

## Information in relation to Personal Budgets: Education

### Relevant guidance / legislation

- **The Special Educational Needs (Personal Budgets) Regulations 2014. SI 1652**  
[http://www.legislation.gov.uk/ukxi/2014/1652/pdfs/ukxi\\_20141652\\_en.pdf](http://www.legislation.gov.uk/ukxi/2014/1652/pdfs/ukxi_20141652_en.pdf)
- **SEND Code of Practice (Dated January 2014 but which came into force April 2015)**  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/398815/SEND\\_Code\\_of\\_Practice\\_January\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf)
- **Children and Families Act 2014**  
<http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted>

### What is an educational Personal Budget?

This is the amount of money needed to make any of the special educational provision for a child or young person as specified in their EHC plan. This is the unique provision (as set out in the EHC Plan) that is *additional to and different from* the universal support offered within a school or setting which the child or young person has been assessed as needing in order to support them to achieve their outcomes.

### When can I request a personal budget?

During a statutory assessment process, following an Annual Review or during a re-assessment a parent or young person (YP) can request the Council to prepare an Educational Personal Budget in relation to their or their child's EHC Plan. This is the amount of money it costs to meet the education needs of the CYP as set out in the EHC Plan. Whilst the Council does not routinely include the total cost of the personal budget on every child or young person's plan, every parent, carer or young person as defined by the Children and Families Act 2014 can request that the Council prepares a budget. The Local Authority will prepare a budget when requested. SEN case officers will discuss this with parents or carers and young people during the Statutory Assessment process or following an Annual Review. Where the LA, school or college holds the funds and commissions the support specified in the EHC Plan, it is called a *notional* personal budget.

### What types of personal Budgets are there?

- 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 ( 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

### How much 'say' do I have in how much the personal budget will be?

As part of the SA or annual review process the LA must take into consideration the views of the parent/carers or young person – this is often referred to as co-production. These views are gathered during the statutory assessment and consultation or the annual review process and are taken into consideration when finalising or amending an EHC Plan. It is the cost of the provision, as outlined in section F of the EHC Plan that the child or young person requires, which is the value of the personal educational budget. This will be different for every child and young person and is based on their assessed needs.

### **How are Educational Personal Budgets Funded?**

Schools and academies funding comprises of three different amounts.

- Element 1 funding, which all schools and academies receive (previously known as AWPU). This part of funding cannot be used for a personal SEN budget.
- Element 2 funding – the costs associated with targeted support. The national funding formula means that schools and academies are required to fund the first £6,000 of targeted support.
- Element 3 funding – also known as High Needs funding. It is this amount of funding that can be used for direct payments

### **What is a Direct Payment?**

In some cases the parent, carer or young person would like to make the arrangements for securing the provision themselves. Where the LA agrees to such request it will provide a sum of money directly to the parent, carer or young person and they make the arrangements. This will be in the form of a direct payment.

### **Do I have to have a direct payment**

No! The majority of parents, carers and young people are happy for the LA to make the arrangements for the provision as outlined in the EHC Plan. In cases where the LA agrees to provide a direct payment this will be when a parent, carer or young person has requested it.

### **How do I request a Direct Payment?**

If a parent, carer or young person would like to have a direct payment they need to make a request in writing to the caseworker. Once the LA has identified the amount of funding available for a direct payment it will make a decision as soon as is reasonably possible - the expectation is that a decision will be made within 10 working days. There may be occasions when a decision will take longer because the LA is seeking further information or is in discussion with the education setting about this matter. The caseworker will notify you if it will take longer than 10 working days.

### **What happens if the LA says no – can I appeal to Special Educational Needs and Disability (SEND) Tribunal?**

A parent, carer or young person is able to ask the LA to make a review of the decision. There is no right of appeal to SEND Tribunal. Requests for reviews of the decision need to be made in writing and addressed to the SEN Area Manager responsible for overseeing the case. The person making the request for a review needs to notify the Council within 5 days of the date of the decision letter and include the reasons why they are asking for a review, the outcome they are hoping for and provide any further information to support their request. The Council will review the decision and write to them with the outcome of that review, normally within 10 working days.

The Council will only undertake one review and the outcome of that review is final.

### **In what circumstances can the Council consider a Direct Payment?**

- The Council can consider a direct payment when the cost of the educational support in a school or academy exceeds £6,000 and is funded through High Needs Funding (HNF)
- The Council can consider Direct Payments where there is substantial medical evidence that demonstrates a child or young person cannot be educated in a school. These cases are exceptionally rare.
- The Council will consider direct payments for Personal Transport Budgets where the CYP is eligible for assistance. Please see <http://www.kent.gov.uk/roads-and-travel/school-transport/school-transport-for-children-with-special-educational-needs/personal-transport-budgets>

Please note that SCARF funding (support to nursery settings) is not available for a direct payment

### **Examples of where the Council has funded a Direct Payment**

The use of direct payments within education is new and is therefore developing. The numbers of Direct Payments are increasing but there are still relatively few options for direct payments as much of our services are already commissioned and cannot be disaggregated. The way in which the Council commissions Special School places and Specialist Resource Provisions for example means we cannot disaggregate this funding for a direct payment.

Example 1: for a child who cannot be educated in a school setting

*Travelling for one child was widely evidenced to cause her extreme levels of pain and distress because of the nature of her physical difficulties; in fact, her discomfort was such that this child was housebound unless emergency intervention was required from a clinical setting (hospital). Professionals, including NHS staff needed to make home visits to deliver services. As a result of this, the Council made arrangements for education to be delivered in the home environment. Initially the Council was responsible for making the arrangements but after a period of time, the parent requested that this be made available as a direct payment. This was agreed.*

*Personal Transport Budget:*

- *Over 200 families have had a personal transport budget agreed. This allows parents or carers greater flexibility and has been very popular. More information on Personal Transport Budgets can be found via the following link <http://www.kent.gov.uk/roads-and-travel/school-transport/school-transport-for-children-with-special-educational-needs/personal-transport-budgets>*

### **I have decided to Electively Home Educate my child – can I receive a direct payment?**

The Council recognises that many parents choose to Electively Home Educate their child. The Children and Families Act Para 61 (2) makes clear the LA can only make arrangements for Education Other Than At School (EOTAS) if it is “satisfied that it would be inappropriate for the provision to be made in a school or post-16 institution or at such a place”.

In general where a school placement would be able to meet the needs of a child or young person but the parents decide to electively home educate their child, the parent or carer would remain financial responsible.

### **Where can I get more advice about Direct Payments?**

- IASK - [https://www.kent.gov.uk/\\_data/assets/pdf\\_file/0006/18735/IASK-personal-budgets-for-Special-Educational-Needs.pdf](https://www.kent.gov.uk/_data/assets/pdf_file/0006/18735/IASK-personal-budgets-for-Special-Educational-Needs.pdf)
- Your SEN caseworker
- The Parents Consortium <http://www.cfdp.co.uk/>
- The Personal Budget Regulations (link above)
- The SEND Code of Practice (link above)
- The Children and Families Act (link Above)

### **If a Direct Payment is agreed will I receive support?**

The Parents Consortium support families in managing direct payments. They already have significant experience in supporting the families of children known to the disabled children's team and will support families who receive education direct payments. Their website focuses on Children's social service direct payments support but much of the information will apply if you have an educational Direct Payment. You can also contact them directly to find out more information about managing direct payments including your duties as an employer if you choose to use your direct payment to employ staff to deliver a service. If you would like more information about direct payments or CFDP, you can contact their helpline between 10am and 4pm, Monday to Thursday. Tel: 01322 669 245 or email [office@cfdp.co.uk](mailto:office@cfdp.co.uk). Further information is available on their website <http://www.cfdp.co.uk/about-cfdp/>

### **Conditions to be met before a Direct Payment is made**

A local authority may only make direct payments where a request has been made for direct payments to be made and the authority is satisfied that—

- the recipient will use the funds to secure the agreed provision in an appropriate way;
- where the recipient is the child's parent or a nominee, that person will act in the best interests of the child or the young person when securing the proposed agreed provision;
- the direct payments will not have an adverse impact on other services which the local authority provides or arranges for children and young people with an EHC plan which the authority maintains; and
- securing the proposed agreed provision by direct payments is an efficient use of the authority's resources. *For example, in the cases of a request for a Personal Transport Budget (PTB) the Council may refuse to provide a PTB if to do so would cost the Council more than making its own arrangements.*

The Council **cannot** make direct payment in respect of any goods or services that are to be used or provided in a school or post-16 institution without the written consent of the head teacher, principal or the person occupying an equivalent position.

The Council **cannot** make direct payment in respect of any goods or services which are to be used or provided on premises where relevant early years education is provided without the written consent of the provider of the relevant early years education.

Local authorities **must not** make direct payments for the purpose of funding a school place or post-16 institution.

### **Direct payments may only be made to an intended recipient if the person—**

- appears to the local authority to be capable of managing direct payments without assistance or with such assistance as may be available to them;
- is over compulsory school age;
- does not lack capacity within the meaning of the 2005 Act to consent to the making of direct payments to them or to secure the agreed provision with any direct payment; and
- is not a person described in the Schedule.

The LA will not make any direct payments to persons as set out in the schedule of the Personal Budget Regulations (see appendix 1 for a copy of that schedule)

### **Conditions for direct payments**

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 or through the Kent Card.

### **Upon receipt of a notice the recipient must notify the local authority in writing that they agree to—**

- receive the direct payments;
- use the direct payments only to secure the agreed provision;
- comply with any conditions specified in the notice under paragraph (2)(d);
- notify the local authority of any changes in circumstances which might affect the need for the agreed provision;
- use the bank account approved by the local authority or the Kent Card solely for the purposes of one or more of the following—
  - these direct payments;

- direct payments made pursuant to the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009(a);
- direct payments made pursuant to the National Health Service (Direct Payment) Regulations 2013(b);
- ensure that the bank account approved by the local authority is only accessible by the recipient or any other person approved in writing by the local authority; and
- keep a record of money paid in and withdrawn from the bank account approved by the local authority and, on request, or at intervals specified by the local authority, provide the local authority with information or evidence relating to—
  - the account; and
  - the agreed provision.

The local authority must ensure that the amount of direct payments is sufficient to secure the agreed provision.

The local authority may increase or reduce the amount of direct payments provided that the authority is satisfied that the new amount is sufficient to secure the agreed provision.

**The local authority may reduce the amount of direct payments where—**

- payments remain unused; and
- the local authority considers that it is reasonable to offset unused direct payments against
- the outstanding amount to be paid.

**Monitoring and review of direct payments**

The local authority must review the making and use of direct payments—

- at least once within the first three months of direct payments being made; and
- when conducting a review or a re-assessment of an EHC plan under section 44 of the 2014 Act.

When carrying out a review, a local authority must consider whether—

- it should continue to secure the agreed provision by means of direct payments;
- the direct payments have been used effectively;
- the amount of direct payments continues to be sufficient to secure the agreed provision;
- it is still satisfied as to the matters set out in regulation 6; and
- the recipient has complied with the conditions set out in regulation 8(3).

**Reducing the amount of direct payments**

- Where a local authority decides to reduce the amount of direct payments it must provide reasonable notice to the recipient, and must set out in the notice the reasons for its decision.
- The local authority must reconsider its decision, where requested to do so by the recipient.
- When conducting its reconsideration, the local authority must consider the representations made by the recipient (and where the recipient is a nominee, any representations made by the child's parent or the young person) and must then provide written reasons to the recipient (and to the child's parent or young person, where the recipient is a nominee) of its decision following the reconsideration.
- The local authority is only required to undertake more than one reconsideration of a Decision.

**Repayment and recovery of direct payments**

- A local authority may require the recipient to repay part or all of the direct payments, where—
- the circumstances of the child or young person have changed in a manner which has an impact on the appropriateness of the agreed provision;
- all or part of the direct payments have not been used to secure the agreed provision;

- theft, fraud or another offence may have occurred in connection with the direct payments;
- the child or young person has died.

The local authority may only seek repayment of any portion of the direct payments that has not already been spent on the agreed provision.

Where a local authority decides that all or part of the direct payments must be repaid, the local authority must give notice in writing to the recipient, setting out—

- the reasons for the decision;
- the amount to be repaid; and
- a reasonable timescale within which the amount must be repaid.

The local authority must reconsider its decision where requested to do so by the recipient.

### **Stopping making direct payments**

- A local authority must stop making direct payments if—
- the recipient has notified the local authority in writing that he or she no longer consents to receive the direct payments;
- the recipient ceases to be a person to whom a direct payments may be made;
- following a review under regulation 11, it appears to the local authority that—
- the recipient is not using the payment to secure the agreed provision;
- the agreed provision can no longer be secured by means of direct payments;
- at any point the local authority becomes aware that the making of direct payments is—
- having an adverse impact on other services which the local authority provides or arranges for children and young people with an EHC plan which the authority maintains; or
- no longer compatible with the authority's efficient use of its resources;
- it has taken reasonable steps under regulation 15(1) to ascertain whether the young person consents to direct payments and the young person has not notified the local authority that he or she consents to receive direct payments.

Where a local authority decides to stop making direct payments, the local authority must first give notice in writing to the recipient setting out the reasons for its decision.

### **Transition: when a child becomes a young person**

- Where a child in respect of whom direct payments are being made becomes a young person, the local authority must take reasonable steps to ascertain whether the young person consents to receive direct payments.
- Where the young person has notified the local authority in writing that he or she wishes to receive direct payments, the local authority must make direct payments where the making of such payments is in accordance with regulations 5 and 6.
- Where the young person consents in writing that the local authority continues to make direct payments to the young person's parent or the nominee, the local authority must do so.
- Where the young person notifies the local authority in writing that they do not consent to the making of direct payments, the authority must stop direct payments as soon as reasonably practicable.

## Appendix 1

### SCHEDULE

#### Regulation 5(2)(d)

#### Persons to whom direct payments may not be made

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(b) or by a suspended sentence order within the meaning of section 189 of that Act(c);
- (b) a person who is subject to an alcohol treatment requirement, as defined by section 212 of the Criminal Justice Act 2003(d), 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(e), Chapter 6 of Part 12 of the Criminal Justice Act 2003(f) or Chapter 2 of Part 2 of the Crime (Sentences) Act 1997(g) subject to a 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(a) or a community punishment and rehabilitation order within the meaning of section 51 of that Act(b);
- (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(c);
- (f) a person who is 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(d) which requires the person to submit to treatment pursuant to a drug treatment requirement;
- (g) a person who is 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) a person who is 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.

(a) 2003 c.44; section 209 has been amended by section 6(2) of, and paragraphs 71 and 88 of Schedule 4 to the Criminal Justice and Immigration Act 2008 (c.4) ("the Criminal Justice Act 2008") and section 74(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) ("the Legal Aid Act").

(b) Section 177 has been amended by section 6(2) of, and paragraphs 71 and 88 of Schedule 4 to the Criminal Justice Act 2008; sections 66, 70, 72 and 76 of the Legal Aid Act; and section 44 of and Schedule 16 to the Crime and Courts Act 2013 (c.22).

(c) Section 189 has been amended by S.I. 2005/643, and section 68 of the Legal Aid Act.

(d) Section 212 has been amended by section 75 of the Legal Aid Act.

(e) 1991 c.53. Sections 34A and 35 have been repealed, with savings, by sections 303 and 332 of, and Schedule 37 to the Criminal Justice Act 2003 (c.44) ("the 2003 Act").

(f) Heading to Chapter 6 of Part 12 substituted by section 111 of, and Schedule 14 to the Legal Aid Act. Section 244 has been amended by section 31 of, and Schedule 6 to the Domestic Violence and Crime Act 2004 (c.28); sections 89, 111, 114, 120, 121 and 125 of, and Schedules 10, 14, 15, and 17 to, the Legal Aid Act. Section 246, has been amended by section 378 of, and Schedule 16 to, the Armed Forces Act 2006 (c.52), section 24 of the Criminal Justice Act 2008; sections 89, 110, 111, 112, 120 and 125 of, and Schedules 10, 14, 15 and 20 to, the Legal Aid Act. Section 246A was inserted by section 125 of the Legal Aid Act. Section 247 has been amended by sections 25, 121 and 149 of, and Schedules 17 and 28 to the Criminal Justice Act 2008.

(g) 1997 c.43. Subsections (1A), (1B) and (5)(a) of section 28 substituted for subsections (1) to (5)(a) as originally enacted by section 74 of, and Schedule 7 to the Criminal Justice and Court Services Act 2000 (c.43) and further substituted by section 275 of the 2003 Act. Subsection (7)(c) has been amended by section 119 and Schedule 8 to, the Crime and Disorder Act 1998. Subsection (8A) was inserted by section 275 of the 2003 Act. Section 28(1B) has been modified by section 74 of, and