

APPENDIX E

# **Children and Young Person's Provisional Personal Budgets Policy & Guidance     DRAFT**

**London Borough of Hammersmith & Fulham**

**Royal Borough of Kensington & Chelsea**

**Westminster City Council and**

**Hammersmith and Fulham, West London and  
Central London Clinical Commissioning  
Groups**

**Sept 2014**

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**London Borough of Hammersmith & Fulham, Royal Borough of Kensington & Chelsea, Westminster City Council and the Inner North West London Clinical Commissioning Group's<sup>1</sup>**

**Children and Young Person's Provisional Personal Budgets Policy & Guidance**

**1. Introduction**

The Children and Families Act 2014 introduces new duties, policies and procedures for Local Authorities and Clinical Commissioning Groups (CCGs) and the support they provide to children and 'young people' with Special Educational Needs (SEN) and/or disabilities. A 'young person' in this context is a person over compulsory school age and under 25.

The Children and Families Act 2014 replaces Statements of Special Educational Needs and introduces Education Health and Care (EHC) Plans which include the right to request a Personal Budget.

In accordance with the Special Educational Needs and Disability Code of Practice 2014<sup>2</sup>, local authority and health partners (CCGs) **must** set out their joint commissioning arrangements for agreeing Personal Budgets and this is the purpose of this policy and guidance. The eligibility criteria for personal budgets and how they may be accessed must also be published in the Local Offer.

The Special Educational Needs (Personal Budgets) Regulations 2014 were approved by Parliament on the 18 June 2014. Personal budgets will be offered alongside the introduction of Education, Health & Care (EHC) Plans and children and young people assessed as needing an EHC plan will have the option of a personal budget from September 2014. The Code defines a personal budget in the following terms:

'A personal budget is an amount of money identified by the local authority to deliver provision set out in an EHC plan where the parent or young person is involved in securing that provision.' **SEN and Disability Code of Practice June 2014 P167 para. 9.95**

'Personal Budgets should reflect the holistic nature of an EHC plan and can include funding for special education, health and social care provision. They should be focused to secure the provision agreed in the EHC plan and should be designed to secure the outcomes specified in the EHC plan.' **SEN and Disability Code of Practice June 2014 P167 para. 9.98**

The Tri-Borough and Inner North West London Clinical Commissioning Group's (INWL CCGs) Children and Young Person's Personal Budgets Policy and Guidance provides:

- A clear statement of eligibility criteria and the decision-making process.
- A description of the services across Education, Health and Social Care that lend themselves to personal budgets.
- The mechanisms of control available to parents and young people including:

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<sup>1</sup> Hammersmith and Fulham, West London and Central London Clinical Commissioning Groups (CCGs)

<sup>2</sup> Page 37 Para 3.38

- § Direct payments - where individuals receive the cash to contract, purchase and manage services themselves
- § An arrangement - whereby the local authority, school or college holds the funds and commissions the support specified in the EHC plan (sometimes called notional budgets)
- § Third party arrangements - where funds (direct payments) are paid to and managed by an individual or organisation on behalf of the child's parent or the young person
- § A combination of the above

## **2. Policy Statement**

**The London Borough of Hammersmith & Fulham, the Royal Borough of Kensington & Chelsea and Westminster City Council**

And

**Hammersmith & Fulham CCG, West London CCG and Central London CCG**

are jointly committed to implementing the Children & Families Act 2014 and specifically:

- Publishing a local offer of services for children and young people with special educational needs and/or disabilities
- Working together to assess, agree and review Education, Health and Care Plans
- Developing joint commissioning arrangements to deliver services for children and young people with special educational needs and/or disabilities
- Offering a personal budget option where an EHC Plan has been agreed
- Extending the services where a personal budget can be applicable over the next two years (2015-17)

This policy and guidance will be reviewed with parents, young people and CCG partners in March 2015 and revised as is appropriate.

## **3. Personal Budgets**

Information will be provided on Personal Budgets as part of the Tri-Borough and INWL CCG Local Offer and a Personal Budget will be prepared when requested by Parents/Young Person.

Parents/Young Person have the right to request a Personal Budget when a local authority has completed an EHC needs assessment and confirmed that an EHC plan will be prepared. They may also request a Personal Budget during a statutory review of an existing EHC plan.

As required by the published SEN and Disability Code of Practice, Personal Budgets will be focused to secure the provision agreed in the EHC plan and will be designed to secure the outcomes specified in the EHC plan.

## **4. Eligibility Guidance - what types of person budget can we make?**

A child or young person is eligible for a personal budget under the Children and Family Act 2014 if they have been assessed for an EHC Plan and additional needs have been identified and a EHC Plan is to be put in place.

Local authorities must consider each request for a personal budget on its own individual merits. If a local authority is unable to identify a sum of money they should inform the child's parent or young person of the reasons. The Personal Budget can be used in the following ways:

- The Local Authority producing a notional budget summarising resources and how they will be deployed
- A direct payment directly to the young person or family
- A direct payment arrangement to a third party which can include a broker, provider or nominee
- A combination of the above

Additionally, a young person under 18 will be eligible for a direct payment if they meet national children's continuing care criteria.

Furthermore, young people older than 18 will be eligible for a direct payment

## **5. Setting and Agreeing a Personal Budget**

It is for the Local Authority to determine how it calculates the level of personal budget and this should be done as an indicative figure in the first instance.

Some local authorities have decided to use resource allocation or banding systems to calculate this board funding figure. As these systems have a number of flaws, the broad funding figures will be calculated by estimating the amount of activity or service required and the relevant unit costs involved. All figures discussed at this stage are indicative only.

Where a direct payment is provided it must meet the costs of delivering the provision set out in the EHC Plan.

The Local Authority should set out clearly the appeal arrangements where the parent/young person disagrees with the personal budget allocation or alternative that a personal budget has been refused.

## **6. Services that can be considered as part of a Personal Budget or Direct Payment**

From Sept 2014 the following will be available within a personal budget:

- Home to School Travel Assistance (see appendix 1)
- Personal Care
- Short Breaks
- Equipment and disposables

During 2014-15 the three local authorities and staff from the three CCGs will work with local parents to increase the scope of personal budgets based on the needs of children and young person and the provision that is available locally.

An immediate area for consideration will be how and when personal budgets could be utilised for therapy needs identified in EHC Plans, where the therapy provision could be delivered by an alternative provider and/or at a cheaper cost to the Local Authority than through NHS block therapy contracts.

Personal budgets may not be offered for services where the funding has been already delegated to the providers e.g. a school or college or where it is not possible to separate the funding allocated to the setting.

Additionally, where the support or service is to be delivered in a school, early years setting or college, the Head Teacher must agree to the arrangement and where they do not, the personal budget cannot be implemented in school. The local authority should also seek assurances from the parent, young person or nominee that any person employed by the young person or parents will conform to the policies and procedures of that institution and this may be written into the direct payment funding agreement.

## **7. Person Centred Planning**

Young people and parents must be consulted and actively involved throughout the assessment and production of an EHC Plan. This includes a focus on a young person as an individual, allowing parents and young people's views to be expressed and involving the family in the decision making process. This approach is often referred to as person centred planning<sup>3</sup>. This approach should also be applied to personal budgets.

## **8. Advice and Support for Families**

Local authorities must provide information to parents and young people about which organisations can offer advice about personal budgets so that families can make informed decisions.

This can include local parent's organisations and local and national voluntary organisations who will provide an independent view.

A programme of training will also be delivered to relevant local authority and health staff including keyworkers and social workers to ensure that there is a consistent approach and that they are able explain the personal budget options, benefits and responsibilities that individuals and families should consider.

## **9. Education**

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.

The amount of funding will generally come from the "High Needs Block" and it will be the "top up" funding that is allocated by the Local Authority to an EHC Plan that will be used to form the personal budget.

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<sup>3</sup> See section 9.20 – 9.29 for full description: SEN and Disability Coded of Practice: 0 to 25 Years June 2014

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.

With the agreement of the Head Teacher schools can agree to contribute their own funding to a personal budget.

## **10. Social Care**

The Care Act 2014 mandates a personal budget as part of the care and support plan for people over 18 with eligible care and support needs. The Act also clarifies people's right to request a direct payment to meet care and support needs and covers people without capacity to request direct payments.

For children under 18 local authorities are under a duty to offer direct payments for services which local authorities provide to children with disabilities under section 17 of the Children Act 1989.

## **11. Personal Health Budgets**

Personal Health Budgets for health care are not appropriate for all aspects of NHS care. Full details of excluded services are set out in guidance provided by NHS England and include primary medical (i.e. GP services) and emergency services.

Since April 2014 everyone receiving NHS Continuing Health Care (including children's continuing health care) has the right to ask for a personal health budget. From October 2014 this group will have the 'right to have' a personal health budget.

Young people reaching the age of 18 may require a health assessment to determine eligibility for 'adult' Continuing Health Care support.

## **12. Direct Payments**

Direct payments are payments made directly to a child's parent, the young person or their nominee. This allows them to arrange provision themselves. They must be set at a level that will secure the provision specified in the EHC Plan. If a direct payment is not set at a suitable level it must be reviewed and adjusted.

A local authority must not make a payment for the purposes of funding a school place or post-16 institution.

Direct payments for special educational provision, health care and social care provision are subject to separate regulations:

- The community Care, services for Carers and Children's Services (Direct Payments) Regulations 2009 (to be replaced by the Care Act 2014)
- The National Health Service (Direct Payments) Regulations 2013
- The Special Educational Needs (Personal Budgets) regulations 2014

These regulations make common requirements including covering consent, use of nominees, conditions of receipt, monitoring and review of direct payments and persons to

whom direct payments **must not** be made (such as those subject to certain rehabilitation orders).

Education and Social Care must be satisfied that the person receiving the direct payment will use them appropriately in the best interest of the child.

Additional requirements include considering the impact on other service users, value for money and seeking the agreement of educational establishments where a service funded by direct payments is delivered in their premises.

Direct Payments for Health require the agreement of a Care Plan between the CCG and the recipient. This will include:

- The health care needs to be met and the outcomes to be achieved
- The things the payment will be used to purchase
- The name of the care co-ordinator managing the care plan
- Who is responsible for monitoring the health condition
- The date of the first review
- The notice required if the CCG decides to reduce the direct payment
- A procedure for discussing risk
- Where people lack capacity and are vulnerable, the plan should consider safeguarding, promoting liberty and where appropriate set out any restraint procedures<sup>4</sup>.

If the local authority refuses a Direct Payment they must explain their decision in writing and also explain the process for review of the decision. If the refusal concerns the personal health part of the EHC plan, then the explanation for the refusal and the opportunity for a review must be provided by the CCG responsible for the decision.

### **13. Quality and Risks**

Individual young people who use education health and social care support services and their parents are able to make their own decisions and calculate and take risks which they deem to be acceptable to lead their lives their way.

Where parents or a young person takes a Direct Payment to secure a service they also accept the responsibility to ensure the service is safe and of acceptable quality.

However, in order to ensure that provision secured by parents or young people is 'fit for purpose' local authorities and CCGs have a responsibility to ensure that those choosing to take direct payments have access to independent organisations as well as informed and expert advice from local authority of health staff. This can include guidance on questions to ask when engaging a service provider and suggestions on how to monitor quality of delivery.

### **14. Safeguarding**

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<sup>4</sup> SEN and Disability Code of Practice June 2014 P172 para 9.123/4



Young people and families must be given appropriate advice and information on the relevant safeguarding issues to be considered and the steps that can be taken if concerns arise in relation to securing provision from third party providers.

### **15. Agreement for Direct Payments**

A parent or young person who chooses to proceed with a direct payment as part of their personal budget will be required to have a separate bank account to receive the funding and making payments for services or equipment purchased. The bank account must solely be used for this purpose. The local authority is currently developing the use of payment cards for the purpose of direct payments funding and payment.

The local authority will also require a Direct Payment agreement to be signed which will also cover personal health budgets where relevant.

It is important that the agreement is read carefully and understood.

The purpose of the agreement is to ensure that the parent or young person understands how the direct payment is to be spent. It will explain what the responsibilities are for the person receiving the money and also the responsibilities the council and the CCG holds in providing the direct payment.

The agreement will identify the amount of the personal budget that is to be allocated as direct payments. Funding will be paid in equal instalments. Unless specifically agreed with the key worker.

As part of the agreement the parents or young person must ensure that the services purchased do meet the needs of the child or young person, as identified in the EHC plan and the funding available in the personal budget. It is important that the funding supports the outcomes of the young person and does not impact adversely on the agreed outcomes.

It is a requirement that the Direct Payment will be spent on purposes agreed as part of the EHC plan agreed with the key worker and not for any other purposes.

Where it is confirmed that funding has not been used for the purpose intended, then the ability to use this facility will be stopped with immediate effect. Any money spent on services not agreed with the local authority must also be paid back.

The parent or young person receiving the Direct Payment must ensure that the quality and viability of the providers is sufficiently robust to deliver the required service and outcomes.

Any money not used at the end of the financial year or the end of the EHC plan must be returned to the local authority.

### **16. Accountability of Public Funds**

In order for the system of personal budgets and in particular the direct payments to work effectively, there is a need for mutual trust and acceptance that the allocation of funds will only be used for the purpose intended and as set out in the funding agreement. The use of the funds for any items not agreed with the local authority or CCG will be a breach of the agreement. The implications of this will be laid out in detail in the agreement and can include

- Cessation of Direct Payments
- Return of funds to the local authority
- In the event that fraud is suspected i.e. intentional miss-use of public funds, the matter will be reported to the Police Authority. This may lead to prosecution and a criminal record.

The local authority and the CCG as the custodians of public funds are required to ensure that any public funds are used for the purpose intended. This includes the requirement for accountability for funds transferred to third parties which include direct payments.

The local authority will therefore undertake regular monitoring and review of the use of funding. Recipients of Direct Payments will be required to work effectively with the local authority to support this process. It should be noted that reviews will be in part random recognising that all recipients at some stage will be reviewed. This will include access to any records of payments /contracts including invoices, bank statements etc.

It should also be noted that this process supports the periodic reconciliations of returns e.g. bank statements, invoices etc.

## **17. Legal**

Relevant Legislation:

Section 49 of the Children and Families Act 2014, the Special Educational Needs (personal Budgets) Regulations 2014, the Community Care, services for Carers and Children's Services (Direct Payments) Regulations 2009 (the 2009 regulations are replaced by those made under the Care Act 2014), and the National Health Service (Direct Payments) Regulations 2013.

## **18. Extending Personal Budgets 2014-17**

Working with local parents and young people, the Tri-B local authorities and the Inner London CCGs will be working to expand the needs and services covered by personal budgets.

This will include looking at identified therapy needs as an immediate priority for early inclusion.

Where parents have chosen to make their own travel arrangements they are able to request a Direct Payment for home to school/college transport on behalf of their son or daughter, if they are eligible for transport support. Direct Payments cannot be used where a family has opted to use the local authority transport.

### **Eligibility Guidance for Home to School Travel Assistance**

The statutory walking distance for travel, which applies to all children and young people is up to 2 miles for children aged under 8 and up to 3 miles for children and young people aged over 8. However, in addition to a child's age, Education will also take in to account a child or young person's level of need.

The fact that a child or young person has an EHC Plan does not in itself entitle them to Home to School Travel Assistance to and from school. Most children and young people are able to travel to and from school, accompanied by a parent/carer if necessary. Additionally, depending on the age and need of the child/young person, Education are able to provide travel training to help young people travel independently.

Education are also able to assist in cases where a child or young person can travel by foot or public transport, but needs accompanying in order to remain safe.

In some cases however, the only practical way for a child or young person to travel to and from school is in a vehicle. Where this is necessary, parents can ask for the costs of the transport to be given in the form of a Direct Payment. The guiding principle is that the amount provided cannot exceed the amount it would cost the local authority to make provision.

In taking a Direct Payment for transport provision, parents assume full responsibility for ensuring their son or daughter gets to school/college on time and ready to learn.

Direct Payments cannot be used to purchase alternative passenger assistants on local authority transport.

### **Budgets**

Transport budgets may be made up of one or two elements: mileage and, in some cases, a passenger assistant.

#### **Mileage**

The amount payable per mile is governed by Her Majesty's Revenue & Customs (HMRC) rates. The amount allowed is increased from time to time and the actual payment made will reflect this.

#### **Passenger Assistant and Walking Escort**

Where it is agreed that a young person needs either a walking escort or a passenger assistant an assessment will be made of the journey time. The journey time will be measured from the home address to the school/college. Assistants/Escorts will be paid for both the out journey with the child/young person, and for their own journey back to the home address.

**Carer**

Where a child or young person has a medical need that requires a more highly trained carer to accompany them, the hourly rate will be agreed on a case by case basis.