



# **Hull City Council Policy Document**

## **Personal Budgets *for* Children and Young People with an Education, Health and Care Plan (EHCP**

## **Purpose of this document**

This policy document sets out information on personal budgets for children and young people with special educational needs and disabilities (SEND) 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 SEND 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 and the eligibility criteria for agreeing a personal budget which education, health and social care services use in reviewing requests and the mechanisms for delivery. Other factors which are likely to be considered include 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 from education (only), 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.

### 1.6 Who can apply for a personal budget?

Parents/carers of children who have an EHCP or young people aged over sixteen who have an EHCP and have who are no longer of compulsory school age.

### 1.7 When can an application for a personal budget be made?

There are specific times in which a personal budget can be requested:

- a. During a statutory assessment, or reassessment, at the point in which the local authority is drafting an EHCP.
- b. During the annual review of the EHCP.

### 1.8 Is a personal budget for a child or young person with an EHCP 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. This information can be found on the Personal Budget Information Leaflet, available on the Local Offer.

### 1.9 How is a personal budget delivered?

There are four ways in which the local authority can deliver a personal budget:

- a. 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.
- b. 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 – this is sometimes referred to as a notional budget.
- c. 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.
- d. 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 EHCP.

## **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 an educational 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 EHCP is being reviewed. You will need to write to the Statutory SEND Assessment and Review Team stating which elements of the provision (Section F of the EHCP) set out in the EHCP you wish to make your own arrangements for via a personal budget. A request form can be found on the Local Offer.

The local authority must consider your request and if it is likely that this may be able to be agreed, it must provide you with an indication of the likely cost of the provision for which you have identified as wishing to make your own arrangements. This is known as an 'indicative budget' and is intended only to help with the exploration and planning process. At this stage, it is not a firm commitment by the local authority that it will agree to the personal budget request. Your SEND Caseworker from the Statutory SEND Assessment and Review Team will keep you informed throughout the process.

If you are applying for a personal budget for health and/or social care provisions contained in the EHCP, 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 to the parent/carer or the young person, then the amount of money agreed must be sufficient to meet the full cost of the agreed provision.

## **2.4 Must the parent/carer or young person manage the personal budget and arrange the provision?**

There are four ways in which the local authority can deliver a personal budget:

- a. 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.
- b. 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 – this is sometimes referred to as a notional budget.

- c. 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.
- d. A combination of the above.

The parent/carer or young person may not want to manage the personal budget themselves, or the local authority could determine that they wish to manage the budget or ask a third party to do so.

## **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 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 or principal, or equivalent, to work within the setting.

## **2.6 Can all provision set out in an EHCP 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 and Physiotherapy through the NHS and may not be 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 (commissioned) 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 EHCP.

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.

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

When a direct payment is made, the parent/carers or young person is responsible for sourcing and arranging the provision, and for arranging payment. Direct payments can be used for special educational provision provided in an educational setting, but only with the setting's agreement. When a personal budget is agreed, the local authority is no longer responsible for securing 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 adopts a person-centred approach and will ensure the personal budget is used in the most effective and efficient way. The Local Offer contains a flowchart which provides an overview of the process.

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

The local authority does not have to agree personal budget. They may decline the request, but they must provide their reasoning.

### **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/carers or young person setting out its reasons and provide information on how to request that the decision is reviewed.

### **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 that the decision is reviewed and submit additional evidence to support the review. The local authority must consider this information and provide a formal response.

A refusal to grant a personal budget cannot be appealed to the SEND Tribunal (SENDIST), but a new request can be made during the next annual review of the EHCP.

### **3.3 Who can receive a direct payment?**

Direct payments can be made to several groups:

- child's parent/carers
- young person (aged sixteen or over)
- a person nominated in writing by the parent/carers 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 2015 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 if they are satisfied that the recipient will act in the best interests of the child or young person.

### **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 the EHCP 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/carers or young person safeguarding duties.**

When parents/carers 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. Safeguarding, welfare and safety concerns should be reported to the child or young person's SEND Caseworker without delay.

### **3.8 Parent/carers or young person duty to ensure safety and acceptable quality.**

Parents/carers 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 to commencing work with children/young people. The local authority may ask for evidence of a DBS check prior to granting a direct payment.

### **3.9 Local authority duty to provide written notice.**

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

- 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 a direct payment;
- 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 certain terms as part of the direct payment agreement:

- 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. Ordinarily, this will occur when undertaking a review or a reassessment of an EHCP.

The review must consider several key elements:

- whether to continue the use of direct payments to secure agreed provision (or whether the child or young person continues to require the provision outlined within the EHCP);
- whether the direct payments have been used effectively and appropriately;
- 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 The local authority can reduce the amount of a direct payments**

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

It must reconsider its decision, if asked to do so by the recipient and must consider 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 The local authority can request repayment of direct payments**

The local authority may require the recipient to repay all or part of the direct payments, under certain circumstances:

- all or part of the direct payments have not been used as agreed (i.e., they have not been used to secure the provision outlined in Section F of the EHCP);
- 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 reconsider its decision if asked to do so by the recipient and must consider 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 The local authority's right to stop direct payments.**

The local authority must stop making direct payments under certain 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;
- it is no longer responsible for the child or young person.

#### **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 reconsider its decision, if asked to do so by the recipient and must consider 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, is no longer of compulsory school age (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 meet the conditions for receiving a direct payment. The young person can choose for the direct payments to be made to their parent/care or nominee should they not wish to be paid this directly to themselves. The local authority will seek written confirmation of their decision.

#### **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 must consider any representations or views made by the young person. The outcome of the review and the reasons for the decision must be in writing.

**More information****Hull City Council****Statutory SEND Assessment and Review Team**

- Telephone: 01482 616 007
- Email: [send@hullcc.gov.uk](mailto:send@hullcc.gov.uk)

**Hull City Council Local Offer webpage**

<https://hullsendlocaloffer.org.uk/money/personal-budgets>

**Council for Disabled Children: information on Personal Budgets**

<https://councilfordisabledchildren.org.uk/sites/default/files/uploads/files/Making it Personal Education and LA.pdf>

**Hull City SENDIASS**

- <https://www.kids.org.uk/hull-sendiasm>
- 01482 467 541
- [hullsendiasm@kids.org.uk](mailto:hullsendiasm@kids.org.uk)

**Relevant Legislation**

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