



**Personal Budget Policy relating to Children, Young People  
and Adults aged 0-25 years with Special Educational Needs  
and Disabilities (SEND)**

**Southampton City Council & Southampton City Clinical  
Commissioning Group**

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## 1. Introduction & Background

- 1.1 This policy relates to the duties of Southampton City Council and Southampton City Clinical Commissioning Group regarding the provision of Personal Budgets as detailed in the 'Children & Families Act 2014' (Part 3, section 49), the 'Special Educational Needs (Personal Budgets) Regulations 2014' and the statutory guidance within the 'Special educational needs and disability code of practice: 0 to 25 years' (specifically paragraphs 9.95 to 9.124).
- 1.2 This policy will be published as part of the Personal Budget Local Offer and will be of interest to:
- Children, young people and adults aged 0 to 25 years with Special Educational Needs & Disabilities (SEND)
  - Parents/carers and other family members of those with SEND aged 0-25 years
  - Education, health, social care and voluntary sector staff working within the field of SEND.
- 1.3 Other relevant national legislation and guidance includes:
- The Community Care, services for Carers and Children's Services (Direct Payments) Regulations 2009 (these will be replaced by regulations made under the Care Act 2014)
  - The National Health Service (Direct Payments) Regulations 2013
- 1.4 Other relevant local policies include:
- Southampton City Council Direct Payments Policy for the implementation of direct payments within adult social care
  - Southampton City Clinical Commissioning Group 'Delivery of Personal Budgets Policy'.
- 1.5 The most frequently asked questions relating to personal budgets are answered in section 3 so this should be the first place to look before reading further into the other sections.

## 2. Glossary of terms

Term	Explanation in relation to SEND
Local Authority (Southampton City Council)	The Local Authority (LA) is responsible for identifying the educational and social care needs of those with Special Educational Needs & Disabilities (SEND) and then making provision to meet the assessed needs and achieve the agreed outcomes.
Southampton City Clinical Commissioning Group (the CCG)	The CCG is responsible for identifying and providing services to meet the health needs and achieve the agreed health related outcomes. The CCG commission local health services but the actual services are provided by other organisations (e.g. Solent NHS trust).
Education Health & Care (EHC) Plan	Education, Health & Care Plans are written for children, young people or adults (aged 0 to 25 years) who require special educational provision to meet their special educational needs and secure the best possible outcomes for them across education, health and social care. From September 2014 EHC Plans will begin to replace statements of SEN and Learning Difficulty Assessments.
Local Offer	Local authorities must publish a local offer which sets out in one place information about services that are available across education, health and social care in their area for children, young people and adults with SEND.
Code of Practice, 2014	This provides statutory guidance on the duties, policies and procedures relating to the new SEND law which comes into effect in September 2014. The full code of practice can be found at: <a href="https://www.gov.uk/government/publications/send-code-of-practice-0-to-25">https://www.gov.uk/government/publications/send-code-of-practice-0-to-25</a>

### **3. Frequently Asked Questions**

**Q1. My child has an EHC Plan, do I have to have a personal budget?**

A1. No, you do not have to have a personal budget. Support to achieve outcomes can be provided directly by the local authority/CCG (as has traditionally happened in the past).

**Q2. When can I make a request for a personal budget?**

A2. You can have discussions with people supporting you and your family at any time however the formal request for a personal budget can only be made at the point when an EHC Plan is first written, when a statement is transferred to an EHC Plan or at an annual review of an EHC Plan.

**Q3. My child currently has an SEN statement, does this mean I will have an EHC Plan and personal budget by September 2014?**

A3. The transfer process from SEN statements to EHC Plans will start from September 2014; however it is not possible for all children to have a new EHC Plan by then. The government has given local areas until April 2018 to complete the transfer for all children and young people. The right to request a personal budget will begin when an EHC Plan is drawn up and cannot be made whilst a child still has an SEN statement.

**Q4. If I request a personal budget, does the local authority have to agree to this?**

A4. If the request is within the scope of the current personal budget local offer and policy then it will be agreed. If the request is to use the personal budget via a direct payment, this will only be agreed if it is clear that:

- a) The direct payments will be used in an appropriate way and in the best interests of the child, young person or adult (see section 8.5)
- b) The intended recipient is not excluded from receiving a direct payment (see paragraph 8.4.2)
- c) Making the direct payment will not adversely impact upon services provided to other children.
- d) It is an efficient use of local authority resources
- e) There is agreement from the Head teacher or Principal if the direct payment is to be used to pay for support within school or college

If the local authority/CCG does not agree to a direct payment this will be explained in writing including details of how to challenge the decision.

**Q5. I am unhappy with some of the services provided to my child; however they seem to be outside of the scope of the current personal budget policy (e.g. speech and language therapy or physiotherapy). I would like to receive a personal budget so I can buy my own support for these services, is this possible?**

A5. Currently these services are provided through a block contract and it may not be possible to remove the individual funding for your child from the overall amount. Every request will be dealt with individually but it is likely that it would not be agreed at this time. As the personal budget local offer grows over the next three years, this may be something which will become available as an option.

**Q6. I am not clear about what the current personal budget options are and what is within the scope of this policy. Can you clarify?**

A6: From September 2014, the personal budget options are:

- a) Social care assessed (specialist) short breaks (see section 5 for more information)
- b) Continuing care and Continuing Healthcare (see section 6 for more information)
- c) Personal Travel Budgets (see section 7.7 for more information)

The Code of Practice says that local authorities must consider each request for a personal budget on its own individual merits, however requests made outside of the areas above are unlikely to be agreed. The reason for this is that disaggregating funding would affect the delivery of services to a number of children and young people (see answer to question 5).

**Q7. How much will the personal budget be?**

A7. This will vary for each child, young person or adult as the amount is based on individual outcomes and needs. The Code of Practice is clear that the personal budget amount must be sufficient to secure the agreed provision specific in the EHC Plan.

**Q8. If I choose to receive the money myself through a direct payment, will this be taxed or affect any benefits?**

A8. No, direct payments are not classed as income so they are not taxed and will not affect the level of any benefits received. If direct payments are used to employ a person then there is the responsibility to have Employer's Liability Insurance and to pay tax and national insurance for the employee.

**Q9. Once there is a plan for how the personal budget will be used, can this be changed at a later point?**

A9. Yes, arrangements can be changed. This would usually be discussed at an annual review of the EHC Plan.

**Q10. If my child had a personal budget from more than one service (e.g. social care and health), could all of the money be paid into one account and used together?**

A10. Yes, the money can be paid into one account. If the money is to be pooled together, the EHC Plan would need to provide detail on how it will contribute to all necessary outcomes in the plan.

## 4. Personal Budgets Basics

- 4.1 A personal budget is an amount of money that is allocated based on an individual assessment of a child, young person or adults' needs. Having a personal budget can give more opportunities for choice and control over how the money is spent.
- 4.2 A personal budget is not an additional resource but a mechanism for making an already allocated resource clear and transparent and then exploring what is the best way to use it to meet needs and achieve outcomes. Having a personal budget does not entitle someone to extra or more expensive services or to preferential access.
- 4.3 The code of practice is clear that a personal budget could potentially be from education, health or social care. This does not mean that all funding from any of these agencies is available as a personal budget, nor does it mean that all children, young people and adults with EHC Plans will be able to access a personal budget from all three or even one of the agencies. The code of practice provides the framework around personal budgets and requires that local areas give more detailed information about the personal budget options that are available locally – this policy provides this further detail.
- 4.4 Families may wish to look into or discuss the personal budget options at any time, however the formal request for a personal budget can only be made at the point when:
  - a) An EHC Plan is first drawn up
  - b) An EHC Plan annual review takes place
  - c) A child with a statement of SEN has their statement transferred to an EHC Plan
- 4.5 When a statutory assessment of SEN begins, information about personal budgets will be provided to the family. This will primarily be via the Personal Budget Local Offer and will include information about organisations that may be able to provide advice and assistance to help parents and young people to make informed decisions about personal budgets. When it is confirmed that an EHC Plan will be issued, an indicative personal budget amount will be given, where possible. In some circumstances and particularly during the transition phase from statements to EHC Plans, families may already be accessing personal budgets from social care or health before they have an EHC Plan. These will be incorporated into the EHC Plan when it is drawn up.
- 4.6 Details of any agreed Personal Budget will be included in the EHC Plan within Section J. This will include details of the funding source(s) for the personal budget, how the budget will be accessed (see paragraph 4.8), the personal budget amount and details of how the budget will be used to contribute towards the outcomes in the EHC Plan. Arrangements in relation to direct payments will also be included where relevant.

- 4.7 Services that are supplied as part of a block contract would not normally be offered as a personal budget as it would be difficult to disaggregate an individual cost from the overall amount without affecting the service provision for other service users and the efficient running of the service.
- 4.8 There are four ways in which a personal budget can be accessed:
- a) As a Direct Payment – where the money is paid directly to the young person or family member and they purchase and manage services themselves (see chapter 8 for more detailed information on direct payments)
  - b) As a ‘managed budget’ (also sometimes called a notional arrangement) – where the local authority, CCG, school or college hold the money and commission the support specified in the plan and agreed with the family
  - c) As a ‘third party budget’ – where the money is paid to an individual or organisation and managed on behalf of the young person or their family. This option is relatively new, so not yet widely available.
  - d) As a mixture of the options above
- 4.9 Most families will benefit from information and support to consider the personal budget options that may be available to them and to reach an informed decision about whether to make a request for a personal budget. This information and support will come from a range of places, including:
- a) Through the Personal Budget local offer and this policy
  - b) The assessment coordinator and/or lead professional
  - c) Independent supporters as part of the Mencap Information, Advice & Support Service
  - d) National organisations such as the KIDS ‘Making It Personal’ project (<http://www.kids.org.uk/mip>) and the ‘SENDirect’ website (<http://www.sendirect.org.uk/>) from the SEND Consortium

Specific information and advice about taking on a direct payment is provided by the local organisation ‘SPECTRUM Centre for Independent Living’ at the website:

<http://directpaymentsouthampton.info/>

## 5. Personal Budgets and Social Care

- 5.1 Some children, young people and adults with SEND are eligible to access support from social care. This could be for a range of reasons and one type of support provided may be short breaks. These are allocated following a social care assessment of need and could include:
- a) Overnight support either in the home, through a foster carer or in a residential unit
  - b) Daytime support either in the home or in the community
  - c) A direct payment for a young person or their family to purchase their own short break support.
- 5.2 For example, following an assessment a personal budget allocation may be made with various options about how to use it (such as those above). An indicative allocation will be made after a Resource Allocation System (RAS) tool is completed with you by your assessment coordinator or lead professional. The purpose of the RAS is to fairly allocate resources across all eligible children and young people according to the support they need to achieve outcomes. An outcomes based RAS to allocate social care assessed short breaks is starting to be trialled from September 2014.
- 5.3 Many families in Southampton who have this type of social care assessed short break support in place already have this provided via a personal budget. However the personal budget may not have explicitly been notified to the family in all cases where specialist short break support is accessed.
- 5.4 If children, young people or adults who have this type of support have an EHC Plan (or their statement is transferred to an EHC Plan), then this support will be included in the plan and the personal budget amount also detailed.
- 5.5 Currently those eligible for a social care (i.e. short breaks) personal budget are those children and young people open to the Jigsaw service (0 to 18 year olds). A 0-25 service is currently in development, once this is in place this policy will be updated to reflect any changes in eligibility.
- 5.6 Adults (aged 18 and over) may also be eligible for a personal budget from adult social care services. This is currently determined via an adult social care assessment. Further details of this are given at: <http://www.southampton.gov.uk/living/adult-care/howgetsupport/>

## 6. Personal Budgets and Health

- 6.1 Personal Budgets within health services (usually called Personal Health Budgets) are a very recent introduction and therefore the options are currently limited.
- 6.2 There are a small number of children, young people and adults who need additional support due to their complex, long-term and/or life limiting health condition. This may include those who cannot breathe without support or who have a significant health need which means that a carer has to be with them all of the time to keep them safe and healthy.
- 6.3 This type of support is called 'Continuing care' for children and young people (aged 0 to 18 years) and 'Continuing Healthcare' for adults (aged 18 and over). Eligibility for this support is determined following a 'Continuing Care assessment' using the national Decision Support Tool. From October 2014 everyone assessed as eligible for continuing care or continuing healthcare has the right to request (becomes a right to have in from October 1<sup>st</sup> 2014) and to have their support provided via a personal health budget.
- 6.4 Some families may prefer that services are organised and paid for directly by the health service (the CCG) as they have been before but others might prefer that they themselves manage some or all of the money and take responsibility for providing support.
- 6.5 The CCG have been trialling continuing healthcare personal health budgets in 2013/14 and there are already a small number of adults with these budgets. This will expand over time and if a child, young person or adult also has an EHC Plan (or their statement is transferred to an EHC Plan), the support arrangements and budget will be included in the plan.
- 6.6 Wider health services that are available to everyone such as access to a GP, hospital or emergency services are specifically excluded from being offered as a personal health budget.
- 6.7 Personal Health Budgets for other 'long term health conditions' will be developed from 2015 and the CCG are currently exploring how this will work. When further information about this expanded personal health budget offer is known this policy will be updated.

## **7. Personal Budgets and Education**

- 7.1 Many children and young people with SEND are supported by the resources already available within their school or college and do not require any additional support. Schools and colleges will make it clear what support they will provide from their own funding through their individual Local Offer.
- 7.2 Some children and young people do require additional support beyond that which the school or college can fund and provide. This support is usually funded by the Local Authority from the 'Higher Needs Block' and in mainstream settings is usually paid to the school or college for them to employ a Learning Support Assistant to support an individual or small group of children.
- 7.3 The Code of Practice also allows that a school or college can release some of their own funding to a personal budget where this would help to meet the needs of the child more effectively. This would only be agreed in certain circumstances where a creative solution to support is required and the final decision on this is made by the Head teacher or Principal.
- 7.4 SEN Personal Budgets will not be available for things that a school or college already provides. This may mean that the support available through a personal budget will change between a mainstream and special school as the special school will be providing a higher level of support through their Local Offer.
- 7.5 Where a personal budget is proposed to be used within a school or college, this can only go ahead with agreement from the Head teacher or Principal.
- 7.6 Personal Budgets cannot be used for the purpose of funding a school place or post-16 institution.

### **7.7 Personal Travel Budgets**

- 7.7.1 A Personal Travel Budget (PTB) is where a family of a child who is eligible for free school travel opt out of the council providing transport, instead they receive a direct payment and have responsibility for getting their child to and from school
- 7.7.2 Children, young people and their families will have the option of a PTB If the child:
- Is of school age
  - Attends specialist provision within the City (not Polygon School or pupil referral units)
  - Has been assessed as needing specialist transport

## 8. Direct Payments

This section should be read alongside the 'Direct Payment Policy for adult social care' and the 'Delivery of Personal Health Budgets Policy'.

- 8.1 Direct payments have a separate section in this policy because there are additional responsibilities for both the Local Authority/CCG and person taking on the direct payment which should be made clear from the outset.
- 8.2 It is important to be clear that a direct payment is only **one** option for managing a personal budget. It is the option which generally offers the most choice and control but young people and their families should not feel that requesting a personal budget means they have to receive the money themselves (see paragraph 4.8 for the range of personal budget options).
- 8.3 Receiving a personal budget can mean more flexibility around how services are provided to achieve the outcomes set out in the EHC Plan. However, taking on a direct payment also entails more responsibility.

### 8.4 Who can and cannot receive direct payments

- 8.4.1 If a personal budget is agreed and allocated then the option of a direct payment will be made available for accessing the budget. The only exceptions to this are where the intended recipient is subject to certain rehabilitation orders (see 8.4.2) or if the Local Authority is not satisfied that the intended recipient will use the money in an appropriate way or in the best interests of the child or young person.
- 8.4.2 National regulations state that 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 with 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.*

## **8.5 Direct Payments and how they can be used**

- 8.5.1 In most circumstances direct payments will be paid on a monthly basis into the nominated bank account. There may be occasions where one-off payments are made, for example where there is a full upfront cost for a service; these will be agreed on a case by case basis.
- 8.5.2 Direct payments cannot be used for any of the following:
- a) Anything which does not meet the child, young person or adults needs or contribute towards the agreed outcomes in the EHC Plan
  - b) Anything illegal
  - c) Long term residential care
  - d) Medicines
  - e) Alcohol, tobacco or drugs
  - f) Gambling
  - g) Equipment provided by the joint equipment store
  - h) To purchase services provided by the local authority e.g. in-house day services (if a family wanted to access in house services this could be done via a notional personal budget arrangement rather than a direct payment)
- 8.5.3 National guidance says that direct payments cannot be used to pay any of the people listed below except in exceptional circumstances where it is agreed by the Local Authority or CCG and considered necessary to ensure the child, young person or adult's safety and wellbeing.
- a) The spouse or civil partner of the service user

- b) A person who lives with the service user as if their spouse or civil partner
- c) A person living in the same household who is the services user's:
  - i. Parent or parent in law
  - ii. Son or daughter
  - iii. Son in law or daughter in law
  - iv. Stepson or stepdaughter
  - v. Brother or sister
  - vi. Aunt or uncle
  - vii. Grandparent
  - viii. Grandson or granddaughter
- d) The spouse or civil partner of any person specified above who live in the same household as the service user
- e) A person who lives with any of the people specified above as if they were that person's spouse or civil partner.

## **8.6 Direct payment agreement**

- 8.6.1 To receive a direct payment, a parent/carer or young person must enter into a formal contractual agreement with Southampton City Council (or the Clinical Commissioning Group for a Personal Health Budget direct payment) called the 'Direct Payment Agreement' or Letter of Agreement.

## **8.7 Bank accounts for direct payments**

- 8.7.1 To receive a direct payment, the recipient must open a bank account designated only for the direct payments in order to assist auditing and review and to protect the recipient's financial privacy.

## **8.8 Financial monitoring & record keeping**

- 8.8.1 Alongside checking that a direct payment is being used to meet a child or young person's needs and achieve their outcomes, the local authority has a responsibility to monitor how the money has been spent.
- 8.8.2 At regular intervals the local authority will request that the direct payment recipient completes a financial monitoring return to evidence that the money has been used appropriately, i.e. as agreed in the EHC Plan.
- 8.8.3 Financial monitoring will take place at least annually and may be more often where there are concerns around usage or when a package is first set up.
- 8.8.4 The types of records a direct payment recipient should keep are:
  - a) Bank statements

- b) Receipts for cash payments
- c) Invoices for services purchased
- d) Payslips and timesheets (if the payments are being used to directly employ somebody)
- e) Tax and national insurance records (if the payments are being used to directly employ somebody)

8.8.5 If, following the financial monitoring return being completed, there are any queries or clarifications required these will be requested.

8.8.6 If there are significant build-ups of money in the account, clarification will be requested to find out the reasons for this. A reassessment may take place and the direct payment amount adjusted where money is not being used.

8.8.7 At the end of each financial year, any significant amounts left in the bank account which are not owed to a person or organisation should be repaid to the local authority.

## **8.9 Suspending or terminating a direct payment**

8.9.1 A direct payment may be suspended or terminated if:

- a) The recipient is using the direct payments illegally, fraudulently or outside of the agreed plan
- b) One or more of the terms and conditions in the Direct Payment Agreement are not being met
- c) The child or young person is at risk of serious harm due to the direct payment not being used or managed appropriately
- d) Following a review, it is assessed that a personal budget is no longer required to achieve the outcomes in the EHC Plan.
- e) The recipient is in hospital and the support is not needed for more than 21 days

8.9.2 Before suspending or terminating a direct payment, this action would be notified to the recipient with the reasons for this. If the recipient has outstanding financial obligations arising from their direct payment these will be taken account of prior to suspension or termination.

8.9.3 A parent/carer or young person in receipt of a direct payment can choose to cease the arrangement and have support provided via a local authority managed budget. Any money remaining in the account must be paid back to the local authority.