

Personal Budgets for Children and Young People (0-25 years) with Education, Health and Care Plans who live in Barnet.

1. Introduction

A Personal Budget enables the individual to have choice and control over who provides help. The help will be described as provision in the Education Health and Care (EHC) Plan and will have been agreed with the relevant service provider. This can be social care, health or education. Not all young people with an EHC Plan will meet the criteria for social care intervention from Children’s or Adult Services. It is not always possible to offer a Personal Budget.

Where a Personal Budget is agreed, payments to parents, carers, the young person or his/her nominee, are made under Direct Payment regulations.

This Personal Budget Policy applies only to those children and young people for whom an EHC Plan is maintained.

Arrangements for direct payments for adults can be found on the London Borough of Barnet website¹. Also on the web-site is information about the Disabled Children’s Team².

2. Legal Background

This Policy is framed within:

- The statutory duties on the Council and the CCG arising from section 49 of the Children and Families Act (2014)³
- The statutory guidance in the SEN Code of Practice (2014)⁴
- The Personal Budget regulations⁵

It builds on the arrangements currently in place for the provision of Personal Budgets for children and young people with SEN and disabilities. Personal Budgets are allocated as a Direct Payment. This relates to adult services as well and takes into account the requirements of the Care Act.

This policy acknowledges the different Direct Payment regulations that apply to:

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| Children and Adults Social Care Services | 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) |
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¹ <https://www.barnet.gov.uk/citizen-home/adult-social-care/support-from-the-council/direct-payments.html>

² <https://www.barnet.gov.uk/citizen-home/children-young-people-and-families/children-and-young-people-with-disabilities/disabled-childrens-team.html>

³ <http://www.legislation.gov.uk/ukpga/2014/6/section/49>

⁴ <https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

⁵ http://www.legislation.gov.uk/uksi/2014/1652/pdfs/uksi_20141652_en.pdf

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| The Health Service | The National Health Service (Direct Payments) Regulations 2013 |
| Special Educational Provision on EHC Plans | The Special Educational Needs (Personal Budgets) Regulations 2014 |

There are common requirements particularly around procedures that are about proper use of the direct payments, monitoring, review and accountability for their use.

Detailed arrangements for direct payments are set out in Section J of the EHC Plan.

3. The Policy

The SEN Code of Practice says that Local Authorities must

“ provide information on Personal Budgets as part of the Local Offer. This should include a policy on Personal Budgets that sets out a description of the services across education, health and social care that currently lend themselves to the use of Personal Budgets, how that funding will be made available, and clear and simple statements of eligibility criteria and the decision-making processes. “

This Policy includes information on:

- Section A** The provision across health, education and social care for which a personal budget may be available for children for who an Education Health and Care plan is maintained.
- Section B** Details of organisations that provide advice and help to parents and young people in relation to personal budgets
- Section C** The rules, procedures and conditions that must be met before direct payments can be made.

Section A – Provision for which a personal budget may be available for children and young people with an EHC Plan.

Personal Budgets and EHC Plans

4. Any parent or young person with an EHC Plan can ask for services to be provided through Direct Payments during an EHC annual review or at the point at which a draft EHC Plan is issued.
5. Personal budgets can be used to pay for aspects of provision on an EHC Plan. The

payment is from the Council or CCG to the parent or young person's nominee by Direct Payments. A direct payment is where individuals, or their nominee, receive the cash to contract, purchase and manage services themselves. Section C of the Policy explains this in more detail.

6. The Council must be satisfied that the person who receives the direct payments, known as the recipient, will use them in an appropriate way and that they will act in the best interests of the child or young person. Section C explains the additional requirements that apply before a direct payment can be agreed.
7. The personal budget must be spent on provision specified in the EHC Plan and be clearly linked to required outcomes. They can be both short and longer term arrangements and provide the opportunity for one-off payments
8. Where there is a Personal Budget, Section J of the EHC Plan will refer to it. It will provide detailed information on any Personal Budget that will be used to secure provision set out in the plan. The arrangements in relation to Direct Payments by education, health or social care will be set out.
9. Any SENs and outcomes that are intended to be met through provision of Direct Payments must be specified. Not all Direct Payments referred to in an EHC Plan will lead to education outcomes.
10. There is no right of appeal to the SEND Tribunal against a decision not to make a provision available through Direct Payments

Direct Payments and Children and Adults Continuing Healthcare

11. Since April 2014, everyone receiving NHS Continuing Healthcare (including children's continuing care) has had the right to ask for a Personal Health Budget, including a direct payment. From October 2014 this group will benefit from a right to have a Personal Health Budget.
12. Direct payments for health require the agreement of a Care Plan between the recipient (of direct payments) and the CCG (Clinical Commissioning Group).

Direct Payments and Children's Social Care Services

13. Some Social Care provisions, accessed via the Disabled Children's Social Work Team, are available through direct payments and include services which the local authority may provide to children with disabilities, or their families, under section 17 of the Children Act 1989 following an assessment of need. These include direct payments to enable help to care for disabled children at home.
14. The eligibility criteria can be found on the Disabled Children's Team Barnet web-site.
15. Some services are normally provided through a commissioned approach, such as Short Breaks⁶. From 1 April 2014 these services may also be available through a direct payment. The eligibility for Short Breaks can be found on the Short Breaks Barnet web page.

⁶ <https://www.barnet.gov.uk/citizen-home/children-young-people-and-families/children-and-young-people-with-disabilities/disabled-childrens-activities>

Direct Payments and Adult Social Care Services

16. In adult social care services, the estimated personal budget is generated following a needs assessment. A needs assessment takes place once eligibility for adult services is agreed. The needs assessment can be a self-assessment or an assisted assessment.
17. The Care Act (2014) says that people who are eligible to receive social care services should be offered a direct payment. This gives more flexibility to an individual to manage their support either:
 - Independently
 - Via support from a third party
 - By the Council directly commissioning services.
18. The personal budget relates directly to the level of identified need. In adult services, the services that are typically funded are those that:
 - Help with personal care
 - Enable access to the community
 - Reduce risk
 - Support and enable independence.
19. The eligibility criteria that currently operate are known as the FACS criteria and can be found on the Barnet web-site⁷.

Direct Payments and Special Educational Provision, recorded on the EHC Plan

20. The special educational provision specified in an EHC plan includes provision funded directly by the school, setting or college, as well provision that will be funded directly through the Council's High Needs budget. The high needs budget is part of the overall funding for education. It includes the funding for:
 - top up costs for pupils with EHCs in schools, colleges and early education settings – this enables schools and settings to ensure higher levels of adult support and for specialist support to be put in place.
 - specialist teachers and other specialist staff who work with families, education settings and children and young people
 - teachers and specialist staff who train and develop skills with parents in supporting the development of their disabled children
 - specialist high cost equipment that is needed by individual children and young people for their education, for example: chairs and mobility aids; communication aids.
 - some therapy costs – the majority of speech and language, physiotherapy and occupational therapy that is needed as a special educational provision, is jointly commissioned by the Local Authority and the Clinical Commissioning Group.
21. The home to school/college transport budget is sometimes used to provide personal transport budgets to parents for their children's transport to school. This is not special educational provision but it may be referred to in the EHC Plan.

What education services are currently provided as a Personal Budget ?

⁷ <https://www.barnet.gov.uk/citizen-home/children-young-people-and-families/children-and-young-people-with-disabilities.html>

22. Home to School transport where the child is eligible for the transport on distance or SEN grounds, and where to provide the direct payments would not lead to an inefficiency of the Local Authority's resources and where suitable safeguarding and safe transport measures are in place. Not all children who have a personal transport budget have a statement of SEN or an EHC Plan. Some children may have short term medical conditions where a personal transport budget enables them to attend school.
23. Exceptional arrangements for children's education - there are a very small number of children whose health prohibits regular school attendance and where their parents play a key role in organising parts of their education activities and programmes. The provision made is set out on the statement and reviewed regularly with the parents.
24. The SEN Officer will co-ordinate the provision of direct payments where they are agreed to deliver outcomes specified on an EHC Plan. He or she will work closely with the parent, young person or nominee to ensure there is a clarity about who is doing what and when the first review is required.

What can be funded through direct payments as a personal Budget?

25. Parents may request direct payments to deliver special educational provision specified on the EHC Plan such as:
- Access to a lap-top or I Pad
 - A communication aid
 - Specialist seating
 - Extra help in school
26. Parents and young people will be able to ask for some provisions on the EHC Plan to be delivered through a personal budget when the EHC Plan is reviewed or amended.

Are there some things that Personal Budgets for special educational provision cannot fund?

27. Headteachers are not required to release funds normally sent to the school to enable the school to secure the outcomes for the young person through the special educational provision for the child. Agreement is needed where a service funded by a direct payment is to be delivered on the school premises.
28. Personal budgets and direct payments cannot be used to pay the costs of a school place, including school fees. If to make a direct payment would lead to an inefficient use of the Local Authority's resources, it may not be possible to make a direct payment for that aspect of the provision.

Section B - Details of organisations that provide advice and help to parents and young people in relation to personal budgets

29. The SEN and Disability Independent Information and Advice Service provides information and advice. It can signpost parents and young people to the right person to help them, as well as providing advice on Personal Budgets. Their contact details are 020 8359 7637 and e mail sendIASS@barnet.gov.uk . For young people over 18 years of age there is also a user led organisation, Barnet Centre for Independent Living, who can provide

support in putting together a support plan using the direct payment and other resources such as community groups. Their telephone number is 020 8359 6450 and e mail address: info@barnetcil.org.uk.

30. Independent Supporters are also provided by Barnardos through a Government funded programme for Independent Support. They can be contacted by e mail on ISBarnet@Barnardos.org.uk. Their telephone number is 0808 800 0037.
31. The Parent Carer Forum will want to know your views about your experiences with the new SEN EHC Assessment and Plan, including Personal Budgets. The Forum can be contacted at info@barnetpcf.org.uk.
32. The SEN Casework officer will be able to discuss these matters with the young person or parent at the point of reviewing the EHC Plan or transferring the statement to an EHCP. Direct Payment advisers are based within Adult Social Care and they can advise on the processes relating to Direct Payments. You can ring them on 020 8359 3760 or email to directpaymentsadvisoryteam@barnet.gov.uk

Section C – The Rules, Processes and Procedures

Request for a Personal Budget including Direct Payments

35. A parent or a young person can ask for a personal budget to deliver a provision that is specified on the EHC Plan when:
- They are consulted on the draft Plan, or
 - When the EHC Plan is being reviewed or being re-assessed

When a request for direct payments (the cash allowance for the specified provision) is made, the Local Authority must consider the request.

Decision making on whether a Personal Budget or direct payments will be made.

36. In making its decision, the Local Authority will apply the following criteria.

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| (i) | The young person or parents will use the direct payments to secure the specified provision in an appropriate way |
| (ii) | The person who receives the Direct Payment will act in the best interests of the child in securing the provision |
| (iii) | The allocation of 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 |
| (iv) | Securing the proposed provision by Direct Payments is an efficient use of the Local Authority's resources. |
| (v) | That direct payments cannot be used for the purpose of funding a place at a school or post 16 institution |

Decisions about whether or not direct payments will be made to secure provision on the EHC Plan are delegated to officers in health, social care and education services. Where timelines allow, there will be discussion at a moderating Panel of professional staff and stakeholder representatives.

If the Local Authority decides not to make direct payments following a request, it will explain the reasons for the decision to the young person or parent, and will let them know of their right to ask for a review of the decision. The review will enable the young person and/or parent to set out their views and explain their reasons.

The same decision making framework (see (i) – (iv) above) will apply. There is no right of appeal to the SEN Tribunal about Personal Budgets.

37. People to whom direct payments are made

The direct payment Authority can be made to the young person, the child's parent or a person nominated in writing by the parent or young person. The person to whom direct payments may be made must be capable of managing them, over compulsory school age and with capacity.

The Schedule to the regulations describes unsuitable people as those who are subject to drug or alcohol treatment or who are subject to orders through the criminal justice system.

38. The Conditions under which Direct Payments are made

When a decision has been made to provide direct payments to the young person or parent to secure provision set out on the EHC Plan, the Local Authority will write to the recipient, and the recipient must notify the Local Authority in writing of their agreement to certain conditions.

The Local Authority will write to the recipient and specify the following:

- (i) The name of the child or young person
- (ii) The provision on the EHC Plan to be secured and funded through direct payments
- (iii) Any conditions about how the direct payments can be spent
- (iv) The dates for payments into the bank account that has been approved by the Local Authority

The recipient must notify the Local Authority in writing of their agreement to comply with the following expectations. Normally a written agreement including the following information will be sent to the recipient to sign.

That the recipient agrees to:

- Use the direct payments only to secure the agreed provision
- Comply with any conditions specified about how the direct payments may be spent
- Notify the Local Authority about any changes in circumstances that might affect the need for the provision
- Use the bank account approved by the Authority solely for the purposes of direct payments approved by the Local Authority or the Health Service
- Ensure the bank account is only accessible by the recipient or other person approved by the Local Authority
- Keep a record of money paid into and out of the approved bank account
- Provide evidence relating to the account and the provision funded through the direct payments

Where the recipient is a nominee, there must be a separate correspondence and agreement with the Local Authority setting out responsibilities (see section 8(4)(a)(b) of the SEN Personal Budget regulations.

39. Direct Payments for goods or services which are to be provided in a school, college or early education setting.

If a parent seeks a personal budget to secure provision to be used or provided in an educational setting, the written consent of the headteacher, proprietor or principal must be obtained.

40. The amount of the Direct Payments

Where direct payments are agreed they must be sufficient to secure the agreed provision. The amount of direct payments can increase and decrease as long as the Local Authority is satisfied that the amount is sufficient to secure the required provision. Where payments remain unused, the Local Authority can reduce the amount of direct payments where it considers that it is reasonable to offset unused direct payments against the outstanding amount to be paid.

41. Monitoring and reviewing Direct Payments

The Local Authority is responsible for monitoring the use of Direct Payments by the recipient. It must review both the making of direct payments and their use at least once in the first three months, and then during a review or a re-assessment of an EHC Plan.

The review should consider whether:

- (i) the Local Authority should continue to secure the specified provision through direct payments
- (ii) the direct payments have been used effectively
- (iii) the amount of direct payments is sufficient to secure the agreed provision
- (iv) the eligibility criteria (see section 5 above) continue to be satisfied
- (v) the recipient has complied with the requirements (see section 7 above)

The recipient can ask the Local Authority to review the making and use of direct payments. If this happens the Local Authority will consider if it is necessary to do so, and if it is, the matters listed (i) to (v) above will apply.

42. After a review of Direct Payments

After a review of direct payments, the Local Authority can:

- Change the person who receives the direct payments
- Increase, reduce or maintain the amount of direct payments
- Decide that the recipient must not secure a service from a particular person
- Require the recipient to provide required information
- Decide to stop making direct payments.

43. When a decision to reduce the amount of direct payments is made

When a decision to reduce the amount of direct payments is made, the Local Authority must provide a reasonable notice period and explain its reasons in writing. If asked to do so by the parent or young person, it must reconsider its decision, looking at representations made by the parent or young person. Then the parent and/or young person should be informed of the decision with a further explanation of the reasons. There is no requirement to reconsider the decision more than once.

44. Repayment and recovery of direct payments

Sometimes it is necessary for the recipient to repay some or all of the direct payments. This would be where one or more of the following apply:

- The circumstances of the child have changed so that there is an impact on the appropriateness of the agreed provision
- All or part of the direct payments have not been used for the agreed provision
- Theft, fraud or another offence has occurred in relation to the direct payments.

Only money not spent on the agreed provision can be reclaimed. When the Local Authority decides that direct payments must be re-paid, written notice must be given to the recipient setting out the reasons, the amount to be repaid and the timescale for repayment. This can be recovered as a debt due to the Local Authority.

45. Stopping making direct payments

The Council is required to stop making direct payments if:

- the recipient has written to the Council to say the direct payments are no longer required
- the recipient is no longer a person to whom direct payments can be made (see section 6 above)
- the recipient has not been using direct payments for the required provision
- the agreed provision can no longer be secured through direct payments
- making of direct payments is having an adverse impact on services provided by the London Borough of Barnet for other children and young people with an EHC Plan maintained by Barnet
- to do so is no longer compatible with the authority's efficient use of its resources.

The Council may stop making direct payments if the recipient has not complied with any of the conditions in section 7 above.

When a decision to stop making direct payments is made, the Council must provide a reasonable notice period and explain its reasons in writing. If asked to do so by the parent or young person, it must reconsider its decision, looking at representations made by the parent or young person. The parent and/or young person should be informed of the decision with a further explanation of the reasons. There is no requirement to reconsider the decision more than once.

Any right or liability of the recipient to a third party, acquired or incurred in relation to the provided service being funded by direct payments, transfers to the Council when it stops making the payments. The transfer of the liability is binding on the third party.

46. Transition – when a child becomes a young person

When a child becomes a young person, on reaching statutory school leaving age, the Local Authority must take reasonable steps to see if the young person wants to receive or to continue to receive direct payments. The young person can request that the direct payments are made to his parents/carers or nominee, or that they are made directly to him/her, or that he/she no longer wishes direct payments to be made.

47. Capacity

The right of a young person to make a decisions is subject to his or her capacity to do so. This is explained in the 2005 Mental Capacity Act, and in paragraph 8:21 of the SEN Code of Practice (July 2014) and Annex 1 to the SEN Code. As many young people as possible should be empowered to make decisions on their own behalf and, where they cannot, decisions taken on their behalf should be in their best interests.

The type of decision is important. A young person may not have capacity in relation to some decisions, but may in relation to others.

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