

Guidance on Personal Budgets in education for children and young people with special educational needs and disabilities



**Brighton & Hove
City Council**

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Introduction and background

The Children and Families Act 2014 introduced significant change to the Special Educational Needs and Disability (SEND) system and reinforced the need to put children, young people and their families at the heart of the system.

SEND describes the needs of a child who has a difficulty or disability which makes learning harder for them than for other children their age. SEND covers a broad spectrum of learning difficulty or disability and about 15% of children and young people will have SEND at some point during their education¹. Children may have wide-ranging or specific difficulties. For example, a child might have issues with one area of learning, such as letters or numbers, they might find forming positive relationships challenging or they might find learning across the curriculum more difficult than their peers. For the majority of children and young people, their needs can be met from within the Special Educational Needs support that schools and colleges ordinarily provide.

Some children and young people need more help than is available through this SEN support. Where this is the case, their needs will be fully assessed for eligibility for an Education, Health and Care plan (EHC plan). EHC plans are legal documents that describe a child or young person's special educational, health and social care needs and the support they require. An EHC plan is drawn up with involvement from the child or young person being assessed, a child's parent or carer, and specialist practitioners such as educational psychologists or speech and language therapists.

Where a child or young person has an EHC plan, it may be appropriate for some aspects of the help the child or young person needs to be delivered by a Personal Budget, whereby a sum of money is individually calculated and allocated to provide the support set out in an EHC plan to meet certain objectives.

This guide explains what a SEND Personal Budget for education is, the scope and function of education Personal Budgets, eligibility criteria and arrangements to manage one. Personal Budgets are also available to meet health and social care needs.

This information forms part of Brighton and Hove City Council's 'Local Offer', the guide to support and services available for children and young people with SEND aged from birth to 25. The Local Offer can be found at www.brighton-hove.gov.uk/content/children-and-education/local-offer

¹ Source: statistics from the Department for Education, January 2017

What is an education Personal Budget for a child or young person with SEND?

An education Personal Budget is an amount of money identified by the local authority to deliver some or all of the support a child or young person needs, as set out in their EHC plan, to help them meet specific outcomes. Examples of outcomes that might be in an EHC plan are:

- by the end of the current course, she will have attended 3 work-based interviews;
- will be able to work independently for at least 50% of each lesson period, by the end of KS2; and
- by the end of year 9, he will be able to make his own way to school.

Personal Budgets can extend choice, control and independence for some parents and young people through personalising services and resources to meet the outcomes agreed. It builds on the personalisation that is an essential part of the assessment and planning process for all children and young people with SEND.

Where assistance or a service is directly provided to help a child or young person with an area they find more difficult, they would not get that support in addition to a Personal Budget for this area of need.

A Personal Budget would not normally provide a level of support higher than would be available at a mainstream or special school. It must be sufficient to enable the agreed support in the EHC plan to be provided as long as a Personal Budget approach provides value for money to the Council.

What an education Personal Budget can and cannot be used for

An education Personal Budget must be used to provide support linked to outcomes in a child or young person's EHC plan. Depending on the eligibility criteria (see below), this could include support across the four elements of SEN: cognition and learning; communication and interaction; social, emotional and mental health; and sensory and physical needs.

Areas that could be funded through a Personal Budget include support and equipment linked to learning. Examples include:

- scanner pens to help where reading can be problematic for those with significant additional literacy needs;
- inclusions in groups to support socialisation and friendship where this has been identified as an area of need; or
- support for specific learning where there is a link to later employability.

There are specific things that a Personal Budget cannot be used for. These include:

- funding a school placement, whether that is in the maintained or independent sectors and whether the place is in an early years setting, school or college;
- purchasing SEN services directly from BHCC or the NHS;

- employment of family members living in the same household, other than on exceptional basis; and
- alcohol or tobacco, gambling, to repay debt, anything illegal or unlawful.

A Personal Budget must be used to provide agreed support linked to the outcomes set out in an Education, Health and Care plan. It cannot, therefore, be used to provide anything which is not agreed and does not help meet the outcomes set out in the relevant EHC plan.

Eligibility for an Education Personal Budget

To be eligible for an Education Personal Budget, a child or young person must have an EHC plan that requires funding over and above that which would normally be available to meet their needs in an educational setting, through SEN support. This is sometimes referred to as 'High Needs Funding'.

Where that is the case, there are several instances where it might be appropriate for support to be made available through a Personal Budget. These include:

- where the local authority and young person, or their family where they are under 16, agree that education other than in a school or post-16 educational setting is the right provision for an individual;
- where the local authority and young person, or child's family where they are under 16, agree that education should be provided by a joint placement between an educational facility and time outside that facility; or
- the education or support needed cannot be provided at a mainstream school, special school or post-16 setting, or is not typically provided by the school the individual attends is not or normally available in the local area.

The scope for a Personal Budget being available can vary depending on which school an individual goes to and the level of specialised need. Special schools and colleges make some additional, specialist provisions available as part of their core offer of services which are not normally available at mainstream schools and colleges. Therefore if an individual goes to a special school, there would be limited scope for a Personal Budget, whereas the choice of a place in a mainstream school that does not make that particular provision might increase the opportunity for a Personal Budget if services are not separately provided by the council or the educational setting.

A Personal Budget cannot be agreed where it is the local authority's view that a student's needs would best be met in a particular education environment and a family decides not to take up or continue the place and home educates instead.

There are some key principles that any Personal Budget must meet. Personal Budgets can only be agreed where:

- It gives value for money - ie it costs less than providing the support in a different way or does not cost significantly more than it would cost to provide it through a different way;
- Agreeing to the Personal Budget for one child does not reduce the our ability to provide other services, such as Speech and Language Therapies, literacy support or Occupational Therapy to other children or young people with EHC plans; and
- if any of the funding for a Personal Budget comes from a school or college, or where Personal Budget funds are to be spent on a school or college's premises, the Head of the education setting has given their agreement.

If a parent, carer or young person employs someone through a Personal Budget who will be working on an early years setting, school or college premises, this employee must agree to conform to the policies and procedures of that institution.

How a Personal Budget can be delivered

There are four ways a Personal Budget can be arranged. These are:

- Direct payments – where a sum of money is individually calculated to meet an individual's needs and the parents/carers, young person or a person nominated on behalf of the individual receives the amount of money agreed as the Personal Budget. This person is responsible for contracting, buying and managing the support and services needed. Direct payments can be used to meet all or part of your agreed needs;
- A Notional Budget – where a sum of money is individually calculated to meet an individual's needs and the local authority or education setting holds the funds on behalf of the individual and arranges for the support specified in the EHC plan to be provided for the child or young person;
- Third Party arrangements - where the money is paid to, and managed by, an organisation on behalf of the family or young person; or
- A combination of the above where a Personal Budget could include an element of Direct Payment and also an element of Notional Budget or a third party arrangement.

How to request an education Personal Budget

There are two occasions during the EHC plan process where a young person or their parent/carers may request a Personal Budget. The first is once we have confirmed that a draft EHC plan will be prepared for an individual following a full assessment of need. The second is during a statutory review of an existing EHC plan. This normally happens yearly but can happen more frequently if necessary. Asking about a Personal Budget does not commit the young person or family to having one after receiving further information and thought and discussions with the council.

Where the request meets the eligibility criteria, we will in the first instance identify an indicative level of funding that *could* be made available for the type of needs identified through the assessment process. Any final budget agreed is likely to be different to this indicative amount due to further work to personalise the budget to the child or young person's individual circumstances and confirm the good and services it would cover.

As mentioned, where any of the funding for a Personal Budget comes from a school or college, or where Personal Budget funds through a Direct Payment are to be spent in an early years setting or school or college's premises, the head of that organisation must give their agreement. Where agreement cannot be reached, we are unable to go ahead with the Personal Budget. We will continue to work with the child's parent or the young person, together with the setting to try to gain agreement and/or to explore other opportunities for the personalisation of provision in the EHC plan.

Monitoring and administrative arrangements for a Personal Budget

Where a Personal Budget is to be delivered through a Direct Payment to a young person, their parent/carer or nominated person, we will send them an agreement covering:

- the name of the child or young person the personal budget is for;
- level of the Personal Budget agreed;
- the areas of support and outcomes from the EHC plan the funding supports including the good and services the budget provides for; and
- the processes for administering and monitoring the payment and spending of the Personal Budget.

This agreement must be signed and returned before any payments can be made.

A separate bank account must be set up which is only used for the Personal Budget and statements will need to be provided to meet our accounting arrangements. Payments will normally be made monthly or quarterly in advance in agreement with the young person or family. This ensures the continued privacy of your personal finances.

Where a Personal Budget is delivered through a Notional Budget, the organisation holding the money will be responsible for monitoring its administration as part of its regulatory duties. Where it is held by us, the provision supplied would be monitored against the funds agreed and the council's procurement and accountancy arrangements would apply. Where the Notional Budget is administered by an education provider, an agreement would be drawn up between the council and the provider setting out the arrangements by which the Personal Budget was agreed and the responsibilities of the provider to monitor and account for the delivery of the support to meet the outcomes set out in the EHC plan. This would include arrangements for accounting for the expenditure.

Where an element of the Personal Budget has not been used to deliver the outcomes set out in the EHC plan and remains in the Personal Budget bank account, future levels of funding through the Personal Budget may be reduced to reflect this. If funds continue to remain unspent, or if the Personal Budget arrangements cease, the Council can require that this funding is returned to us.

Stopping making direct payments

Under certain conditions a local authority must stop making direct payments. These include:

- the recipient has told the local authority in writing that he or she no longer consents to receive the direct payments;
- the recipient is judged to no longer be capable to manage direct payments without assistance or with the assistance available to them or no longer has the capacity to consent to the making of direct payments to them;
- following a review under the monitoring arrangements, it appears to the local authority that payment is not being used to buy the agreed provision, the agreed support can no longer be provided through a direct payment;
- providing support through a Personal Budget would reduce the Council's ability to provide services to other children and young people with EHC plans;
- where it no longer provides value for money; or
- it is no longer meeting the outcomes set out in the EHC plan.

Where a local authority decides to stop making direct payments, the local authority must first give notice in writing to the recipient setting out the reasons for its decision.

Where the council decides not to agree to a Personal Budget request

Where we decide not to agree a request for a SEN Personal Budget request or do not agree an element of support requested, we will set out our reasons in writing and inform the child's parent or the young person of their right to request a formal review of the decision.

Right of review where a Personal Budget request is refused

Where a parent/carer or young person requests a formal review of our decision not to agree to a Personal Budget or an element of a Personal Budget request, the Council will consider that request, including any new information or supporting points provided. After that further consideration, we will write to the young person or parent/carer with our final decision.

It is not possible to take a disagreement about Personal Budgets to the First-tier Tribunal (SEN and Disability). This does not affect the rights of a parent/carer of young person to appeal to the Tribunal if the disagreement is about an element of provision specified in an individual's EHC plan or other matters to do with the EHC plan processes.

People who can have a Personal Budget paid by Direct Payment

A local authority may make direct payments, as appropriate, to—

- the child's parent;
- the young person; or
- a person nominated in writing by the child's parent or the young person to receive direct payments on their behalf.

Where a Personal Budget paid by direct payment is for someone under the age of 16, their parents/carers have control of the management and spend of the agreed Personal Budget. This changes when the young person turns 16 when it can be managed by them if they have the capacity to do so. They may also nominate their parent, carer or someone else to manage their budget on their behalf.

Direct payments may only be made if the person—

- appears to the local authority to be capable of managing direct payments without assistance or with such assistance as may be available to them;
- where the recipient is an individual and is over compulsory school age;
- does not lack capacity within the meaning of the Mental Capacity Act 2005 to consent to the making of direct payments to them or to secure the agreed provision with any direct payment; and
- is not within one of the groups that Personal Budgets cannot be made to as set out in the SEN Regulations 2014. These are listed at appendix 1.

Thinking about what opportunities and support exists in the community

Personal Budgets are only one part of the approach to personalisation and are most effective when best use can be made of all the other support, activities and opportunities that exist.

Every family should have access to opportunities in, and things on offer, in their community. This includes all the people family members know, all the skills and knowledge represented by members of the community, their assets, their access to services and their resilience.

Children and young people can access many activities and services in their community, such as leisure facilities, out of school clubs and activity-focused groups. These services and groups are available to the whole community, whether or not children or young people have SEND. We would normally expect parents to support their children using their own funds for activities such as this rather than requesting support through a Personal Budget where their child has an EHC plan.

Support available to help with a Personal Budget

Information on Personal Budgets is available from the SEN Team at Brighton and Hove City Council, please speak with your Casework Officer in the first instance.

You can also speak to amaze, the local, independent charity that gives information, advice and support to parents and carers of children and young people with SEND. Their website is at <http://amazebrighton.org.uk/>, and their helpline can be contacted either via email on helpline@amazebrighton.org.uk or on 01273 772289 (the helpline is open 9.30-2.30 Monday to Friday).

PeoplePlus is an organisation that provides Direct Payment Advice, Information and Guidance Support Service to both adults and families in Brighton & Hove. Their website is at <https://ils.peopleplus.co.uk/ILS/SitePages/Home.aspx> and they can be contacted by telephone on 0330 123 2815.

Publication and review

This guidance was issued in 2018 and will be reviewed as the policy is developed.

Persons to whom direct payments may not be made. This information is taken from 'The Special Educational Needs (Personal Budgets) Regulations 2014'

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(6), imposed by a community order within the meaning of section 177 of that Act(7) or by a suspended sentence order within the meaning of section 189 of that Act(8);
- (b) a person who is subject to an alcohol treatment requirement, as defined by section 212 of the Criminal Justice Act 2003(9), 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(10), Chapter 6 of Part 12 of the Criminal Justice Act 2003(11) or Chapter 2 of Part 2 of the Crime (Sentences) Act 1997(12) subject to a 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(13) or a community punishment and rehabilitation order within the meaning of section 51 of that Act(14);
- (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(15);
- (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(16) 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.

(6)2003 c.44; section 209 has been amended by section 6(2) of, and paragraphs 71 and 88 of Schedule 4 to the Criminal Justice and Immigration Act 2008 (c.4) (“the Criminal Justice Act 2008”) and section 74(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) (“the Legal Aid Act”).

(7)Section 177 has been amended by section 6(2) of, and paragraphs 71 and 88 of Schedule 4 to the Criminal Justice Act 2008; sections 66, 70, 72 and 76 of the Legal Aid Act; and section 44 of and Schedule 16 to the Crime and Courts Act 2013 (c.22).

(8)Section 189 has been amended by S.I. 2005/643, and section 68 of the Legal Aid Act.

(9)Section 212 has been amended by section 75 of the Legal Aid Act.

(10)1991 c.53. Sections 34A and 35 have been repealed, with savings, by sections 303 and 332 of, and Schedule 37 to the Criminal Justice Act 2003 (c.44) (“the 2003 Act”).

(11)Heading to Chapter 6 of Part 12 substituted by section 111 of, and Schedule 14 to the Legal Aid Act. Section 244 has been amended by section 31 of, and Schedule 6 to the Domestic Violence and Crime Act 2004 (c.28); sections 89,111, 114, 120, 121 and 125 of, and Schedules 10, 14, 15, and 17 to, the Legal Aid Act. Section 246, has been amended by section 378 of, and Schedule 16 to, the Armed Forces Act 2006 (c.52), section 24 of the Criminal Justice Act 2008; sections 89, 110, 111, 112, 120 and 125 of, and Schedules 10, 14, 15 and 20 to, the Legal Aid Act. Section 246A was inserted by section 125 of the Legal Aid Act. Section 247 has been amended by sections 25, 121 and 149 of, and Schedules 17 and 28 to the Criminal Justice Act 2008.

(12)1997 c.43. Subsections (1A), (1B) and (5)(a) of section 28 substituted for subsections (1) to (5)(a) as originally enacted by section 74 of, and Schedule 7 to the Criminal Justice and Court Services Act 2000 (c.43) and further substituted by section 275 of the 2003 Act. Subsection (7)(c) has been amended by section 119 and Schedule 8 to, the Crime and Disorder Act 1998. Subsection (8A) was inserted by section 275 of the 2003 Act. Section 28(1B) has been modified by section 74 of, and paragraphs 146, 147 and 148 of Schedule 7 to the Criminal Justice and Court Services Act 2000. Section 29 was repealed by sections 303 and 332 of, and Schedule 37 to, the 2003 Act.

(13)2000 c.6. Section 41 has been repealed, with savings, by sections 303 and 332 of, and Schedule 37 to the 2003 Act.

(14)Section 51 has been repealed, with savings, by sections 303 and 332 of, and Schedule 37 to the 2003 Act.

(15)Section 52 was repealed, with savings, by sections 303 and 332 of, and Schedule 37 to the 2003 Act.

(16)2008 c.4.