



Personal Budget Policy

Children/ Young people aged 0-25 with Special Educational Needs and their Families

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1. Introduction

The purpose of this document is to outline the policy of Lancashire County Council in relation to the Children and Families Act, 2014 (section 49), the Statutory Guidance and Code of Practice for special educational needs and disability 0-25 years, 2014 (9.92- 9.121) and the Special Educational Needs (Personal Budgets) Regulations 2014.

The Education, Health and Care Plan (EHCP) will offer a personal budget for aspects of the provision outlined in it, if parents or young people wish it. The request can be made either during a statutory assessment (at the draft Plan stage), or when an EHCP is being reviewed/ re-assessed. Personal budgets are an allocation of funding made for children and young people with Special Educational Needs (SEN) and their families, after an assessment of their needs and expected outcomes will be outlined in an EHCP. It will cover aspects of the EHCP that can be offered as a personal budget. It will not cover the cost of a named educational placement.

Personal budgets can be made up in the following ways:

- Notional Budget
- Budget held by a third party
- Direct Payment

Personal budgets are designed to pay for the elements of provision that the local and health authorities have agreed can be offered as a direct payment. A direct payment will be the mechanism of receiving the personal budget.

The statutory regulations state

“Direct payments may only be made if the person

(a) appears to the local authority to be capable of managing direct payments without assistance or with such assistance as maybe available to them;

(b) where the recipient is an individual , is over compulsory school age;

(c) does not lack capacity within the meaning of the 2005 Act to consent to the making of direct payments to them or to secure the agreed provision with any direct payment ; (this means the person must have the mental capacity to manage a budget) and

(d) is not a person described in the Schedule.” (see part 9 of this policy, to see who this applies to)

2. Who does this policy apply to?

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

Parents have control of a personal budget up to the end of year 11 (post compulsory school age). It is then the young person who has this responsibility, as long as they have the mental capacity as defined by the Mental Capacity Act, unless they elect for their parent/carer to manage their funding.

3. Definition of a Personal Budget

A personal budget is not the sum total of all the resources that are available to support a child or young person.

A personal budget is an amount of money identified by the local authority to deliver provision set out in an EHCP where the parent or young person is involved in securing that provision.

Section J (Personal Budgets) of the EHCP does not need to list all the costs associated with supporting a child or young person. Rather, this section should provide a detailed explanation of how a personal budget will be used to deliver agreed provision, the needs and outcomes it will meet, and will explain how the money will be used, spent and managed including arrangements in relation to any direct payments.

- **A personal social care budget:** This refers to the budget that will be made available if it is clear that a young person or child needs additional and individual support at home and when out and about in the local and wider community.
- **A personal health budget:** This refers to the budget that will be made available should a young person or child have complex, long-term and/or a life-limiting condition/s. A personal health budget may also be made available to help with equipment costs or other health services. Children, who are supported through 'Continuing Care' funding, will be offered a personal health budget.
- **A personal SEN budget:** This is a sum of money made available by a local authority because it is clear that without this additional (*top-up*) funding it will not be possible to meet the child's learning support needs. The school involved will already have funding for learning support across the school; only pupils or students with more complex learning support needs are likely to need a personal SEN budget. In some circumstances the head teacher and school may choose to offer some funding towards a personal SEN budget; this will always be the decision of the head teacher.

4. How can Personal Budgets be made up?

Personal budgets can be made up in the following different ways:

- **Notional Budget**

No money changes hands. Parent carers are informed how much money is available and with support identify the different ways to spend that money meeting the outcomes of the EHCP. The services are then arranged on the family's behalf.

- **Budget held by a third party**

A different organisation or trust holds the money and helps parent carers to decide the best way to spend the funding; they then buy the services chosen.

- **Direct Payment**

Parent carers are given the cash to buy and manage the services themselves to meet the outcomes identified in the EHCP.

Personal budgets can be made up as a mixture of these three options

- **Family Expenditure**

In addition to the funding identified through the assessment process, parent carers use a reasonable amount of their own resources to help meet the outcomes identified in the EHCP; for example extended family support or the use of community resources e.g. libraries.

Personal budgets can only be used for outcomes identified in the EHCP.

5. What is in scope?

The exact aspects of what can be included in a personal budget, relating to an individual child or young person will be outlined in the EHCP.

A fully costed plan will be at the end of the EHCP and will outline both the costs of the provision and aspects that can be included, as outlined in Section 49 of the Children and Families Act.

If agreed the following aspects could be included, if a parent, young person over post compulsory school age requests a personal budget:

Health

Currently those children who are entitled to Children's Continuing Care funding. It would also apply to long term health needs from April 2015.

Social Care

The budget would include funding arising from the assessed needs of children in need and individual funding necessary to provide the family of a child with a statutory short break or family support.

Education

This would include parts of or all of element 3 additional individual pupil funding ('top up') from the local authority to meet the complex needs of the individual pupil or student in the school or college.

In some circumstances and at the discretion of the head teacher/college principal further funding could also be included in the personal budget from all or part of the funding already delegated to the setting (Element 2). It may not be possible to include all or part of these elements because it will be part of the overall provision within each setting.

Any staff employed by parents/young people would have to have the school or college permission (usually the Head teacher or Principal) to work within that setting. If this agreement is not given a personal budget cannot be agreed.

The payment for Disclosure and Barring Service (DBS) checks will rest with parent carers or the young person NOT with health or local authority.

Therefore this would need to be carefully planned as part of the assessment process and agreement for the personal budget.

6. What is not in scope?

This will include:

- Services that are supplied as part of a block contract will not normally be offered as a personal budget.
- Areas where it is difficult to disaggregate an individual cost from an overall amount will not normally be offered as part of a personal budget. For example, where it is not possible to disaggregate funding that is currently supporting provision of services to a number of children and young people.

(Reference: Code of Practice: 9:106)

7. How funding will be made available

If a personal budget is agreed, each agency will place money into a central location for parents to receive the budget from Direct Payments. Any agreed costs from health would be paid by the agreed process to fund the plan. The money will be given to parents/young people on an agreed basis. The eventual aim will be for pooled budgets between health and the Council, but this will not be able to occur by September 2014.

A parent and/or the young person will be expected to sign a Direct Payment Agreement before the payment is made. This will outline the parameters of use of the payments and how it should be managed. It will also outline other aspects, such as any employed people having to have an enhanced Disclosure Barring Service (criminal record) check.

If a parent/young person would want to use a personal budget to pay for support staff in school/ college this discussion should occur at an early stage as possible, as part of the person centred planning, since these staff can only be used in

schools/colleges with the permission of the school head teacher or college principal. Any staff employed in schools/ colleges would have to follow that institution's code of conduct, for instance in speaking to others and dress code.

In the circumstances of a request for the extra resources normally supplied to support a student by a college/school budget (termed elements 1 and 2) being requested as a personal budget, this too must occur at as an early stage as possible. It is likely that this would only be agreed by the school/college in certain circumstances where a creative solution to provision is required.

Although there will normally be a set amount of money paid on an agreed cycle there may be one off payments, for instance around specific equipment needs, that could be paid via the direct payment mechanism. A value for money judgement will be made in these circumstances. The equipment would need to meet professional specifications and maintenance of the equipment would be required. If used in a school, agreement of the setting would need to occur.

8. Decision making

When a statutory integrated assessment of SEN commences, the personal budget process will be discussed with the family (young person if post compulsory school age), to see if this is something they may be interested in pursuing, if eligible. The benefits and responsibilities around the personal budget will be explained by a lead professional.

An indicative amount will be given, as soon as possible once the integrated assessment is complete and if an EHCP is the outcome of that assessment. Some families may already be accessing personal budgets in terms of care, and these will continue throughout the statutory process, and be incorporated, as relevant, in the final EHCP if one is issued.

The person centred co-production meeting in the assessment process will outline the needs of the child/young person, outcomes wanted from the EHCP, and provision to meet these.

All professional reports will outline the provision required, from their perspective.

The parent and child/young person contributions will be a vital part of the co-production of the EHCP. At the person centred co-production meeting the exploration of a personal budget, and a decision if a family/young person (post compulsory school age, year 11) wishes to pursue this will occur. The person centred planning will outline what each party to the plan, including the community, young person/child and their family will contribute.

The EHCP will be costed, within a value for money context (e.g. not costing more than services provided directly). Throughout the statutory integrated assessment process will allow a co-production of the plan whilst ensuring it meets the value for money aspects. Part of the discussion with a parent and young person will be the difference in the allocation of an education element if the parental/ young person choice is mainstream or special provision.

(Reference: Code of Practice 9.104)

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 (see section 5 of this policy) will be outlined, if parents/ young people have expressed a wish to have a personal budget. This would also occur if a third party had been nominated to manage the budget for the parent/young person. The other option would be for the local authority and health to manage the provision in the personal budget for them. Parents/young person can say which aspects of their plan they would like in a personal budget to increase choice, via written feedback, and/or clear records of minutes, as part of the person centred planning meeting.

If nominated and mutually agreed, a personal budget can be managed for an individual by another person/organisation. This has to be agreed with the parent or young person, if post school age. The choice to do this can be withdrawn at any point by either writing to ask to stop this or by a nominated advocate doing this for them. If this request occurs the local authority will immediately stop making the payment to the other person/organisation and agree a suitable alternative. This could be options such as using a broker to help them manage the budget, doing it themselves or reverting to the local authority and health brokering support for them. The approval, for a third party, would only occur with people/organisations approved by the local authority for this purpose.

9. Who would be excluded from holding a Personal Budget?

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.”

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 would be granted unless the following circumstances:

- 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

10. Ceasing Direct Payments

Direct payments could cease if:

- The person is in the categories listed in section 9 above
- They are found not to be used for the specific purpose outlined in the EHCP

- If the recipient no longer wishes to use direct payments to provide the provision, they will cease as soon as this request is received in writing and alternatives can be arranged
- The use of direct payments is having an adverse impact on other services provide by the local authority or having an impact on the provision for other children and young people with an EHCP.
- There has been no consent from a young person post statutory school age to receive them

In these circumstances notice in writing will be given by the local authority, along with the rights of appeal, by the recipient saying they wish to do so.

11. Relevant Legislation

Section 49 of the Children and Families Act 2014

<http://www.legislation.gov.uk/ukpga/2014/6/part/3>

The Special Educational Needs (Personal Budgets) Regulations 2014

<http://www.legislation.gov.uk/uksi/2014/1652/contents/made>

The Community Care, services for Carers and Children's Services (Direct Payments) Regulations 2009 (the 2009 regulations will be replaced by those made under the Care Act 2014)

<http://www.legislation.gov.uk/uksi/2009/1887/contents/made>

The National Health Service (Direct Payments) Regulations 2013

<http://www.legislation.gov.uk/uksi/2013/1617/part/3/made>

12. Appendices

Appendix A Parental Guide to School Funding
<http://www.councilfordisabledchildren.org.uk/news/january-june-2013/school-funding-changes-and-children-with-sen-in-mainstream-schools-a-briefing-for-parents>