

Hull City Council Policy Document

Personal Budgets *for Children and Young People with Education, Health, and Care plans*

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Purpose of this document

This policy document sets out information on Personal Budgets for children and young people with special educational needs and disabilities within Hull City.

1.1 Who is this information for?

The information on Personal Budgets contained in this document is relevant to parents/carers, young people and all those who support children and young people with special educational needs and disabilities who have an Education, Health and Care plan (EHCP)

1.2 Relevant legislation

The policy is based on requirements contained in the following:

- Children and Families Act 2014
- The Special Educational Needs (Personal Budgets) Regulations 2014
- SEND Code of Practice: January 2015
- The Care Act 2014
- The National Health Service (Direct Payments) Regulations 2013.

1.3 What is a Personal Budget?

A Personal Budget is defined as: *“An amount of money identified by the local authority to deliver provision set out in an Education, Health and Care (EHC) plan where the parent/carer or young person is involved in securing the provision”* (Children and Families Act 2014, s.49).

1.4 What is the scope of a Personal Budget?

The scope of the Personal Budget will vary depending on the needs of the individual, the eligibility criteria for agreeing a Personal Budget which education, Health and Social Care services use in reviewing requests and the mechanisms for delivery. What can be agreed will also reflect local circumstances, local commissioning arrangements and type of school placement.

1.5 Where do the funds which make up a Personal Budget come from?

The Personal Budget can be made up of funding just from education, or from education, Health and/or Social Care. If the Personal Budget includes funding from Health and/or Social Care, the parent/carer or young person must request those elements of the budget directly from Health and/or Social Care services, and if it is

agreed, then the funding can be combined. For example, in a combined Personal Budget, from education, health and/or social care, direct payments could be used to pay for a personal assistant to support the child/young person in a range of settings. Subject to the Personal Budget being used to secure the provision and outcomes agreed in the EHC plan.

1.6 Who Can Apply for a Personal Budget?

Parents/carers of children who have an EHC plan. Young people aged over 16 who have an EHC Plan and have completed the statutory phase of their education (end of year 11), can apply for a Personal Budget.

1.7 When can an application for a Personal Budget be made?

The request can be made at the following times:

- during a statutory assessment, or re-assessment at the stage when the Local Authority issues a draft plan, or
- when an EHCp is being reviewed.

1.8 Is a Personal Budget for a child or young person with an EHC plan compulsory?

Parents/cares and eligible young people do not have to have a Personal budget. However, if requested, the Local Authority must provide information about Personal Budgets. The Local Authority must also provide information about organisations that may be able to provide advice and assistance to help parents/carers and young people to make informed decisions about Personal Budgets.

1.9 How is a Personal Budget delivered?

There are four ways in which the Local Authority can deliver a Personal Budget:

1. Direct Payments – this involves the parent/carer or the young person receiving a cash payment to enable them to source, contract, purchase and manage services themselves.
2. An arrangement with a setting– this involves the local authority, school or college holding the funds and using the money to commission the provision which has been agreed will be provided by a Personal Budget. (Sometimes called notional budgets)
3. Third party arrangements – this is where direct payments are paid to and managed, by an individual or organisation, on behalf of the child’s parent/carer or the young person and the person/organisation arranges the provision on behalf of the parent/carer/young person.
4. A combination of the above.

1.10 What can a Personal Budget be used for?

The Personal Budget **must** be used to secure the provision and the outcomes set out in the EHC plan.

2.1 Is there anything the Personal Budget cannot be used for?

A Personal Budget cannot be used for the following purposes:

- to fund a place at a school or Post 16 setting;
- to fund general educational provision for children or young people, including those who need SEN support;
- to fund provision or outcomes not contained within an EHCp

2.2 How to apply for a Personal Budget

You can request a Personal Budget when you send your response to the draft plan which has been issued following an assessment or a re-assessment, or when an EHC plan is being reviewed. You will need to write to the SEND team stating which elements of the SEN provision and outcomes set out in the EHC plan you wish to make your own arrangements for, and for which you would like to receive a Personal Budget.

The Local Authority must consider your request and if it is likely that the Local Authority may be able to agree to the Personal Budget request, it must provide you with an indication of the likely cost of the provision you have identified as wishing to make your own arrangements for. This is known as an 'indicative budget' and is intended only to help with the exploration and planning process. It is not a firm commitment by the Local Authority that it will agree a Personal Budget.

If you are applying for a Personal Budget for Health and/or Social Care provisions contained in the EHC plan, you must make your application to the health provider and/or Social Care services.

2.3 The amount of funding agreed must cover the cost of the provision.

If a Local Authority agrees to provide a Personal Budget for the parent/career or the young person, then the amount of money agreed by the Local Authority must be sufficient to meet the cost of the agreed provision.

2.4 Must the parent/carer or young person manage the Personal Budget and arrange the provision?

A Personal Budget can be managed, and the provision arranged in the following ways:

- The Personal Budget can be managed, and the provision arranged by the parent/carer or young person or by a person nominated to act for them.
- the Personal Budget can be managed by a school, early years setting or college who can also arrange for the provision to be secured. This can only be agreed if the Headteacher, Manager or Principal of the setting confirms in writing that they will agree to this. The setting cannot be made to agree to manage a Personal Budget against the wishes of the Headteacher or Principal, etc.
- It may be possible for the parent/carer or young person to manage the Personal Budget and to arrange the provision to be delivered in the school/college/early years setting. The Local Authority can only agree to provide a Personal Budget in this situation if the Head Teacher/Principal/Manager has agreed to the arrangement before the Personal Budget is approved. If agreement cannot be obtained the Local Authority will not be able to agree to a Personal Budget.

2.5 Person(s) employed by parent/carer or young person delivering provision in a school/college/early years setting must conform with the settings rules.

If a person employed by the child's parent/carer or young person under a Personal Budget arrangement, is working on early years, school or college premises to deliver the agreed provision, the person(s) must conform to the policies and procedures of the institution and must have permission from the headteacher/college principal or early years provider to work within that setting. The Local Authority will make this a condition for receipt of the direct payment.

2.6 Can all provision set out in an EHC Plan be sourced through a Personal Budget.

The Local Authority may not be able to agree to provide a Personal Budget for some of the provision in an EHCp if arrangements are already in place with an organisation to supply that provision. For example, many local authorities commission specialist services such as Speech and Language therapy, Occupational Therapy, Physiotherapy through the NHS and are not able to agree to a Personal Budget for these provisions as they cannot separate out or 'disaggregate' the personal budget from the overall budget, agreed with the NHS or other provider.

2.7 Difference between a personal budget and a Direct Payment.

A personal budget is the indicative/notional amount of money that would be needed to cover the cost of making the special educational provision specified in an EHC plan.

A direct payment is the sum of money the Local Authority will provide to the parent/carer or young person to source, arrange and deliver the provision.

A personal budget can include a direct payment if it is agreed that this is the best way to manage part of the personal budget.

2.8 Duties on parent/carer, young person or their nominee in respect of direct payments.

When a direct payment is made, the parent/carer or young person is responsible for sourcing the service and paying for it. Direct payments can be used for special educational provision provided in a school/college, or setting, but only if the school/college or setting agrees. When a Personal Budget is agreed the Local Authority is no longer responsible for providing that element of the provision set out in the EHCp.

2.9 Local Authority decision making process.

Local authorities must consider each request for a Personal Budget on its individual merits. The Local Authority will use a person-centred approach and will ensure the Personal Budget is used in the most effective and efficient way. The Local Authority will prepare an indicative budget if it is likely the request will be agreed. An indicative budget is not binding on the Local Authority and is intended only to support in exploring the feasibility of the request.

2.10 The Local Authority can refuse to provide a Personal Budget.

The Local Authority does not have to agree Personal Budget if the sum is part of a larger amount and disaggregation of the funds for the Personal Budget:

- would have an adverse impact on services provided or arranged by the Local Authority for other EHC plan holders,
- where it should not be an efficient use of the Local Authority's resources
- the request does would not meet the provision or outcomes specified in the EHCp.

3.1 If the Local Authority does not agree to the request.

If the Local Authority does not agree to a request for a Personal Budget, it must write to the parent/carer or young person setting out its reasons.

3.2 Can a decision not to agree a Personal Budget be appealed?

If you disagree with the reasons the Local Authority provided you can ask the Local Authority to review the decision and the Local Authority must do so. You can also provide additional information to support your request for a review of the decision.

A refusal to grant a Personal Budget cannot be appealed to the SENDIST Tribunal Service.

3.3 Who can receive a direct payment?

Direct payments can be made to the following persons:

- child's parent/carer
- young person
- a person nominated in writing by the parent/carer or young person.

3.4 Person receiving the direct payments must be capable of managing the payments.

Before agreeing to make Direct Payments, the local authority must be satisfied that:

- the recipient is capable of managing direct payments without assistance (or with any available assistance), where relevant;
- is over statutory school age (has completed year 11);
- has mental capacity as defined in the Mental Capacity Act 2005 to consent to receiving direct payments;
- is not an excluded person as set out in the Schedule of the Personal Budget Regulations.

3.5 Local Authority must be satisfied the recipient will act in the best interests of the child/young person.

The Local Authority can only agree a direct payment in the following conditions:

- Is satisfied that the recipient will act in the best interests of the child or young person;
- the direct payments will not have an adverse impact on other services provided for children or young people with an EHC plan;
- the agreement of a direct payment is an efficient use of the authority's resources.

3.6 Local Authority duty to arrange the provision discharged.

Local authority and health commissioning body duties to secure or arrange the provision specified in EHC plans are discharged through a direct payment when the provision has been acquired for, or on behalf of, the child's parent or the young person and this has been done in keeping with Personal Budget Regulations.

3.7 Parent/carer or young person safeguarding duties.

When parents or young people are managing a personal budget/direct payment and are purchasing or arranging support, they have a responsibility to be aware of any safeguarding issues.

3.8 Parent/carer or young person duty to ensure safety and acceptable quality.

Parents and young people have a responsibility to ensure services are safe and of an acceptable quality, and that any services arranged through a personal/direct payment are appropriately registered and monitored.

Hull City Council requires all tutors, personal assistants, etc to have been checked under the Disclosure and Barring Service (DBS) prior starting work with children/young people, in settings which bring them in contact with children and young people.

3.9 Local Authority duty to provide written notice.

When direct payments are agreed, the local authority must provide written notice to the recipient, specifying the following:

- the name of the child or young person in respect of whom direct payments are to be made;
- the goods or services which are to be secured by direct payments;
- the proposed amount of direct payments;
- any conditions on how direct payments may be spent;
- the dates for payments into the bank account approved by the local authority.

3.10 Duty on the recipient of the Direct Payments.

The recipient of the direct payments must agree to the following:

- use the direct payments only to secure the agreed provision
- must notify the Local Authority of any change in relevant circumstances
- must ensure use of a bank account, approved by the local authority, which is only used for purposes connected with direct payments and only accessible by the recipient and approved named persons

- must keep a record of money paid in and out
- must on request provide information or evidence about that account or the goods/services secured.

4.1 Local Authority duty to review Direct Payments.

The local authority must monitor the use of direct payments. A review must take place at least once in the first three months and then when undertaking a review or a re-assessment of an EHC plan.

The review must consider the following:

- whether to continue the use of direct payments to secure agreed provision;
- whether the direct payments have been used effectively;
- whether the amount continues to be sufficient;
- whether the decision to make a direct payment still applies;
- whether the recipient has complied with the conditions for being allocated a direct payment.

4.2 Right of recipient to request a review.

A recipient may ask the local authority to review the making and use of direct payments and this request must be considered by the local authority.

4.3 Local Authority can reduce the amount of a Direct Payments

If the local authority is considering reducing the amount of direct payments, it must provide reasonable notice of this to the recipient in writing, setting out the reasons for its decision.

It must re-consider its decision, if asked to do so by the recipient and must take into account any representations/views provided. If asked to review the decision to reduce a direct payment, the Local Authority must set its reasons out in writing. The local authority is not required to undertake more than one reconsideration.

4.4 Local Authority can request repayment of Direct Payments

The local authority may require the recipient to repay all or part of the direct payments if:

- the child's or young person's circumstances have changed;
- all or part of the direct payments have not been used as agreed;
- an offence has been committed in relation to direct payments;
- the child or young person has died.

Repayment will be sought for any portion of the direct payments that has not already been spent. Notice of repayment, the amount to be repaid, the reasons for the decision and a reasonable timescale for repayment will be sent to the recipient in writing.

The Local Authority must re-consider its decision, if asked to do so by the recipient and must take into account representations/views provided. The outcome of this process and the reasons for the decision must be sent to the recipient in writing. The local authority is not required to undertake more than one reconsideration.

4.5 Local Authority right to stop Direct Payments.

The local authority must stop making direct payments in the following circumstances:

- if notified in writing by the recipient that they no longer wish to receive the direct payment;
- the recipient is no longer entitled to receive a direct payment;
- a review identifies that direct payments should cease;
- the direct payment is having an adverse impact on other services provided for children and young people with an EHC plan;
- it is no longer compatible with the efficient use of its resources;
- consent has not been obtained from a young person, who is no longer of statutory school age.

4.6 Duty to give notice of the decision to stop making Direct Payments.

The Local Authority must give the recipient notice in writing before payments are stopped. It must re-consider its decision, if asked to do so by the recipient and must take into account representations/views provided. The outcome of this process and the reasons for the decision must be sent to the recipient in writing. The local authority is not required to undertake more than one reconsideration.

4.7 Child becomes a Young Person.

When a child, whose parent/carer or nominee has been receiving direct payments on their behalf, reaches the end of statutory schooling at the end of Year 11, the Local Authority must take reasonable steps to find out whether the young person, wants to receive the direct payments themselves. If the young person does wish to receive direct payments, the Local Authority must ensure that they are entitled to, and meet the conditions for receiving a direct payment, before making a direct payment (see above XX). The young person can chose for the direct payments to be made to their parent/care or nominee. This must be done in writing.

4.8 Local Authority unable to agree to make Direct Payments to a Young Person.

If the Local Authority is not able to agree a request for a Personal Budget or a direct payment, the young person will be informed of the decision and the reasons for this in writing. The Local Authority must advise them of their right to request a review of the decision and the Local Authority must take into account any representations or views made by the young person. The outcome of the review and the reasons for the decision must be in writing.

You can find out more information about Personal Budgets from:

Hull City SEND, Assessment and Review Team

- **Telephone: 01482 616 007**
- **Email: send@hullcc.gov.uk**

Hull City Council Local Offer webpage

- <https://www.hull.gov.uk/children-and-families/advice-and-information-young-people/local-offer-disabled-children>
- **Council for Disabled Children: information on Personal Budgets**
- Webpage: https://councilfordisabledchildren.org.uk/sites/default/files/uploads/files/MakingitPersonal_EducationandLA.pdf

Hull City SENDIASS

- Webpage: <https://www.kids.org.uk/hull-sendias>
- **Telephone: 01482 467 541**
- **Email: hullsendias@kids.org.uk**

Relevant Legislation

- Children and Families Act 2014
- SEN (Personal Budget) Regulations 2014
- SEND Code of Practice January 2015