

# Personal budgets policy and guidance for children and young people aged 0 – 25

South Gloucestershire Council and South Gloucestershire Clinical Commissioning Group

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# 1. Introduction

The Children and Families Act 2014 introduces new duties, policies and procedures for local authorities and clinical commissioning groups (CCGs) and the support they provide to children and young people with special educational needs (SEN) and/or disabilities. A young person in this context is a person over compulsory school age and under 25.

The Children and Families Act 2014 replaces statements of special educational needs and introduces education health and care (EHC) plans which include the right to request a personal budget.

In accordance with the Special Educational Needs and Disability Code of Practice January 2015<sup>[1]</sup>, local authorities and CCGs **must** set out their joint commissioning arrangements for agreeing personal budgets and this is the purpose of this policy and guidance. The eligibility criteria for personal budgets and how they may be accessed must also be published in the local offer; local authorities must publish a local offer, setting out in one place information about provision they expect to be available across education, health and social care for children and young people in their area who have SEN or are disabled, including those who do not have education, health and care (EHC) plans. <sup>[2]</sup>

The Special Educational Needs (Personal Budgets) Regulations 2014 were approved by Parliament on the 18 June 2014. Personal budgets will be offered alongside the introduction of education, health & care (EHC) plans and children and young people who have an EHC plan have the right to request a personal budget from September 2014. The Care Act 2014 applies to those young people aged 18 and over with social care needs. The focus of the Care Act is on transparency in the allocation of funding, and choice and control in how funding is used to meet outcomes, with the option for most people to receive their support via direct payments. <sup>[3]</sup>South Gloucestershire Council and South Gloucestershire CCG's personal budgets policy and guidance provides:

- a clear statement of eligibility criteria for personal budgets in relation to children and young people aged 0 – 25 with an EHC plan
- a description of the services across education, health and social care that lend themselves to personal budgets
- the ways in which services and support can be organised through a personal budget

## Committee sign off date

### September 2015

<sup>[1]</sup> Special Educational Needs and Disability, Code of Practice, Page 48, para 3.38

<sup>[2]</sup> Special Educational Needs and Disability Code of Practice, Page 59, para 4.1

<sup>[3]</sup> Care and Support Statutory Guidance, issued under the Care Act 2014

## 2. Definitions

The following are key definitions:

### Education, health and care plans

The purpose of an EHC plan is to make special educational provision to meet the special educational needs of the child or young person, to secure the best possible outcomes for them across education, health and social care and, as they get older, prepare them for adulthood.<sup>[1]</sup>

### Personal budgets

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.<sup>[2]</sup>

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. <sup>[3]</sup>

### Direct payments

Direct payments are cash payments made directly to the child's parent, the young person or their nominee, allowing them to arrange provision themselves, as set out in the EHC plan. Direct payments are one of the ways in which personal budgets may be used; please see paragraph 6 for details of others ways in which personal budgets may be used.

### Personal health budgets

A personal health budget is an amount of money to support the identified healthcare and wellbeing needs of an individual, which is planned and agreed between the individual, or their representative, and the local clinical commissioning group (CCG). It isn't new money, but a different way of spending health funding to meet the needs of an individual<sup>[4]</sup>

<sup>[1]</sup> SEND Code of Practice January 2015 page 142, para 9.2

<sup>[2]</sup> SEND Code of Practice January 2015 page 178, para 9.95

<sup>[3]</sup> SEND Code of Practice January 2015 page 178, para 9.99

<sup>[4]</sup> NHS Choices <http://www.england.nhs.uk/healthbudgets/understanding/>

## 3. Policy statement

South Gloucestershire Council and South Gloucestershire Clinical Commissioning Group are jointly committed to implementing the Children & Families Act 2014 and specifically:

- publishing a local offer of services for children and young people with special educational needs and/or disabilities
- working together to assess, agree and review EHC plans
- developing joint commissioning arrangements to deliver services for children and young people with special educational needs and/or disabilities
- offering a personal budget when requested by a young person or parents of a child with an EHC plan

## 4. Personal budgets

Personal budgets make clear the resources available to children and families under the EHC plan, so that the council shares the decisions about the provision of support with children and their families, to find solutions and support that work best for them. It is based on an approach which puts the child or young person and their family at the centre of the process, and offers more choice and control about the services they receive in relation to their educational, health and care needs and outcomes. Personal budgets are focused on securing the provision and outcomes agreed in the EHC plan.<sup>[1]</sup>

Personal budgets are not from a new pot of money; parents and families won't get the support they get now and a personal budget on top. Personal budgets are a more transparent way to spend the money that is available on support for children and young people with disabilities. A personal budget may be used to meet needs that are additional to, or different from, what is required by most children from local services, as set out in the local offer.

<sup>[1]</sup> See section 9.20 – 9.29 for full description: SEND Code of Practice January 2015

## 5. Who can ask for a personal budget?

A child or young person and their parents have a right to ask for a personal budget to be prepared under the Children and Family Act 2014 if the council has completed an EHC needs assessment and confirmed that an EHC plan will be prepared. They may also request a personal budget during a statutory review of an existing EHC plan.

In preparing an EHC plan lead professionals will always look first to community resources and universal services that support the child in mainstream services. The council will look to these resources first before deciding whether a personal budget is needed to access alternative resources. Sometimes there is no need for paid support when free support is combined with what the family and community can offer.

Local authorities must consider each request for a personal budget on its own individual merits. If a local authority is unable to identify a sum of money within the personal budget they should inform the child's parent or young person of the reasons for this.

The introduction of this policy will not affect existing arrangements for disabled children or young people who are not in receipt of an EHC plan. Meeting the social care needs of such children may involve providing services arranged by the council, or a direct payment to meet the child's needs.

Most adults over the age of 18 will receive a personal budget if they are eligible for adult care and support – please see paragraph 10 on moving into adulthood. Personal budgets relating to adult care and support can be used in the same ways as set out in paragraph 6.

## 6. How can personal budgets be used?

The personal budget can be delivered in the following ways:

- a notional budget – no money changes hands. Parents are informed how much money is available and with support identify the different ways to spend that money to meet the outcomes in the EHC plan. The services are then arranged on the family's behalf
- direct payment directly to the young person or family, to purchase and manage services themselves
- a direct payment arrangement to a third party which can include a broker, provider or nominee on behalf of the child's parent or the young person, who helps the parents to buy the services chosen
- A combination of the above

## 7. Setting and agreeing a personal budget

It is for the local authority to determine how it calculates the level of personal budget and this should be done as a provisional figure in the first instance. The provisional figure will be calculated by estimating the amount of activity or service required and the relevant unit costs involved. This process also applies for the health component of the personal budget.

The final budget will be agreed by a resources panel made up of staff from the council 0 - 25 team, who will agree the resources required to meet the agreed outcomes in the EHC plan. Budgets may be agreed to meet outcomes for set periods of time.

If the parent/young person disagrees with the personal budget allocation or the decision on the way in which the budget may be used, appeal will be through the complaints process.

## 8. Direct payments

As set out in paragraph 6, once a personal budget has been requested, direct payments are one of the ways in which a personal budget can be used, and involve a payment made directly to a child's parent, the young person (possible from age 16) or their nominee to meet the outcomes in the EHC plan, by arranging support themselves. Direct payments must be set at a level that will secure the provision specified in the EHC plan. If a direct payment is not set at a suitable level it must be reviewed and adjusted.

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

- The Special Educational Needs (Personal Budgets) regulations 2014
- The National Health Service (Direct Payments) Regulations 2013
- The Care and Support (Direct Payments) Regulations 2014

These regulations contain common requirements relating to 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).

Education, health and social care must be satisfied that the person receiving the direct payment will use it appropriately in the best interest of the child. The parent or young person will be required to sign an agreement which sets out the purpose and amount of the funding, that the funding will be used to meet the outcomes of the EHC plan and explains the legal responsibilities, payment and monitoring arrangements. It is important that the agreement is read carefully and understood. Parents or young people may be asked to present evidence of how the funding has been used.

Where it is confirmed that funding has not been used for the purpose intended, it will be a breach of the agreement. The implications of this are laid out in the agreement and can include:

- the direct payment will be stopped
- return of funds to the local authority

Additional requirements in agreeing the use of direct payments include considering the impact on other service users and value for money. For example, where a service is delivered in a group setting it may not be financially viable to deliver a proportion of this provision via a direct payment, as it may not be possible to re-allocate the funding from the provider's payment into a direct payment.

Direct payments offered to meet health needs, require the agreement of a care plan between the CCG and the recipient. This will include:

- the health care needs to be met and the outcomes to be achieved
- the things the payment will be used to purchase
- the name of the care co-ordinator managing the care plan
- who is responsible for monitoring the health condition

- the date of the first review
- the notice required if the CCG decides to reduce the direct payment
- a procedure for discussing risk
- where people lack capacity and are vulnerable, the plan should consider safeguarding, promoting liberty and where appropriate set out any restraint procedures.[\[1\]](#)

If the local authority refuses a direct payment they must explain their decision in writing and also explain the process for review of the decision. If the refusal concerns the health part of the EHC plan, then the explanation for the refusal and the opportunity for a review must be provided by the CCG.

[\[1\]](#) SEND Code of Practice January 2015 p184

## 9. Opportunities and challenges around offering direct payments

From September 2014 the following will be available as a direct payment within a personal budget, subject to the conditions relating to the direct payment being met:

- home to school travel assistance - options of how best to arrange home to school travel assistance will be explored, and a direct payment for alternative provision may be possible, as long as it is a cost effective approach and meets the needs of the child
- personal care
- short breaks
- equipment and disposables

The special educational provision specified in an EHC plan can include provision funded from the school's budget share (or in colleges from their formula funding) and more specialist provision funded by the local authority directly to the school or college. Schools are not expected to meet the full costs of more expensive special educational provision, this is the responsibility of the local authority where the child or young person lives.

A local authority cannot make a direct payment to fund a school place or a place in a post 16 institution. The funding for this is separate to the personal budget. Schools are funded from central government funding via a ringfenced grant, and under legislation<sup>[1]</sup> the local authority must fund school provision.

Although SEN education provision is part of a personal budget, it is not possible to offer this element as a direct payment, and the education component would only be offered as a notional budget, i.e. no money changes hands via a direct payment to the parent or from the parents to the educational establishment. It is not possible to separate the funding for a particular child or young person from that allocated to the setting as the funding supports provision of services to a number of children and young people.

However via the personal budget parents are informed how much money is allocated to meet the educational outcomes in the EHC plan, and work with the school or education setting to meet their child's needs in the most appropriate way.

Personal health budgets for healthcare are not appropriate for all aspects of NHS care. Full details of excluded services are set out in guidance provided by NHS England and include primary medical (i.e. GP services) and emergency services.

From 1 April 2015 people with long term conditions (including mental health issues and learning disabilities) who may benefit have a right to request a personal health budget.

Requests made to the CCG for a personal health budget will be considered in collaboration with the local authority. Decision making will reflect the education, health and care needs and outcomes described in the EHC plan.

Services that are supplied as part of a block contract will not normally be offered as a direct payment.

[\[1\]](#) The School and Early Years Finance (England) Regulations 2014

## 10. Moving into adulthood

Preparing for adulthood starts at the age of 14, in Year 9 at school, and continues up to the age of 25. Some young people will be eligible to receive support from South Gloucestershire adult services from the age of 18. Where a young person has significant and continuing needs, a lead professional will work with the family to co-ordinate assessment from other professionals involved. These assessments will be used to see whether the young person is eligible for adult care services. The EHC plan may continue beyond age 18, but any social care component will be governed by the Care Act 2014 and any relevant adult care processes.

The Care Act 2014 mandates, for the first time in law, a personal budget as part of the care and support plan for people over 18 with eligible care and support needs, or where the local authority decides to meet needs. The Act also clarifies people's right to request a direct payment to meet some or all of their care and support needs and covers people with and without capacity to request a direct payment.

If the young person has eligible care and support needs, a personal budget will be offered. If the parents are already in receipt of a direct payment, control and management of the direct payment would transfer to the young person, unless they had been assessed as unable to make a decision regarding direct payments under the Mental Capacity Act. If this is the case, the authorised [\[1\]](#)person process under the Care Act 2014 would be followed to enable another person to manage the direct payment on behalf of the young person, if this was clearly in the young person's best interests. For young people who have capacity to make a decision about continuing with direct payments, family members may assist the young person to manage the direct payment. Decisions and discussions about the suitability of direct payments post 18 and the support required by the young person to effectively manage a direct payment will take place prior to the young person becoming 18. Part of this process will include a financial assessment of the young person's ability to contribute financially to their support.

[\[1\]](#) Care and Support Statutory Guidance, issued under the Care Act 2014, para 12.16

# 11. Safeguarding

Young people who use education health and social care support services and their parents are able to make their own decisions and calculate and take risks which they deem to be acceptable to lead their lives their way.

When parents or young people are managing a direct payment and purchasing or arranging support, they have a responsibility to be aware of safeguarding issues. Parents and young people have a responsibility to ensure services are safe and of acceptable quality, and that any services arranged through a direct payment are appropriately registered and monitored. It is strongly recommended by the council that any personal assistants are checked under the Disclosure and Barring Service (DBS). For personal assistants working with people aged under 18, or when personal assistants are working with adults but children or young people are within the household, any personal assistants employed have to receive a satisfactory DBS check prior to the personal assistant starting work. The CCG's policy is that all personal assistant have to receive a satisfactory DBS check, regardless of the age of the person receiving support.

For more information please visit the South Gloucestershire Safeguarding website - <http://sites.southglos.gov.uk/safeguarding>

## 12. Advice and support for families and young people

Local authorities and CCGs have a responsibility to ensure that those choosing to take direct payments have access to independent organisations as well as informed and expert advice from local authority or health staff. This can include guidance on questions to ask when engaging a service provider and suggestions on how to monitor quality of delivery.

The [local offer on the South Gloucestershire Council webpages](#) provides information to parents and young people about which organisations can offer advice about personal budgets and direct payments so that families can make informed decisions.

South Gloucestershire Council has established a list of recognised direct payment support providers who are able to offer advice and support on setting up and managing a direct payment. For families who are employing personal assistants to deliver support as set out in the EHC plan, it will be a requirement for families to receive support from one of the direct payment support providers.

A programme of training will also be delivered to relevant local authority and health staff including keyworkers and social workers to ensure that there is a consistent approach and that they are able explain the personal budget options, benefits and responsibilities that individuals and families should consider.

# 13. Legal considerations

Relevant legislation:

- Section 49 of the Children and Families Act 2014.
- For children and young people under 18, local authorities are under a duty to offer direct payments for services which the local authority may provide to children with disabilities, or their families, under section 17 of the Children Act 1989.
- The Special Educational Needs (Personal Budgets) Regulations 2014
- The Care and Support (Direct Payments) Regulations 2014
- The National Health Service (Direct Payments) Regulations 2013.
- The Care Act 2014
- The Care and Support (Personal Budget and Exclusion of Costs) Regulations 2014

## 14. Reviewing the approach

The 0 - 25 Partnership Board will oversee the implementation of personal budgets, and will seek to maximise the opportunities for parents and young people to receive personalised support.