to. More details can be found within the Warwickshire Transport Policy.

6.7 *Support and Provision that could form part of a personal budget/direct payment arrangement*

A personal budget and direct payments can only be used for funding provision specified within an EHC Plan. Therefore education elements funding through a personal budget must be those specified in Section F of the EHC Plan. Use of the personal budget and direct payments enable more choice to be exercised by parent and/or young people in how exactly provision is commissioned and provided to the child / young person in question. Areas of provision which might be funded through this method include:

- Additions to existing learning support - providing a more consistent offer of support to the child or young person
- Funding specialist input such as Speech and Language Therapy or Nursing / Medical support
- Funding a work experience or work-based learning opportunity
- Funding Alternative Education Provision (such as a private provider, college placement, tuition etc)
- Adding to the technology available to promote a pupil or students individual style of learning:
 - o Assistive technology
 - o Low level access aids including HI and VI

Under no circumstances may a personal budget / direct payments be used to fund any provision that is not specified within an EHC Plan as being required.

7. Calculating and agreeing the Personal Budget

- 7.1 Each individual learner who has SEND and an EHCP will require different levels of support, even if they share types of SEND with other learners. The resources to fund the support needed to achieve the goals and outcomes set out in an EHC Plan are agreed as part of the assessment and planning process. Once the nature and level of support is determined, the option arises to request a personal budget so that the parent or young person can purchase the support for themselves. If agreed a potential budget will be shared during the EHC Needs Assessment Process or following a review of an EHC Plan so that detailed discussions can take place to clarify the needs to be met and the provision the personal budget will purchase to meet the individual outcomes identified in the EHC plan.
- 7.2 Final confirmation of the Personal Budget will be recorded in the finalised EHC Plan.
- 7.3 No funding will be available from the local authority except the amount specified within the agreed personal budget. Therefore those operating the personal budget, whether through direct payments or otherwise, will have access to no further public funds for educational provision. Parents/ young people in receipt of direct payments must therefore not to commit to spending any further amounts unless they are to be covered by other means, such as personal finances or a local charity.

8. Managing and Using a Personal Budget through Direct Payments and otherwise

8.1 A personal budget is not the same as a direct payment. A direct payment is one of several ways that a personal budget can be managed. The following options to manage a Personal Budget are available:

- An arrangement whereby the local authority, school or college holds the funds and commissions the support specified in the plan (these are sometimes called notional budgets)
- Direct payments – where individuals receive the cash to contract, purchase and manage services themselves
- Third party arrangements – where funds (direct payments) are paid to and managed by an individual or organisation on behalf of the child's parent or the young person
- A combination of the above

8.2 If direct payments are made then they must be paid to a bank account set up specifically for the purpose of funding EHC provision.

8.3 If help is required in managing a personal budget this could occur from the Self Directed Support team, and parents / young people can request assistance from this team. Should the authority have any concerns over the capacity of a person to receive direct payments, then Mental Capacity Act assessment processes must be followed.

9. Monitoring and Review of Direct Payments

9.1 Periodically, the local authority will examine how Direct Payments are being spent, to ensure that special educational provision is being provided and outcomes met, and that the direct payments are being used solely to meet the needs and provide the provision identified as being necessary for the child / young person within their EHC Plan. The direct payment recipient will be subject to regular audits in relation to the use and management of the direct payments. This is required to ensure that local authority monies are being used for the purpose laid out in the EHC Plan, the correct amounts are being used for each area of provision, and that accurate receipts and records are being kept. Any discrepancies will be investigated and resolved.

9.2 The local authority has the right to suspend or terminate the direct payment arrangements as a result of the findings of an audit of a direct payment

account. An audit of the individual's circumstances may take place at any time and local authority officers may demand immediate access to bank account details for the relevant account receiving direct payments to monitor usage of the account.

Reviews of Direct Payments

9.3 When audits are being undertaken, consideration must be given as to whether the recipient's direct payment bank account is being managed correctly, records and receipts are up to date, monies are being used for the provision for which they were intended, and that the direct payment is appropriately meeting the special educational needs of the child or young person in question. The local authority has the right to increase, decrease, suspend or terminate direct payments in line with regular reviews or reassessments of the child or young person's special educational needs. A formal review of the child or young person's special educational needs will take place on at least an annual basis, and further review and re-assessments as necessary and in accordance with the law. Direct payments are only available whilst the child or young person retains an EHC Plan and when eligible under this policy.

Recovery of Direct Payments

9.4 The local authority reserves the right to recover direct payments, in line with the authority's debt recovery policy, in the following circumstances:

- If the direct payment has not been used to provide the provision for which the direct payments have been provided, and as specified within the child or young person's EHC Plan;
- If the direct payments are not being used to meet the outcomes specified in the child or young person's EHC Plan, or if the commissioned provision is failing to meet these outcomes;
- If the direct payments have not been used due to a change in circumstances, whether temporarily or permanently;
- If a direct payment has been overpaid or paid in error;
- If there is a surplus in the direct payment account, which has been accrued above any amount agreed with the local authority;
- If the direct payments recipient has not met any condition which the local authority has properly imposed in the direct payments agreement or any agreed letters;
- If, following termination of direct payments, any direct payment monies remain in the direct payment account.

9.5 If there is found to be a build-up of unused direct payment funds in the recipient's direct payment account, the recipient must return the sums concerned. If this does not happen then they will be notified that these

unspent monies will be recovered, and recovery action will be taken by the local authority.

- 9.6 If the child or young person is no longer entitled to direct payments, or the recipient no longer wishes to receive them, and/or an overpayment has occurred due to an error on the part of the local authority or any other party, the direct payment recipient will be notified that this overpayment must be returned, and recovery action will be taken by the local authority if necessary.

Wrongful use of direct payments

- 9.7 Where it appears that the direct payment recipient has been using the monies received for items or services other than those specified in the EHC Plan and agreed as being available for the use of a personal budget, or there is evidence of deliberate misuse of funds, the local authority will undertake a full reconciliation to ascertain the exact amount of money that has been inappropriately used and seek to recover it.
- 9.8 If direct payments have been inappropriately used (either intentionally or unintentionally) due to mismanagement of the direct payment account, or the direct payment account, or the direct payment recipient has shown themselves incapable or unwilling to manage their direct payment correctly, a review will be undertaken as a matter of urgency. If the outcome is that direct payment monies have been inappropriately used, the monies will be recovered.

10 Termination of Direct Payments

- 10.1 If a direct payment recipient expresses a desire to terminate the direct payments, the reasons for the termination need to be provided to the local authority. The authority will then work with all relevant parties to plan how the relevant parts of their special educational provision will be met in an alternative way.
- 10.2 The local authority reserves the right to terminate the direct payments if terms of the direct payment agreement are breached. If this happens, the recipient will be informed in writing. In such cases, the local authority will then work with all relevant parties to plan how the relevant parts of their special educational provision will be met in an alternative way.

11. Managing Changes to Circumstances

- 11.1 Regular reviews will occur as part of the assess-plan-do-review cycle in terms of a child/ young person's development. On a formal basis this will occur as part of the annual review, but can occur for individual elements more

frequently as needed. If a significant change in needs occur, then a review sooner than annually will occur in order to make necessary amendments to the EHC Plan. Following any changes to the EHC Plan a review of the impact that this has on personal budgets and any direct payments being made will take place, and new arrangements for the provision of an updated personal budget / direct payment will be made as soon as is practicable.

- 11.2 Where a child/young person has fluctuating difficulties, for example due to ongoing health needs, this should be taken into account within the EHC Plan. A request could be made for a “top up” amount or there could be a contingency that could be reclaimed by the local authority and / or health at the end of the financial year.

12. Negotiation and Disputes

- 12.1 The Council will actively seek to resolve disagreements about the budget, the choice of management of the funding and the use of the personal budget throughout the EHC pathway. Should it not be possible to reach agreement at any stage of EHC pathway then the relevant service manager will be available to seek to resolve the dispute. If this does not result in resolution of the dispute then the matter may be referred to a senior manager. There are disagreement resolution services available as set out within the SEND Code of Practice.

Appeal Process

- 12.2 An appeal can occur under the following circumstances:
- An aspect of provision listed in the Education, Health and Care Plan has not been offered in a personal budget which is wished for by the parent or young person if old enough and with the mental capacity to appeal.
 - A personal budget, or direct payments, have not been offered
 - The monies listed are felt not to be sufficient to cover the needs of the young person.
 - An appeal would then be made to the appropriate commissioner.

This must be in writing to:

SENDAR
Saltisford Office Park
Ansell Way
Warwick
CV34 4UL

- 11.3 Due legal process regarding any appeals will be followed as laid out in the Children and Families Act 2014 and/or the Code of Practice relating to the personal budgets for SEN and disability aspects of this legislation
- 11.4 The First-Tier Tribunal does not hear appeals about personal budgets or direct payments, but will hear appeals about the special educational provision to which a personal budget may apply.

12. Contact Details

Contact us at:

Email: sen@warwickshire.gov.uk

Post: SENDAR, Saltisford Office Park, Ansell Way, Warwick, CV34 4UL

Tel: 01926 742160

Appendix 1: Who would be excluded from holding a personal budget?

Anyone who has a child with an EHCP, or is post compulsory school age with one, can request a personal budget to meet their needs as outlined in the EHCP. This eligibility would be valid unless the following circumstances applied:

- The child is in care. If in long term foster care the foster parents may access a personal budget if there is agreement as part of a care plan*
- The child has a Child Protection Plan. Any use of a personal budget would have to be part of the plan agreed at the multi professional Core Group meeting. If the use of it was felt not to meet the aims of the plan, and to compromise the safety of the child/ young person, it would not be agreed*
- A person subject to a drug or alcohol treatment programme (as in the regulations). If the person wishes to receive a direct payment and may be covered by this, there will be a discussion between the local authority and person involved to explore their particular circumstances in relation to the regulations. If a person has a gambling addiction this also may preclude them from receiving a personal budget.*
- The young person has a youth rehabilitation order The regulations (the legal guidance for the law relating to personal budgets) state the following:*

“The following persons may not receive direct payments “

(a) a person who is subject to a drug rehabilitation requirement, as defined by section 209 of the Criminal Justice Act 2003 (a), imposed by a community order within the meaning of section 177 of that Act or by a suspended sentence order within the meaning of section 189 of that Act;

(b) a person who is subject to an alcohol treatment requirement, as defined by section 212 of the Criminal Justice Act 2003, imposed by a community order within the meaning of section 177 of that Act or by a suspended sentence order within the meaning of section 189 of that Act;

(c) a person who is released on licence under Part 2 of the Criminal Justice Act 1991(a), Chapter 6 of Part 12 of the Criminal Justice Act 2003 or Chapter 2 of Part 2 of the Crime (Sentences) Act 1997(b) subject to a non-standard licence condition requiring the offender to undertake offending behaviour work to address drug-related or alcohol related behaviour;

(d) a person who is required to submit to treatment for their drug or alcohol dependency by virtue of a community rehabilitation order within the meaning of section 41 of the Powers of Criminal Courts (Sentencing) Act 2000 or a

community punishment and rehabilitation order within the meaning of section 51 of that Act(c);

(e) a person who is subject to a drug treatment and testing order imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000(d).

(f) subject to a youth rehabilitation order imposed in accordance with paragraph 22 (drug treatment requirement) of Schedule 1 to the Criminal Justice and Immigration Act 2008 which requires the person to submit to treatment pursuant to a drug treatment requirement.

(g) Subject to a youth rehabilitation order imposed in accordance with paragraph 23 (drug testing requirement) of Schedule 1 to the Criminal Justice and Immigration Act 2008 which includes a drug testing requirement.

(h) subject to a youth rehabilitation order imposed in accordance with paragraph 24 (intoxicating substance treatment requirement) of Schedule 1 to the Criminal Justice and Immigration Act 2008 which requires the person to submit to treatment pursuant to an intoxicating substance treatment requirement.”