

Committee:	Lead Member for Learning and School Effectiveness
Date:	6 October 2014
By:	Director of Children's Services
Title of Report:	Policy for Personal Education Budgets for children and young people with an Education Health and Care Plan
Purpose of Report:	To seek agreement from the Lead Member on the attached policy for personal education budgets for children and young people with an Education Health and Care Plan

Recommendation: The Lead Member is recommended to agree the draft policy.

1. Financial Appraisal

1.1. The roll out of Personal Budgets for children and young people with an Education Health and Care Plans (EHCP) may have a financial impact on the services we commission and provide for children and young people with Special Educational Needs or Disabilities (SEND). Parents and young people will be in control of how they wish to spend their personal budgets and may choose not to spend it on our services. This could put those services at risk. Effective commissioning practice to ensure the services are outcome based and fit for purpose will mitigate this risk.

2. Supporting information

2.1. The SEND Code of Practice 2014 explains that Local authorities must arrange for children with SEN or disabilities for whom they are responsible, and their parents, and young people with SEN or disabilities for whom they are responsible, to be provided with information and advice about matters relating to their SEN or disabilities, including matters relating to health and social care. This must include information, advice and support on the take-up and management of Personal Budgets.

2.2. The policy attached at Appendix 1 relates to our current position on personal budgets where an EHCP is in place. It will be supported by operational guidance. It does not cover health or care budgets where there is no EHCP. It is our intention to work to integrate education, health and care personal budgets and we will be developing a policy to support this.

2.3. It will be important to look at the three separate areas and how they will work together when a child has an EHCP. Arrangements will be made to integrate the elements, and this will be a significant piece of work for Autumn 2014.

3. Conclusion and Reason for Recommendations

3.1. It is a statutory to have Personal Budget arrangements in place as part of the SEND Reforms.

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East Sussex County Council and East Sussex Clinical Commissioning Groups

Policy for Personal Budgets for children and young people aged 0-25 with special educational needs and disabilities with an Education, Health and Care Plan or undergoing an Education, Health and Care needs assessment (Personal Education Budgets only – excludes social care and health budgets)

1. Context

- 1.1 This policy relates to the duties of East Sussex County Council and the East Sussex Clinical Commissioning Groups under the Children and Families Act 2014 (section 49), The Special Educational Needs (Personal Budgets) Regulations 2014 (1652) and the SEN Code of Practice 2014.
- 1.2 This policy covers direct payments, third party arrangements and notional budgets where an organisation other than the County Council holds the funds. It relates only to Personal Budgets provided through an Education, Health and Care plan (EHCP). It does not cover other types of personal budgets or direct payments e.g. health or social care personal budgets where the child or young person does not have an EHCP and personal transport budgets.
- 1.3 A personal budget for health is currently available to children and young people who are entitled to Continuing Healthcare or Continuing Care. A personal social care budget will be available for children and young people with disabilities who have an assessed need and where individual funding is required to provide family support or a short break.
- 1.4 This policy reflects our current position in September 2014 at the time of the SEND Reforms. Our next step will be to integrate the education, health and care personal budgets and a policy document will be published to set out those new arrangements.
- 1.5 Further information about Personal Budgets can be found at:
<http://www.eastsussex.gov.uk/childrenandfamilies/specialneeds/sen/pathfinder/budgets/default.htm>

2. Introduction

- 2.1 Children and young people with an EHCP or undergoing an Education, Health and Care needs assessment are able to request a personal budget to cover aspects of the provision to meet the outcomes set out in the plan which the County Council and/or CCGs have agreed can be offered as a personal budget.

- 2.2 Within an overall context of diminishing resources within East Sussex County Council, the Local Authority will offer personal budgets in line with statutory guidance and as flexibly as possible. However it will not be possible for use of personal budgets to increase the total overall resource that is available to support families.
- 2.3 Personal budgets are only one approach to supporting a child or young person with special educational needs (SEN) and disabilities to achieve their aspirations. They are most effective when best use is also made of all the other support, activities and opportunities that exist.
- 2.4 East Sussex County Council and the East Sussex CCGs will identify which areas of spending are amenable to the offer of personal budgets. These areas will be set out in the Local Offer. The Council and the CCGs will work together through the joint commissioning process over the next 3-4 years to increase the number of areas which could be included in a personal budget.
- 2.5 Personal SEN budgets will only be available where the child or young person is eligible for an EHCP, and requires additional and individual funding to meet his or her SEN. Personal budgets through social care and health are available to those children and young people who have an assessed need and who are eligible to receive a social care service or Continuing Healthcare/Continuing Care.
- 2.6 This policy applies to any child or young person with SEN, who has an EHCP and where a personal budget has been requested and agreed.
- 2.7 The aim of personal budgets is to increase a child's or young person's independence by giving them and/or their parent(s) control over the way they are supported. Direct payments are cash payments made instead of specified services from the local authority or health services. The payment must be sufficient to enable the recipients to purchase the support set out in the EHCP in order to achieve the outcomes in the plan. Direct payments entail increased responsibility for the recipients.

3. Ways of having a personal budget

- 3.1 There are four ways of having a personal budget:
- i) A direct payment – where individuals receive the cash to contract, purchase and manage services themselves.
 - ii) An arrangement whereby the local authority, school or college holds the funds and commissions the support specified in the plan (sometimes called notional budgets)

- iii) Third party arrangements – where the personal budget is paid to and managed by an individual or organisation on behalf of the child or young person.
- iv) A combination of the above.

4. Scope of Personal Budgets

- 4.1 Personal SEN budgets will usually be agreed only if the child's or young person's support needs are additional and individual over and above the provision normally provided or able to be provided by the educational setting. For a personal budget for SEN provision this will be the 'top up' or 'element 3' funding. If the pupil or student is or will be attending a special school or specialist college it may not be possible to offer a personal budget as all of the funding is normally required to make the provision within the school or college. In certain circumstances, where a creative solution to provision is required, a mainstream school or college may agree for some funding from its budget (made up of elements 1 and 2) to be included in the personal budget.
- 4.2 A personal budget may not include the costs of the school place.
- 4.3 A personal SEN budget would normally be agreed only if the child or young person is attending the educational setting or apprenticeship named in the EHCP and if, in the Local Authority's view, it would support the child or young person to achieve the educational outcomes specified in the EHCP. There may be a small number of cases where a personal SEN budget might be agreed to support the child or young person reintegrate into the named school or college.

5. Recipients of direct payments

- 5.1 Direct payments relating to an Education, Health and Care Plan may only be made if the recipient appears to the local authority to be capable of managing direct payments without assistance or with such assistance as is available to them, is over compulsory school age and has the mental capacity under the Mental Capacity Act 2005 to agree to direct payments and secure the agreed provision and is not prohibited by the Regulations from receiving them.
- 5.2 If a child has a Child Protection Plan a personal budget, if agreed, and where it would meet the aims of the Child Protection Plan, would be included in the Child Protection Plan agreed by the multi-professional Core Group meeting.
- 5.3 The following persons may not receive direct payments:
 - i) a person who is subject to a drug rehabilitation or alcohol treatment requirement imposed by a community order or by a suspended sentence order;

- ii) a person who is released on license subject to a license condition requiring the offender to undertake offending behaviour work to address drug-related or alcohol related behaviour;
- iii) a person who is required to submit to treatment for their drug or alcohol dependency by virtue of a community rehabilitation order or a community punishment and rehabilitation order;
- iv) a person who is subject to a drug treatment and testing order;
- v) a person who is subject to a youth rehabilitation order which requires them to submit to drug treatment or drug testing or to treatment for intoxicating substance.

5.4 Parents will have control of the direct payments for the child whilst they are of compulsory school age. The young person themselves has this responsibility if they are over compulsory school age as long as they have the mental capacity (as defined in the Mental Capacity Act 2005) to undertake this.

5.5 The Local Authority will only make direct payments where a request has been made and the authority is satisfied that the recipient will use them to secure the agreed provision in an appropriate way and will act in the best interests of the child or young person when securing the agreed provision.

5.6 Where a young person becomes over school age the Local Authority will seek to ascertain whether the young person consents to receive direct payments. The young person can request that the direct payments continue to go to their parent or nominee.

6. Requesting a personal budget including direct payments

6.1 The Local Authority, where it maintains an EHCP or is preparing one for a child or young person, will make arrangements for the child's parent or the young person to have access to the following information:

- i) the provision for which a personal budget may be available;
- ii) details of organisations that provide advice and assistance on personal budgets; and
- iii) the conditions that must be met before direct payments may be made.

6.2 A child's parent or a young person may request a personal budget, including direct payments, at any time in which a draft EHCP is being prepared, an EHCP is being reviewed or where an EHCP is being reassessed.

6.3 The Local Authority recognises and supports the flexibility that personal budgets give to the individual child and young person. At the same time it must consider and balance the positive impact on the individual against the

adverse impact it may have on services for children and young people with an EHCP that can no longer be funded by the local authority because funding has been reassigned to personal budgets. The Local Authority will, therefore, consider a request but may choose not to offer a personal budget or direct payment where it would have an adverse impact on other services or where it would be an inefficient use of the authority's resources.

6.4 A personal budget request will only be agreed where there is strong evidence demonstrating it will meet the outcomes set out in the EHCP.

6.5 Where the Local Authority agrees to direct payments it will provide the recipient with the following information in writing:

- i) the name of the child or young person for whom direct payments are to be made;
- ii) the goods or services to be secured by direct payments;
- iii) the proposed amount of direct payments and any conditions on how the direct payments may be spent; and
- iv) the dates for payments into the bank account approved by the Local Authority.

6.6 The recipient must then notify the Local Authority that they agree to receive the direct payments, that they will use the direct payments only to secure the agreed provision and comply with any conditions specified, notify the Local Authority of any changes in circumstances and use the bank account approved by the Local Authority solely for the direct payments, ensure the bank account is only accessible by the recipient or other approved person, keep a record of money paid in and withdrawn and information or evidence relating to the account and the agreed provision.

6.7 Where the recipient is a nominee the child's parent or the young person must provide written consent and the nominee must confirm in writing that he or she is responsible for all contractual arrangements for the benefit of the child or young person secured through the direct payments.

6.8 The Local Authority must seek the agreement from the headteacher, principal or early education provider for any goods or services through direct payments to be used or provided on a school, college or early years education setting's premises.

7. Monitoring and review of direct payments

7.1 The Local Authority will monitor the use of direct payments at least once in the first three months and when conducting a review or reassessment of an EHCP. This will include considering whether direct payments should continue to be made, if they have been used effectively, the amount continues to be

sufficient to secure the agreed provision, the recipient has complied with the direct payment conditions.

- 7.2 The recipient may request that the Local Authority reviews the direct payments and the Local Authority will consider this request and decide whether or not to undertake the review.
- 7.3 After the review the Local Authority may change the recipient of the direct payments; change the amount of the direct payments, require the recipient not to secure a service from a particular person/ask for further information from the person, or stop making the direct payments.
- 7.4 Where the Local Authority decides to reduce the amount of a direct payment it will provide reasonable notice and will set out the reasons for its decision. The recipient may ask the Local Authority to reconsider its decision. In undertaking the reconsideration the Local Authority will consider the representations made by the recipient (and where the recipient is a nominee, the child's parent or the young person) and provide written reasons of its decision. The Local Authority will not reconsider a decision more than once and may reduce direct payments following reasonable notice despite the fact that a request for reconsideration has been made.
- 7.5 The Local Authority may require repayment of all or part of the direct payments if the circumstances of the child or young person have changed in a manner which affects the appropriateness of the provision; if all or part of the direct payments have not been used to secure the provision; if theft, fraud or another offence may have occurred in relation to the direct payments; or the child or young person has died.
- 7.6 The Local Authority will stop making direct payments if the recipient has notified it in writing that he or she no longer consents to receiving direct payments; the recipient falls under the list of people who are not allowed to have direct payments; the direct payments have not been used to secure the agreed provision or if the provision can no longer be made through direct payments; or if the recipient has failed to comply with the conditions for direct payments.
- 7.7 Given the limited resources, the Local Authority will need to monitor the impact of personal budgets on other services for children and young people with an EHCP. The Local Authority may stop making direct payments if they are no longer meeting outcomes, or if it becomes incompatible with the efficient use of its resources. The Local Authority will give notice in writing of its decision to stop making direct payments. The recipient may request reconsideration of this decision.

- 7.8 If, at the end of the financial year, there is an underspend on a Personal Budget, the course of action to take must be agreed with the Local Authority. That course of action must be in line with the Education, Health and Care Plan.

8. Appeal process

- 8.1 It will not always be possible to offer a personal budget as part of the EHCP. Parents and young people will be offered early information about the purposes and extent of personal budgets and their implications. If a personal budget in relation to an EHCP has not been agreed following a request the parent or young person will be notified of the reasons for this decision in writing.
- 8.2 The parent of a child under statutory school age, or the young person over statutory school age with mental capacity (under the Mental Health Act 2005), may appeal about the decision not to agree to a personal budget as part of an EHCP. If the appeal is in relation to a Personal SEN or Social Care Budget it will be considered by the Head of SEND Assessment and Planning within the Children's Services. The decision will be provided in written format. Decisions in relation to a Personal Health Budget are the responsibility of the CCG.

