**Children and Young People’s Personal Budgets**

**Policy & Guidance**

**Background**

The Children and Families Act 2014 requires Local Authorities to offer families a personal budget so that they have more choice and control over the support they need.

Personalisation is at the heart of the Special Educational Needs and Disability (SEND) reforms, and is about putting children, young people and their families at the centre of the Education, Health and Care (EHC) process. It means starting with the person as an individual with strengths, preferences and aspirations, identifying their needs and making choices about how and when they are supported to live their lives.

**Introduction**

The Special Educational Needs (Personal Budgets) Regulations 2014 were approved by Parliament on the 18 June 2014. Together with the Special Educational Needs and Disability Code of Practice 2015 (9.92 – 9.121) a personal budget is defined in the following terms:

‘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 that provision.’ **para. 9.95**

**‘**Personal Budgets should reflect the holistic nature of an EHC plan and can include funding for special education, health and social care provision. They should be focused to secure the provision agreed in the EHC plan and should be designed to secure the outcomes specified in the EHC plan.’ **para. 9.99**

This guidance covers the approach taken by Wiltshire Council’s SEND Service for personal budgets where a child or young person has an Education, Health and Care (EHC) plan. This document is intended to draw upon existing policies across Wiltshire Council for personal budgets and/or direct payments. Your local Clinical Commissioning Groups can give guidance on what is accessible via a health related personal budget.

This guidance does not replace Wiltshire Council’s duty to Carers and their right to have a Carers Assessment.

**Who does this policy apply to?**

This policy applies to any child or young person with a special educational need and disability who has an Education, Health and Care plan and where it has been requested and agreed.

Parents have control of the personal budget up to the end of Year 11 (post compulsory school age). It is then the responsibility of the Young Person as long as they have the mental capacity as defined in the Mental Capacity Act, unless they elect their parent/carer to manage the funding on their behalf.

**What is a personal budget?**

A personal budget is an allocation of money that can be used to arrange and pay for some of the support agreed in the Education, Health and Care plan, if the parents or young person wish it. The request for a personal budget can be made at the assessment stage or when the EHCP is reviewed/re-assessed. It will cover aspects of the Education, Health and Care Plan that can be offered as a personal budget. It will not cover the cost of a named educational placement.

The personal budget section of the Education, Health and Care plan (section J) does not need to list all the costs associated with supporting the child or young person. 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 payment.

Money allocated by education, health or social care may be referred to as a direct payment. Such direct payments may be linked together and called a personal budget. The amount that is allocated depends on the needs and outcomes identified in the Education, Health and Care plan and can alter as they change. Personal budgets gives children, young people and families more flexibility, choice and control over the way that support is delivered and enables them to be in charge of how the money for support is spent to meet the outcomes outlined in an EHC plan.

**Eligibility**

A parent of a child and/or young person who has an Education Health and Care plan and is resident in Wiltshire has the right to request a personal budget to meet the outcomes detailed in their Education, Health and Care plan. The personal budget may include funding from education, health and social care although the amount of the personal budget will vary depending on eligibility for the different components, the child or young person’s needs and the outcomes to be achieved.

In some cases a parent of a child or young person may have a personal budget from one or more source, i.e. education, social care and/or health. An education, health and social care budget combined is sometimes referred to as an ‘Individual Personal Budget’.

A parent of a child or young person may be offered a personal budget for social care or for health support without having an Education, Health and Care plan, i.e. having an Education, Health and Care plan is not the only way a personal budget may be offered to meet identified social care or health needs.

Education, health and social care have separate eligibility criteria for funding and those services that can be provided by a direct/cash payment. There are three main sources of funding for a personal budget, which are:

**A personal SEN budget**

A personal education budget may be made available should a child or young person aged 0-25 years have an Education Health and Care plan. A personal education budget is a sum of money made available by the Local Authority to meet the child or young person’s learning support needs. The school/ college involved has funding for special educational needs through the school funding system and therefore only children and young people with the most severe and complex learning support needs are likely to need a personal education budget.

A personal education budget will not be used to fund a school place or post 16 institution. Where a child is in school or college the level of funding potentially available to be used as a personal budget will vary according to the provision identified within the Education, Health and Care plan and will come from the high needs funding block. In addition schools will need to give permission before the Local Authority can agree to fund special educational provision through a direct payment to the family where the service or equipment is to be provided on the school premises. The local authority is also required to consider the impact on other service users.

Not every child or young person with an Education, Health and Care Plan will have a personal education budget. The scope of personal budgets will reflect local commissioning arrangements and will not normally be used for services that a school or college provides, from its own budget, as part of the local offer. In practice this means that the parent or young person will need to be made aware that the scope for a personal budget will differ depending on school placement. It may be that the setting already provides the specialist provision required and in such a case a personal budget would not be available. For example, as part of their core provision, special schools and colleges make some specialist provision available that is not normally available at mainstream schools and colleges. The particular choice of a special school, with integrated specialist provision, might therefore reduce the scope for a personal budget.

Wiltshire Council is working with partner agencies to develop personal budgets for education to provide young people and families with greater choice and control. The Local Authority considers requests for a personal education budget on an individual basis.

**A personal social care budget**

A personal social care budget may be made available if a child or young person is assessed as needing additional and individual support at home and when out and about in the local and wider community. This may include, support for help in the home, support to access social activities to avoid family breakdown (over and above eligibility for short breaks under the Local Offer <https://www.wiltshirelocaloffer.org.uk/short-breaks-scheme/> ).

Some children and young people may already be receiving a service or a direct payment from social care and this will continue throughout the process and be incorporated in the final Education, Health and Care plan. Young people aged 18 to 25 will be deemed eligible for direct payments in line with existing policies and procedures.

A parent of a disabled child or young person can request a Child in Need Assessment. The eligibility criteria primarily focus on the care of the disabled child and the ability of the parent/carer to continue to care for the child/young person within the family home.

For young people age 18 years and above, eligibility for social care support is assessed using Government Guidance on Eligibility Criteria for Adult Social Care. The eligibility decision is based on the risks to an individual’s independence and wellbeing.

**A personal health budget**

A personal health budget may be made available should a child or young person have complex, long term and/or life limiting condition/s. A personal budget may also be made available to help with equipment costs or other health needs that the NHS assess are not being met sufficiently through services within the local offer. Children and young people who are supported through NHS Continuing Care funding, have the right to request and to have a personal health budget (from April/October 2014).

There are very few things a personal health budget cannot be spent on, as it is designed to offer flexibility and control to children, young people and families and all proposals will be considered in this context. However, the support purchased must be agreed with the health professional and with the CCG to ensure that it is safe, clinically appropriate and meets the identified health outcomes.

For these same reasons, some complex equipment that sustains life, such as a ventilator for example cannot be purchased through a personal health budget.

NHS Continuing Care for Children [www.nhs.uk/CarersDirect/guide/practicalsupport/Pages/continuing-care-children.aspx](http://www.nhs.uk/CarersDirect/guide/practicalsupport/Pages/continuing-care-children.aspx)

NHS Continuing Healthcare [www.gov.uk/government/publications/national-framework-for-nhs-continuing-healthcare-and-nhs-funded-nursing-care](http://www.gov.uk/government/publications/national-framework-for-nhs-continuing-healthcare-and-nhs-funded-nursing-care)

**Preparing a personal budget and the process**

If a child or young person has been assessed as needing an Education, Health and Care plan, a parent or young person can request a personal budget. Personal budgets are optional and children and young people can continue with their existing arrangements if they want to. The professional coordinating the Education, Health and Care plan will discuss the option of an educational personal budget with the parent or young person and provide information on having and managing a personal budget. A personal budget for education may also be requested during a statutory review or a reassessment of an existing EHC plan.

If a parent/carer is interested in having a personal budget they will be encouraged to think about how they would use a personal budget to meet the outcomes detailed in the Education, Health and Care plan. A proposal would then need to be drawn up in consultation with the SEND Lead Worker and the application submitted for approval. The proposal will include details of how the personal budget will be managed.

There are four ways in which a personal budget can be managed.

1. Direct Payments are cash payments which enable a parent or young person to organise, purchase and manage services themselves. A direct payment may be utilised to purchase a range of services as part of a child or young person’s Education, Health and Care plan, such as to provide personal care within the home or support to access social activities. A Direct Payment can also be used to employ a Personal Assistant.
2. Third party arrangements also referred to as a third party cash/ direct payment, this is where the money is paid to a nominated person, for example, a friend or relative, or an organisation that runs a payments service. Or the money could be sent to a support provider - this is called a Provider Managed Account. An agency acting as a third party may make a charge for doing this.
3. An organised arrangement also referred to as a managed/notional budget, is where Wiltshire Council, the CCG, school or college holds the funds and commissions the support specified in the Education, Health and Care plan with contracted providers.
4. A combination of the above. For example, a direct payment to employ a Personal Assistant to access the local community and a council managed domiciliary care service for support to get up and ready in the morning.

**What is included in the personal budget?**

Wiltshire Council and the CCG’s have separate guidance which specifies what a direct/cash payment can be spent on. A common theme is that a personal budget can only be used to meet the needs and outcomes agreed in the Education, Health and Care plan. Examples of how children and young people are currently using their cash/ direct payment in Wiltshire, where eligible, include domiciliary care/personal assistance to provide support in the home, or to access social activities, employing tutors, on-line educational courses assistance with oil and petrol to enable parents/carers to transport children with Education, Health and Care plans to school.

**What is not included in the personal budget?**

Information on each agency’s direct/cash payment guidance will be made available on the local offer website and will be updated regularly as the scope for personal budgets develops. The existing guidance outlines what a direct/cash payment can and cannot be spent on.

Common themes that a cash/direct payment cannot be spent on include:

* anything that does not meet an identified outcome within the Education, Health and Care plan,
* anything that isn’t safe or legal,
* to purchase alcohol and tobacco,
* for betting or gambling,
* to pay for housing or other household costs, permanent residential/nursing care,
* to employ someone living in the same household except where, due to exceptional circumstances, this is the only available option.

**Who can receive a direct/cash payment?**

Direct payments for special educational provision, health and social care provision are subject to separate regulations. These are:

* 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).
* The National Health Service (Direct Payment) Regulations 2013.
* The Special Educational Needs (Personal Budgets) Regulations 2014.

The regulations have common requirements including those covering consent, use of nominees, conditions of receipt, monitoring and review of direct payments and persons to whom direct payments must not be made (such as those subject to certain rehabilitation orders). Regulations governing the use of direct payments for special educational provision place a number of additional requirements on both local authorities and parents before a direct payment can be agreed. These include requirements to consider the impact on other service users and value for money and to seek agreement from educational establishments where a service funded by direct payments is delivered on their premises.

**Who cannot receive a direct/cash payment?**

The regulations state that the following person/s 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.”

**Mental capacity**

Where a person lacks capacity and direct payments are being considered as a means of providing support, professionals must establish that the person lacks capacity by carrying out an appropriate mental capacity test and best interest’s evaluation in accordance with the Mental Capacity Act 2005.

The Mental Capacity Act 2005 provides a framework to empower and protect people who may lack capacity to make some decisions for themselves. The Mental Capacity Act makes clear who can take decisions in which situations, and how they should go about this. Anyone who works with or cares for an adult (a person aged 16 or over) who lacks capacity must comply with the Mental Capacity Act 2005 when making decisions or acting for that person.

The underlying philosophy of the Mental Capacity Act 2005 is to ensure that those who lack capacity are empowered to make as many decisions for themselves as possible and that any decision made, or action taken, on their behalf is made in their best interests.

The representative who has consented to manage the direct payment on behalf of a person who has been deemed to lack the capacity to consent must always act in the best interest of that person. Representatives and professionals making best interest decisions for a person who lacks the capacity to make specific decisions must evidence that they have acted in accordance with the Mental Capacity Act 2005. <https://www.justice.gov.uk/downloads/protecting-the-vulnerable/mca/mca-code-practice-0509.pdf>

**Managing and using the personal budget**

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 Education, Health and Care plan 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 Education, Health and Care plan 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 Education, Health and Care plan, 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 Education, Health and Care plan. 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 Education, Health and Care plan 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.

A written agreement will need be signed before a payment is made which will outline the responsibilities and obligations of the funding agency and those of the parent or young person. This will include signing to accept the responsibility to arrange and manage the direct/cash payment to purchase support to meet the identified needs and outcomes outlined in the support plan. If a parent or young person does not adhere to the agreement that has been signed, for example, if the money is misused then it may have to be paid back and the cash/direct payment withdrawn or further conditions imposed. CCG’s will require a separate agreement with the parent or young person, as it is a separate legal entity to the Local Authority.

A parent or young person who takes on responsibility for managing a personal budget or direct payment will need to consider the following: employing Personal Assistants and the legal responsibilities of being an employer, i.e. sickness and holidays, tax and National Insurance contributions, Disclosure and Barring checks (DBS) and Employers Liability Insurance.

A summary of what it involved is outlined below. More detailed guidance can be found in the Wiltshire Council document - Children and Young People’s Personal Budgets: Responsibilities of Parents/Carers.

A separate bank or building society account will need to be set up for the direct/cash payment to be paid into. If there is a health component to the personal budget, this may be paid into the same bank account so that the recipient has all the money in one place.

Records of expenditure will need to be kept to evidence how the cash/direct payment has been spent. This includes; bank statements, invoices and receipts. These will be audited when the support plan is reviewed in line with each agency’s existing policies and procedures.

If there is a surplus of money in the account that has not been agreed for specific expenditure in the EHC plan then this money may have to be returned .There may also be situations where the cash payment may be temporarily suspended for a period of time. For example; if a child or young person goes into hospital. Specific details will be outlined in each agencies direct/cash payment agreement.

Each funding agency will conduct a statutory review of the personal budget in line with their existing policies and procedures.

The EHC plan will be reviewed by Wiltshire Council as a minimum every 12 months. The review will focus on the child or young person’s progress and will include information on existing personal budget arrangements across education, health and social care and how they contribute towards achieving the outcomes specified in the EHC plan. The focus of the review will be progress against the outcomes in the EHC plan and whether the support in place remains appropriate.

**When might a direct payment cease?**

Direct payments could cease if:

 The person is in the categories listed above as not eligible to receive a direct payment

 They are found not to be used for the specific purpose outlined in the Education, Health and Care plan

 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 Wiltshire local authority, along with the rights of appeal, by the recipient saying they wish to do so.

**Safeguarding**

The move towards personalisation of services and self-directed support, although a positive step in improving choice and control for parents and young people, does not replace, or reduce the Local Authority’s duty of care to ensure that children and vulnerable adults are protected from abuse.

If a safeguarding concern is reported regarding someone who is in receipt of a personal budget, including a direct payment, this will be investigated following the appropriate safeguarding procedure.

**Disagreements/Complaints**

If a direct payment for special educational provision is refused on the grounds set out in The Special Educational Needs (Personal Budgets) Regulations 2014 Wiltshire Council will set out the reasons in writing and inform the parent or the young person of their right to request a formal review of the decision, which should be made in writing to the SEND Lead Worker within four weeks of the decision being notified. Where requested to do so, the Local Authority will review its decision and consider any representations made by the child’s parent or young person. The Local Authority will write to the child’s parent or the young person to notify them of the outcome of the review outlining the reasons for the decision.

Where the disagreement relates to the special educational provision secured through a personal budget the parent or young person can appeal to the First tier Tribunal (SEN and Disability), as with any disagreement about provision to be specified in an EHC plan.

If the parent or young person is not happy with a decision made in relation to the health and/or social care element of a personal budget the parent or young person will need to be directed to the appropriate complaints procedure for the CCG and/or Social Care.

**Change of circumstances**

If a child or young person’s circumstances change in any way then this will be taken into account as part of the annual review of the Education, Health and Care plan. If there is a significant change in the child or young person’s educational circumstances then the parent or young person can request a reassessment or early review of the Education, Health and Care plan.

If there is a change of circumstances or significant change that may affect the social care or health element of the Education, Health and Care plan then the parent or young person can contact the appropriate lead professional or agency from social care or health.

**Other useful documents**

* DP Leaflet V5 March 2016
* Children and Young People’s Personal Budgets: Responsibilities of Parents/Carers including Appendix 1 Guidelines for Safer Recruitment

These documents can be found on the Wiltshire Local Offer website under Useful Documents [www.wiltshire.gov.uk/local-offer](http://www.wiltshire.gov.uk/local-offer) or by contacting your SEND Lead Worker.