



Personal Budget Policy for Children and Young People with an Education, Health and Care Plan

Date: 1st September 2024

Review date: July 2025

Purpose

Durham County Council's Personal Budget Policy relates to the duties of Durham County Council and the Integrated Care Board (ICB) for the North East and North Cumbria in relation to the Children and Families Act 2014, the Special Educational Needs and Disability Code of Practice 0-25 Years and The Special Educational Needs (Personal Budgets) Regulations 2014.

The purpose of this Policy is to explain what Personal Budgets are, the sources of funding available, the eligibility criteria and the support available in managing Personal Budgets. This Policy applies to any child or young person who has an Education, Health and Care Plan (EHC plan).

Legal Framework

The Children and Families Act 2014 gives a family the right to request a Personal Budget when an EHC plan is being initially prepared or reviewed as part of the statutory annual review process. The law gives the right to request an indicative budget; this is the amount of money needed to meet the child or young person's needs. There are a number of ways in which this budget may be made available:

- a direct payment to the family;
- a payment to a third party to organise on behalf of the family;
- an arrangement where the LA organises support in the way the family chooses; or
- any combination of the above.

Detailed information about Personal Budgets and direct payments are contained in Chapter 9 of the [SEN and Disability Code of Practice 2015](#). The law relating to direct payments and Personal Budgets is set out in the Special Educational Needs (Personal Budgets) Regulations 2014, as amended by the Special Educational Needs (Miscellaneous Amendments) Regulations 2014.

Different Types of Personal Budget

Personal Education Budget

A Personal Education Budget is money used differently to pay for support specified in an EHC plan for a child, young person or adult (up to 25) with special educational needs and/or disabilities (SEND). Each request for a Personal Education Budget is considered on an individual basis to reflect the idea that this is highly personalised care. There is no one-size-fits-all as every case will need to be decided on its own merits. The EHC plan is banded a funding level and a Personal Education Budget will be additional funding.

SEN Code of Practice: 0 to 25 years – 9.112 states:

“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 wholly or partly from the Local Authority's high needs funding. It is this latter funding that is used for Personal Budgets, although

schools and colleges should be encouraged to personalise the support they provide and they can choose to contribute their own funding to a Personal Budget (this will usually be an organised arrangement managed by the setting, but some schools and colleges, including specialist settings, have made innovative arrangements with young people, giving them direct (cash) payments”).

High needs funding can also be used to commission services from schools and colleges, including from special schools. In practice, this will mean the funding from the Local Authority’s high needs budget for the SEN element of a Personal Budget will vary depending on how services are commissioned locally and what schools and colleges are expected to provide as part of the Local Offer”.

Personal Health Budget:

A Personal Health Budget is an amount of money to support the identified healthcare and wellbeing needs of a child/young person. It is planned and agreed between parents/carers and the local Integrated Care Board (ICB). Personal Health Budgets give children/young people with complex health conditions and disabilities more choice and control over the money spent on meeting their needs.

If a child has support from Children’s Continuing Care (CCC) the family may be eligible for a Personal Health Budget. There are exceptional circumstances where a Personal Health Budget can be awarded if the child does not have support from CCC. In the first instance, parents/carers should contact their CCC key contact for advice. As part of the Education, Health and Care Plan process, however, they may request a Personal Health Budget at the point they are informed that an EHC plan will be prepared or during a statutory review of an existing EHC plan and in this instance, the request would be made to the Integrated Care Board via the SEND Casework Team.

Personal Social Care Budget

For a Personal Social Care Budget, there has to be involvement from a Social Worker. Parents/carers/young person can liaise directly with the social worker. If the child/young person does not have a social worker and parents/carers would like an assessment of social care they should call First Contact on 03000 267 979.

Requesting a Personal Budget

- a) Parents/carers of a child or young person with an EHC plan can make a request. If a parent/carer makes a request for an adult aged between 18-25, the adult’s views and preferences will be considered.
- b) A young person with an EHC plan can independently ask for their own Personal Budget after the end of the school year in which they become 16.

Parents/carers/young person have a right to request a Personal Budget:

- a) When the Local Authority (LA) has completed an EHC needs assessment and confirmed that it will issue an EHC plan.
- b) During a statutory review of an existing EHC plan.

Parents/carers/young person will need to complete a Request Form. They will need to source providers, calculate the costs of provision, plan where the proposed provision will take place and draft the budget, based on the outcomes within Section E and provision within Section F of the EHC plan. When a Personal Budget is requested, any supporting evidence from all professionals actively involved should also be submitted. This might include any historical assessments and/or reports that are relevant or important to the particular request.

The LA will also seek assurance from parents/carers/young person that any person employed by them, but working on early years, school or college premises, will conform to the policies and procedures of that institution and may write such an assurance into the conditions for receipt of the direct payment.

Provision which could be included in a Personal Budget

The provision to be delivered through a Personal Budget will be set out as part of the provision specified in the EHC plan. For Personal Budgets relating only to education (i.e. no health/social care element), provision should be for term-time only. Where a Personal Budget has been agreed, the plan **must** also set out the details of the needs and outcomes to be met by the budget and the arrangements for any use of direct payments including the services that they will be used for, the amount and frequency of the payments and arrangements for review. Direct payments **must** be set at a level that will deliver the provision specified in the plan.

Elective Home Education (EHE)

In cases where Section I of the EHC plan names the setting where the child/young person or adult will be educated and parents/carers decide to educate at home, the LA is **not** under a duty to make the special educational provision set out in the plan. This also includes agreeing to a Personal Budget, however, they still have the right to request one, but the request would have to meet the criteria set out in the guidance.

If the LA, however, agrees with parents/carers that Elective Home Education would be the correct provision/educational setting then the LA will consider a Personal Budget request as part of the provision that is put in place.

Decision Making

When a Personal Budget is requested, senior officers within the LA will consider the request, information and supplementary evidence. They will consider the needs and desired outcomes of the child/young person and how a Personal Budget could help in meeting these. They may have further questions about the request or require further supporting evidence. At this point, other professionals may need to be consulted. The LA will give a timescale for any further information to be gathered and brought back to them.

If a Personal Budget is agreed:

a) Parents/carers/young person will receive a letter stating a Personal Budget has been agreed. This will outline the provision, associated costs and the date that the

Personal Budget has been agreed to. It will usually be awarded for one year – until the first or next statutory annual review. Timescales can vary dependent upon circumstances, but the SEND Caseworker will always discuss timescales with the family. At the time of the statutory annual review of the EHC plan, parents/carers/young person must submit a new request for a Personal Budget for the following year.

b) Information relating to the Personal Budget must be written in Section J of the EHC plan. This will include information on how the budget will be managed, the cost of the Personal Budget, what the budget will be used for, and which outcomes it is linked to.

c) Most Personal Budgets are paid via a Direct Payment. The SEND Caseworker will send the relevant documents to the Direct Payments Team. Parents/carers/young person will be allocated a Direct Payments Officer, and they will go through the legal process with them. They must sign a written agreement at the outset which clarifies how the Direct Payment is to be spent and which agencies/providers can be used. There is a legal duty for the family to retain and submit receipts/invoices and contribute to the Direct Payment Team's periodic reviews and the annual audit. The Direct Payments Team will not release funds until they are satisfied with the evidence that they receive. Any unspent monies will need to be returned to the LA each year.

If it has been agreed to fund the Personal Budget in a different way, this will be explained to parents/carers/young person when it is set up.

Reasons for not agreeing to a Personal Budget:

A Personal Budget will **not** be agreed if:

- it falls outside the scope of this policy on eligible spend;
- it does not meet the child's needs, provision, aspirations or outcomes outlined in the EHC plan;
- the request is for private therapy, e.g. an independent Occupational Therapy or physiotherapy programme, when it is available through the NHS;
- it does not represent value for money for the LA or where it would not be an efficient use of services;
- the cost of the specified special educational provision is part of a larger sum that cannot be separated without having an adverse impact on other services (such as provision within a school).

The regulations about Personal Budgets state the following:

“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(a), 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;

b. a person who is subject to an alcohol treatment requirement, as defined by section 212 of the Criminal Justice Act 2003, 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(a), Chapter 6 of Part 12 of the Criminal Justice Act 2003 or Chapter 2 of Part 2 of the Crime (Sentences) Act 1997(b) subject to a non-standard 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 or a community punishment and rehabilitation order within the meaning of section 51 of that Act(c);

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(d).

f. 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 which requires the person to submit to treatment pursuant to a drug treatment requirement.

g. 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. 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”.

Review of the LA’s decision not to agree to a Personal Budget

If the LA refuses a request for a Personal Budget for special educational provision, parents/carers/young person must be informed of the reasons in writing. They have the right to request a formal review of the decision by LA officers - however this is not a legal appeal.

Parents/carers/young person would only be able to appeal to the First Tier Tribunal in exceptional circumstances. They would only be able to appeal this if they are appealing the content of Section F in the EHC plan, where some of the provision may be related to a Personal Budget.