

#15 Personal Budgets

ASK THE JUDGE



Frequently asked questions for parents and young people

These Frequently Asked Questions have been prepared to provide a summary of the key duties on local authorities following the introduction of the Children and Families Act 2014. They are not to be treated as providing legal advice and should be used as a guide only.

If legal advice is required contact SEN4You directly on 01908 082422 or Advice@SEN4You.co.uk

KEY STATUTORY REFERENCES

- Section 49 of the Children and Families Act 2014,
- The Special Educational Needs (Personal Budgets) Regulations 2014,
- DfE Guidance, Support and Aspiration Introducing Personal Budgets October 2013
- The Community Care, services for Carers and Children's Services (Direct Payments) Regulations 2009 (the 2009 regulations will be replaced by those made under the Care Act 2014), and
- The National Health Service (Direct Payments) Regulations 2013

What is a Personal Budget?

A Personal Budget is 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 or young person is involved in securing that provision. The funds can be held directly by the parent or young person, or may be held and managed on their behalf by the local authority, school, college or other organisation or individual and used to commission the support specified in the EHC Plan.

What is a direct payment?

A direct payment (DP) is money given to individuals to buy the support they have been assessed as needing.

What is the difference between a Personal Budget and a direct payment?

A Personal Budget is knowing how much cash is allocated for your child's support - you might use this information to

take a direct payment (taking the money and organising the support yourself) or you may ask the local authority to pay it directly to a company/person for a service. A direct payment is a specific amount of money given directly to the individual to arrange their own support.

Can a parent/young person request a Personal Budget?

Yes. The child's parent or the young person has a right to request a Personal Budget, when the local authority has completed an EHC Needs Assessment and confirmed that it will prepare an EHC Plan. They may also request a Personal Budget during a statutory review of an existing EHC Plan.

Are there different types of Personal Budgets?

Yes. There are different types of Personal Budgets, these include:

- **A personal social care budget:** This refers to the budget that will be made available if it is clear that a young person or child is assessed as needing additional and individual support at home and when out and about in the local and wider community;
- **A personal health budget:** This refers to the budget that will be made available should a young person or child have complex, long-term and/or a life-limiting condition/s. A personal health budget may also be made available to help with equipment costs or other health services. Children, who are supported through 'Continuing Care' funding, will have the right to request a personal health budget from April 2014. This will become a 'right to have' in October 2014. From August 2013, the NHS has the legal power to give direct payments;
- **A personal Special Educational Needs (SEN) budget:** This is a sum of money made available by a local authority because it is clear that without this additional (top-up)

funding, it will not be possible to meet the child's learning support needs. The school/college involved will already have funding for learning support across the school; only pupils or students with more complex learning support needs are likely to need a personal SEN budget. In some circumstances the head teacher/principal and school or college/learning provider may choose to offer some funding towards a personal SEN budget; this will always be the decision of the head teacher.

In all cases the availability of a Personal Budget will be based on the support a child or young person needs in order for them to achieve a set of agreed outcomes and to have their identified support needs met. In some cases, an EHC Plan may not translate into a child or young person having a Personal Budget. In other cases, a child or young person may have a Personal Budget from more than one source, i.e. social care, SEN and/or health.

What can a Personal Budget be spent on?

In the education context, it can be spent on providing the provision that is set out in the EHC Plan but does not include the place at a school or post 16 institution. It could be used to pay for:

- The provision of additional learning support - providing a more consistent offer of support to the child or young person;
- Time to bring all key parties together to bridge the gap between home and school/other learning provision and to build a team of dedicated support people (including family);
- Some specialist input;
- Work experience or work-based learning opportunity;
- The provision of additional technology to promote a pupil or student's individual style of learning.

How can parents/young people access Personal Budgets?

The local authority is required to set out in its Local Offer how Personal Budgets are to be accessed, including providing information to parents/young people in respect of the following:

- A description of the services across education, health and social care that currently lend themselves to the use of Personal Budgets;
- The mechanisms of control for funding available to parents and young people including direct payments, arrangements and third party arrangements;
- The eligibility criteria and the decision-making processes that underpin them;
- The support available to help families manage a Personal Budget.

Does the local authority have to give a parent/young person a Personal Budget if they request one?

A local authority that maintains an EHC Plan, or is securing the preparation of an EHC Plan, for a child or young person must prepare a Personal Budget for him or her if asked to do so by the child's parent or the young person. The authority prepares a "Personal Budget" for the child or young person if it identifies an amount as available to secure particular provision that is specified, or proposed to be specified, in the EHC Plan, with a view to the child's parent or the young person being involved in securing the provision.

However, the parent/young person does not have an absolute right to a Personal Budget, but they do have rights to:

- Receive information and advice;
- Have any request for a Personal Budget considered;
- Be given reasons if they are not granted a Personal Budget; and
- A review of any refusal.

Can a parent/young person be allocated more than one type of Personal Budget?

Yes. Young people and parents of children who have EHC Plans have the right to request a Personal Budget, which may contain elements of education, social care and health funding. Funding for a Personal Budget may also come from the additional resources or "top up" funding that are given to an educational setting to meet the needs of a child/young person who has an EHC Plan. However, it would be for the educational setting to agree that the funding could be used in this way as part of the Personal Budget.



How are Personal Budgets delivered?

There are four ways in which a parent and/or young person can be involved in securing provision as follows:

- 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 plan (these are 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.

Does having an EHC Plan mean that parents and or the young person are eligible for health and social care personal budgets?

No. Personal Budgets for social care and health will depend on whether the young person/family is eligible to receive assistance in accordance with the relevant statutory provisions relevant to those services.

However, local authority commissioners and their partners are expected to establish arrangements that will allow the development of a single integrated fund from which a single Personal Budget, covering all three areas of additional and individual support, can be made available.



How much money can a parent/young person expect for a Personal Budget?

It is for the local authority to determine how it calculates the level of a Personal Budget.

The local authority will take into consideration the special educational provision specified in an EHC Plan, including the 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.

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. In addition, the scope of a Personal Budget varies depending on the school preference. For example, as part of their core provision, special schools and colleges make some specialist provision available that is not normally available at mainstream schools and colleges. The particular choice of a special school, with integrated specialist provision, might reduce the scope for a Personal Budget, whereas the choice of a place in a mainstream school that does not make that particular provision could increase the opportunity for a Personal Budget.

Is there a process that local authorities have to have in place for agreeing a Personal Budget?

Yes there is, but it will vary depending on the local authority's policy and approach to the delivery of Personal Budgets. However, the steps below outline how this can be done:

- Once it is agreed that an EHC Plan is needed, a decision can be taken about the banding of additional learning funding available based upon the assessment. This funding will relate to the additional funding placed within the school/college budget to fund specific support for the child/young person, and in exceptional cases funding on top of that placed within the school budget which may be available as a potential Personal Budget;
- At the same time an allocation exercise can be undertaken if the child/young person is eligible for social care funding and/or continuing healthcare funding;
- A draft plan which sets out the provision made available in addition to that delivered through the school and via social care and health services is shared with the family. The family can then state a preference for a school or college for their child. It is at this point a family can request a Personal Budget. To support them in this decision information will be available about any potential Personal Budget and how the additional and individual funding available will be used based on the preference they make;

- Once the provision delivered through targeted support, the preferred school and any available Personal Budget has been offered/agreed in response to a request then, the family, child / young person and their support person can set how the additional and individual funding will be used and managed;
- The finalised plan will set out how all the provision, including that which is funded through a Personal Budget, will meet the support needs of the child or young person.

Can a Personal Budget be used to pay school fees/support costs?

No. Local authorities are not permitted to make direct payments for the purpose of funding a school place or post 16 institution.

Can a Personal Budget be used to pay for transport?

Yes. Transport costs may be provided as part of a Personal Budget where this requirement is agreed and included in the EHC Plan as part of the special educational provision.

Can a Personal Budget be used to obtain services that will be delivered in school/college?

Yes, if the school/college agree. The local authority must seek the agreement of the nursery, school or post 16 institution where the draft plan sets out any provision to be delivered on their premises which is secured through a direct payment. Where this includes a direct payment for SEN provision, it must include formal written notice of the proposal specifying:

- The name of the child or young person in respect of whom direct payments are to be made;
- The qualifying goods and services which are to be secured by direct payments;
- The proposed amount of direct payments;
- Any conditions on how the direct payments may be spent;
- The dates for payments into a bank account approved by the local authority; and
- Should provide details of the conditions of receipt that recipients must agree to before any direct payment can be made.

What happens if the child/young person’s educational setting does not agree to the use of a Personal Budget within the setting?

Where agreement cannot be reached, with the early years setting, school or college, the local authority must not go ahead with making the direct payment. However, they should continue to work with the child’s parent or young person and the school, college or early years setting to explore other opportunities for the personalisation of provision in the EHC Plan.

What if the provision to be provided via a Personal Budget costs more than the local authority have allocated?

The local authority must ensure that the final allocation of funding is sufficient to secure the agreed provision specified in the EHC Plan and must be set it out as part of that provision.

Does the EHC Plan have to specify the Personal Budget awarded?

Yes. Details of the proposed Personal Budget should be included in section J of the EHC Plan.

Can the Personal Budget be used to pay for support which is not set out in the EHC Plan?

No. It can only be used to pay for qualifying goods and services and those will be set out in the EHC Plan.

What if the parents/young person are unhappy with the level of Personal Budget allocated?

The local authority should provide parents/young people with details of the appeal arrangements that they have put in place if they disagree with their Personal Budget allocation or if a Personal Budget has been refused.

Can the parents/young person appeal to the SEN Tribunal about a Personal Budget?

No. The Tribunal does not hear appeals about Personal Budgets, but will hear appeals about the special educational provision to which a Personal Budget may apply.

Who is responsible for monitoring the use of the Personal Budget?

The local authority is responsible for monitoring the use of Personal Budgets and should have a clear policy in place ensuring that any provision funded is linked to meeting the outcomes identified in the EHC Plan.

