

# West Berkshire Council Personal Budgets Policy

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## 1. Introduction and Background

- 1.1 This policy relates to 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 SEN & Disability (SEND) 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

## 2. What is a Personal Budget?

- 2.1 A personal Budget is an amount of funding made available to a child, young person or their family/carer in order to deliver the outcomes for a child or young person set out in their Education, Health and Care Plan.
- 2.2 The principle behind a personal budget is to ensure that families have some control of the funding allocated to support them in meeting their child/young person's outcomes.
- 2.3 Personal Budgets can be made up in the following different ways:
- An organisational arrangement – no money changes hands. The services are arranged on the family's behalf by the Local Authority or Health Service.
  - Third party arrangement/nominees – a third party organisation, trust or nominated person holds the funds and supports the parents/carers to make decisions about how these funds should be spent; they then purchase services on the parent's/carer's behalf.
  - Direct Payments – parents/carers are provided with the funds to purchase and manage services themselves to meet the identified outcomes.
  - A combination of the above.
- 2.4 In addition to the funding identified as the Personal Budget, some parent/carers may wish to use other available resources to help meet the identified outcomes, for example extended family support or Disability Living Allowance.
- 2.5 Services that are supplied as part of a block contract would not normally be offered as a Direct Payment 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.
- 2.6 West Berkshire is actively encouraging requests for Direct Payments to allow for creative ways of meeting identified outcomes.

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### 3. Who is eligible for a Direct Payment?

- 3.1 If a child or young person is eligible for an Educational, Health and Care Plan they can request a Direct Payment.

### 4. Direct Payments for Health

- 4.1 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.
- 4.2 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. Since October 2014 everyone assessed as eligible for continuing care or continuing healthcare has had the right to request their support via a Direct Payment.
- 4.3 Since April 2015 children with long term illness have also had the right to request a Direct Payment.
- 4.4 Some families may prefer that services are organised and paid for directly by the health service (the Clinical Commissioning Group) 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.
- 4.5 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 Direct Payment.

### 5. Direct Payments for Education

- 5.1 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/SEN Information Report.
- 5.2 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 a budget known as the 'High Needs Block' and this is usually paid to the school or college for them to provide additional individual or small group support.
- 5.3 The Code of Practice also allows that in certain circumstances, some of this funding can be released to parents as a Direct Payment where this would help to meet the needs of the child more effectively.
- 5.4 SEN Direct Payments will not be available for things that a school or college already provides. This may mean that the support available through a Direct Payment will change between a mainstream and special school as the special school will be providing a higher level of support through their normal arrangements
- 5.5 Where a Direct Payment is proposed to be used within a school or college, this can only go ahead with agreement from the Head teacher or Principal.
- 5.6 Direct Payments cannot be used for the purpose of funding a school place or post-16 institution.

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## 6. Direct Payments for Social Care

- 6.1 A Social Care Direct Payment is funding through Social Care that can be used to meet identified social care needs.
- 6.2 It can be used for services from statutory, independent and voluntary sectors.
- 6.3 Families who receive support from Children's Social Care for a child with SEN and Disabilities have the right to ask for some or all of this support to be provided through a Direct Payment.
- 6.4 If a family or young person wishes to spend their Direct Payment on something not identified on their agreed plan, they must seek and gain approval in advance.

## 7. Direct Payment Regulations

### 7.1 Who can and cannot receive direct payments

- 7.1.1 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. a person who is 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. a person who is 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. a person who is 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

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## **7.2 Direct Payments and how they can be used:**

7.2.1 Direct payments cannot be used for any of the following:

- a) Anything which does not meet the child or young persons 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.

7.2.2 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 lives 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.

## **7.3 Direct payment agreement**

7.3.1 To receive a direct payment, a parent/carer or young person must enter into a formal contractual agreement with West Berkshire Council or the Health Service Clinical Commissioning Group.

## **7.4 Bank accounts for direct payments**

7.4.1 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.

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## **7.5 Financial monitoring & record keeping**

- 7.5.1 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.
- 7.5.2 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.
- 7.5.3 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.
- 7.5.4 The types of records a direct payment recipient should keep are:
  - a) Bank statements
  - b) Receipts
  - 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).
- 7.5.5 If, following the financial monitoring return being completed, there are any queries or clarifications required these will be requested.
- 7.5.6 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.
- 7.5.7 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.

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

- 7.6.1 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 Direct Payment 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
- 7.6.2 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.
- 7.6.3 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.

## **7.7 Managed Accounts**

- 7.7.1 If a parent or carer would like a Direct Payment but is unable to take the responsibility of managing this themselves, due to their own circumstances, this does not preclude them from requesting or receiving a Direct Payment. In these circumstances, a Managed Account can be set up, which means that the money will be managed on the parent/carer's behalf, but the parent/carer will retain control over how the money is spent.