

Brent Personal Budget Policy: Education, Health and Social Care

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1. Background

Personal budgets are changing the way that education, health and social care services work with families who have children with special educational needs and/or disabilities.

Personal budgets and/or direct payments for special educational provision, health care and social care provision are subject to separate regulations. These are:

- **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)**
- **The National Health Service (Direct Payments) Regulations 2013**
- **The Special Educational Needs (Personal Budgets) Regulations 2014**
- **Children and Families Act 2014**
- **The Care Act 2014**

A request can be made for a personal budget either during a statutory Education, Health and Care (EHC) needs assessment, if an EHC Plan has been agreed or when an EHC Plan is being reviewed/ re-assessed and/or at an annual review. This is in line with the Children and Families Act 2014 guidance (4.1, 4.2) relating to direct payments and personal budgets as set out in the Special Educational Needs (Personal Budgets) Regulations 2014 and amended by the Special Educational Needs (Miscellaneous Amendments) Regulations 2014.

2. Introduction

The purpose of this policy is to explain the approach taken by Brent Council and Northwest London NHS to personalisation and Personal Budgets (PBs) across education, health and social care. Education, health and social care services work together to support young people, but are guided by specific regulations, eligibility criteria and processes for establishing specific service-related Personal Budgets. Therefore, the policy also provides explanatory notes and links to the application and the decision-making process and notification of outcomes and appeals processes.

While the SEND Regulations cover the 0 – 25 age range, this policy refers mainly to Personal Budgets for children up to 18 only. This is because from 18 years of age the Adult Care Services policies and rules apply for social care and health Personal Budgets.

For 18 – 25 year olds who have educational need and an EHC plan the education information in this policy will still apply. More information on adult social care and health personal budgets can be found at the end of this document.

3. Principles underpinning this policy

A person-centred approach is at the heart of this policy. Personal Budgets should reflect the holistic nature of an EHC plan and can include funding for 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. 9.99 ([SEND Code of Practice](#))

What Person Centred Planning means to the Brent area partnership:

- Putting the child/ young person and their families at the heart of the process
- Ensuring the child/young person's views, strengths and interests are known
- Following the golden thread to ensure children/ young people are able to reach their aspirations with the right support in place
- Listening and responding to their views, wishes and aspirations
- Giving children/young people and their families more control over their futures
- Collaboratively planning the support needed with families and multi-agencies to achieve the goals and ensure the right support is in place
- Everyone working together to discuss and agree an overall approach for Education, Health and Social Care

4. What is a Personal Budget?

A Personal Budget is an amount of money identified by the local authority and/or health partners to deliver provision set out in an EHC plan where the parent/carer or young person is involved in securing that provision.

There are four ways in which a child/young person and/or their family can access a Personal Budget:

- Direct payments: this is where individuals receive the funds to contact, purchase and manage services themselves
- An arrangement: this is where the Local Authority, School or College holds the funding and commissions the support specified in the plan (these are sometimes called notional budgets)
- Third party arrangements/ Third party serviced account (TPSA); this is where the funding (direct payments) is paid to and managed by an individual or organisation on behalf of the child's Parent/Carer or young person
- A combination of the above

4.1 Who can request a Personal Budget?

Parents/ Carers of children and young people who have an EHC Plan have the right to request a Personal Budget, which may contain elements of Education, Health and Social care combined or separately.

The Personal Budget Policy applies to any child or young person with special educational needs or disability (SEND), who has an EHC Plan and when a Personal Budget has been requested. This policy also applies to children and young people who have a Child in Need or Short Breaks Plan following a social care assessment of need under the Children Act 1989, and to children and young people who have a Health Care and Support plan and are eligible for Children's Continuing Care.

For some areas of provision, instead of a family being provided with a service, a budget is identified for parents/carers and young people to buy their own package of support. Work then takes place to identify how this budget can be used to meet some or all of the needs that are set out in a child's/ young person's EHC plan.

Children and young people must have an EHC Plan to get a personal budget for special education provision. A young person with an EHC Plan can ask for their own Personal Budget after the end of the school year in which they become 16, unless identified that they are unable to take a decision under the Mental Capacity Act (see above).

4.2 What can a personal budget not be used for?

A personal budget must only be used to meet a child's or young person's provision needs as detailed within their EHC Plan. A personal budget can be used to pay for a wide range of items and services, including therapies, personal care and equipment. This will give parents choice and control over the services and care their child receives.

There are certain things that a personal budget cannot be used for:

- Anything unlawful
- Repaying a debt
- Employing a family member who lives with the child (though there may be exceptional circumstances where a local authority will agree to this)
- Alcohol, gambling or tobacco
- Services that are already provided for everyone by the NHS, free of charge, such as the service a GP provides
- Emergency care
- Prescription or dental charges
- Surgical procedures

To provide a direct payment, the Council or NHS must be satisfied that:

- It will be used to pay for things that have been agreed in the EHCP.
- It is an appropriate way to pay for things that have been agreed in the EHCP.
- The person receiving the direct payment will act in the best interests of the child/young person.

5. What is a special education (SEN) personal budget?

For an SEN personal budget, the Council applies an Education Banding Tool (EBT) to undertake an assessment of the child/young person's needs and determine the indicative funding that is required in order to meet their educational needs. This will be built into the EHC needs assessment process. Whilst the whole of this funding will make up the personal budget, it is unlikely that the whole personal budget can be taken as a direct payment. The Council will consider the cost of the provision that is required to enable the child to meet the specific outcome in the EHC Plan in order to determine whether a personal budget can be offered and calculate the value of this budget.

6. Transport

A Transport personal budget will be based on eligibility for home to school transport. A personal budget can be considered upon request at any time through the SEND case worker.

7. How do Parents/Carers or young person receive the funding?

Once a personal budget has been agreed, the terms of payment are listed on the personal budget contract. This includes the amount to be paid annually, how it is scheduled to be paid and what we require. The contract is drawn up by the SEND case worker.

The personal budget is recorded on the local authority's records and each payment made is recorded. All relevant invoices and receipts from the parents are filed and checked against the contracted agreement. Bank statements from the parents outlining payments to tutors etc are requested as evidence.

If a parent/carer chooses to receive a personal budget or a direct payment to buy some of the items or services identified in their child's EHC plan, they will be asked to sign a written agreement. The purpose of this agreement is to confirm that the parent/carer understands how the direct payment will be spent. It will explain their responsibilities as the person receiving the money and what duty the council has in providing the direct payment. The Council will monitor and review the payments made in accordance with the SEN (Direct Payments) Regulations 2014.

Parents/carers and young people where relevant must make sure that they have carefully read and understood the agreement before signing it. If the money is spend on anything that has not been agreed, it will need to be paid back.

The bank account into which direct payments received will be audited regularly by the council and any unspent money must be returned to the council.

8. Who is responsible for the Personal Budget?

The Local Authority where the child/young person resides is responsible for monitoring and reviewing the child's/young person's Personal Budget at least annually. A review can be held early depending on individual circumstances.

If a personal budget is used to employ a person, then the parent/carer will be an employer in accordance with the law. If they are in receipt of certain benefits, then they will need to inform the benefits agency that they are an employer.

For example:

If a young person is eligible for support, they might decide to use some of the personal budget to employ a mentor to provide personal and social development. As an employer the parent/carer will be required to:

- Obtain references, check immigration status and carry out disclosure and barring service (DBS) checks.
- Issue a contract for employment, including managing rotas, to make sure support is always in place. This includes covering leave and sickness.
- Be responsible for the health and safety of the employee (such as liability insurance).
- Consider setting up a PAYE system with a payroll provider to enable employees to be paid.
- Open a separate bank account to receive direct payments.
- Keep all receipts.

9. What is a social care personal budget?

A Social Care budget is provided following assessment to meet the assessed need of the child/young person. This could be in the form of support with personal care via a care agency/carer or 1-1 support whilst accessing suitable activities in the community to meet specific outcomes.

Based on need, children's social care determine the level of support required to each individual child/young person. Consideration is also given to the carers needs in relation to the information gathered from the Carer's assessment. The Child and Family Assessment is the method whereby the level of need is identified to determine the level of support which can be offered. This can be through Direct Payments or overseen via 0-25 Disabled Children and Young People Service.

9.1 What are disabled children's social care direct payments?

Direct payments are given to individuals to pay for care/support services which they have been assessed as needing; the intention is to give them greater choice and control over their care services. The payments must only be spent on the services identified in their support plan.

A direct payment may be offered to pay for a personal assistant to support a client of the Children with Disabilities Team to have a short break. The team would be responsible for the set up and administration of this direct payment. Children's health sometimes works with this team and has an agreement that direct payments funded by them are set up and administered by the Children with Disabilities Team. If a child was new to the disability team then the staff would need to check with their colleagues in SEND if an EHC plan was in place. If so, the detail of the service provision and direct payment (personal budget) must be recorded in the EHC plan.

9.2 Who can request a social care personal budget?

Referrals are received through Brent Family Front Door and can be made by the parent/carer or multi-agency professional (schools, health) working with the family. Should they meet the threshold for the 0-25 Disabled Children and Young People Service then they will be allocated to a Social Worker to complete either a Child and family assessment (0-17) or a Care and Support Plan (18-25)

9.3 Decision-making process

If the child/young person is eligible following assessment, then the allocated Social Worker will present the assessed need and their recommendation to the Disabled Children and Young People's Service Resource Allocation Panel. The assessment of need is undertaken a child and family assessment. allocation system (RAS). The personal budget is based on the assessed needs of the individual child and the cost of local services, to enable it to create an indicative budget following the use of the resource allocation system (RAS). It does not suggest which services someone should use to meet their needs; instead producing an estimated value which the family/carer can use to start planning care and support for their child/young person. The Panel members (multi-agency) will then discuss the Social Worker's recommendation and the Service Manager will make the final decision regarding hours and type of care package agreed. If a care package is agreed, then this will be reviewed at panel within 3 months (new care package) or 6 - 12 months (as guided by service manager)

Who can families/ young people contact if their social care budget is awarded but they have not received payment?

Families and young people can contact their allocated social worker/social work assistant who can liaise with the Direct Payment and Care at Home officers to determine why payments have not been received.

9.4 Re-assessment of needs

When a child and family assessment or Care Act assessment is undertaken a support plan will be put in place to confirm plans for the individual and how and who is responsible to meet their identified needs.

Child in need plans following assessment are undertaken every 3 months. Whereas a Care Act assessment will lead to a Care and support plan which is initially reviewed after 6 weeks and then 6 -12 months thereafter.

If it is agreed that only short breaks are required to support the individual, then this will be stepped down to a short break plan which is reviewed every 6 months in most cases or annually if they are receiving less than 10 hours support per week.

Re-assessment of needs are completed annually or more frequently if there has been a change of circumstances.

9.5 Disabled children's social care short breaks services

Short break services form part of a continuum of children's social care services that support disabled children and young people to access social activities and to assist their families by providing them with a break from their caring roles. These needs will be identified through an assessment by a key worker/social worker.

Some children with special needs or a disability access support from social care. This might be for:

- Support in the home - for example, additional help with bathing or personal care.
- Help with finding social or family activities for children and parents to take part in.
- Short break support so that parents/carers can have some respite.

The type of support will be included in an EHC plan, along with an agreed and costed budget. It is important that the SEND officer that supports a child/young person's ECHP is made aware of any social care support received.

A resource panel will consider all requests where appropriate after an assessment or review and completion of the resource allocation system (RAS) which is a tool used with parents to determine the number of hours of support that would be required to meet the identified needs. One of the agreed outcomes if someone is deemed eligible would be to offer a direct payment for these provisions. The resource panel meets on a weekly basis for under 18s and monthly for 18+ and decisions are based on the social care eligibility criteria.

9.6 Social Care disagreement resolution process

A panel decision letter will be sent to the parent/carer highlighting the care package in place or reasons for non-agreement. The parents/carers should speak to their Social Worker/Social work assistant in the first instance. If they are still not satisfied with the explanation about why the decision was made, then parents/carers can write to the panel to appeal the decision.

10. Becoming an adult

The Children and Families Act 2014, identify that a child will become a young person once they reach the end of compulsory school age (i.e. the last Friday of June in the year the child turns 16). At that point parental rights under the law in relation to the young person's education will automatically pass to the young person themselves.

The SEN and Disability Code of Practice 2015 states that once a child becomes a young person at the age of 16, local authorities and others should normally engage directly with the young person. However, the Code also makes it clear that the young person's family and parents should continue to be involved in discussions about the young person's future. The young person may also ask them to help in other ways such as attending meetings, filling in forms or receiving correspondence on their behalf.

11. Mental Capacity Act

The legal concept of mental capacity is contained in the Mental Capacity Act 2005 and the Mental Capacity Act Code of Practice, which is statutory guidance.

[Mental Capacity Act Code of Practice - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Mental capacity is assessed in relation to the particular decision which needs to be made. This means that whether a young person has mental capacity to make a particular decision or not has to be considered on an individual basis in the light of the circumstances at the time. If a young person lacks the capacity to make a particular decision, then the agreed representative will be able to make that decision for them.

A person must be assumed to have capacity unless there is evidence that they are not able to make the relevant decision. Someone is treated as being unable to make a decision if they are not able:

- to understand the information relevant to the decision,
- to retain that information,
- to use or weigh that information as part of the process of making the decision, or
- to communicate their decision (whether by talking, using sign language or any other means).

Before concluding that a young person is unable to decide, all practicable steps should be taken to help them make the decision without success. Importantly, the Mental Capacity Act is clear that a person is not to be treated as unable to decide merely because they make an unwise decision.

If a young person lacks capacity to make a particular decision, the person making the decision on their behalf must act in the young person's best interests.

The decision as to whether a young person has mental capacity to make a particular decision is something that they and their parents/ carers should make in the first instance. It would be very rare for a school or college or LA not to agree with their assessment of the situation.

The Mental Capacity Code of Practice confirms that this opinion could come from Psychiatrist, Psychologist, Speech and Language Therapist, Occupational Therapist or Social Worker. It could also come from someone like a GP or other medical professional who is involved with the young person. It is important that assessments are completed by such professionals who have acquired the necessary skills.

If it is agreed that a young person does not have capacity to make a decision about appropriate support, then parents will automatically make that decision for them unless the Court of Protection has appointed a different person to be their Deputy. They would have to make the decision which was in the best interests of the young person concerned. The local authority would also still have to seek the young person's views as part of any decision-making process.

12. What is a Health Personal Budget?

A personal health budget uses NHS funding to create an individually agreed personalised care and support plan, that offers people of all ages greater choice and flexibility over how their assessed health and wellbeing needs are met.

The personalised care and support planning conversation identifies the care, support and services the personal health budget will be spent on. This can include a range of things to give people access to care, support and services that are holistic, innovative and build on their strengths.

Key points:

- Personal health budgets enable people to have choice and control over decisions about their care and the budget that is available to meet their needs
- personal health budgets can be managed in different ways. No one will ever be expected to have more choice and control than they feel comfortable with
- the NHS should work in partnership with the individual and agree together the outcomes to be achieved and set these out in a personalised care and support plan
- all personal health budgets must be agreed and signed off by the person's NHS team, and where necessary the local integrated care board (ICB).

12.1 Who can request a health Personal Budget?

Children and young people in receipt of continuing care, and young adults receiving NHS Continuing Healthcare, have a legal right to have a personal health budget unless there are exceptional circumstances.

People with a learning disability or autism or both who are eligible for NHS Continuing Healthcare or aftercare services under section 117 of the Mental Health Act currently have a right to have a personal health budget. Anyone else whose support is funded by the NHS, including those with jointly funded packages, could also benefit.

A personal health budget is an amount of money to support health and wellbeing needs, which is planned and agreed between the individual in receipt (or someone who represents them),

and their local NHS team. It is not new money, but it may mean spending money differently so that young people can get the care they need.

12.2 What can be requested in a health personal budget i.e., direct payment, equipment, therapies etc

A personal health budget allows the healthcare and support such as treatments, equipment, and personal care needed to be provided in a way that suits the individual child or young person. It works in a similar way to personal budgets, which allow people to manage and pay for their social care needs. The healthcare support plan will establish what the personal budget should cover.

12.3 How do parents/carers and CYP receive their personal budget?

A personal health budget is based upon a personalised care and support plan. This plan sets out someone's health and wellbeing needs, the outcomes they wish to achieve, the amount of money available and how it will be spent. Once the plan and budget has been agreed, the money in a personal health budget can be managed in three ways, or a combination of these:

1. **Notional budget:** No money changes hands. The personal health budget holder knows how much money is available for their assessed needs and decides together with the NHS team how to spend that money. The NHS is then responsible for holding the money and arranging the agreed care and support.
2. **Third party budget:** An organisation independent of both the person and the NHS commissioner (for example an independent user trust or a voluntary organisation) is responsible for and holds the money on the person's behalf. They then work in partnership with the person and their family to ensure the care they arrange and pay for with the budget meets the agreed outcomes in the care plan.
3. **Direct payment:** The personal health budget holder or their representative has the money in a bank account and takes responsibility for purchasing the agreed care and support. Budget holders must show what the money has been spent on. Further guidance is included in the [Direct Payments for Healthcare](#) guidance.

12.4 Who is responsible for the Personal Budget?

Health providers must consider each request for a personal budget on its individual merits in line with regulatory and legislative requirements.

12.5 How is the personal budget calculated?

For a [Continuing Health Care](#) personal budget, the NHS will undertake an assessment of the child/young person's needs and use that to provide an indication of the level of personal budget that is appropriate in order to meet their needs. For further information please contact children's continuing care team on email: nhsnwl.chc.childrens@nhs.net . Additional details relating to health based personal budgets can be found on the Northwest London Integrated care system web site via: <https://www.nwlondonicb.nhs.uk/your-health-services/your-services/continuing-healthcare/continuing-healthcare-children-and-young-people>

12.6 18–25-year-olds

Adult Social Care provides personal and practical support to help people lead a full and active life, maintain independence and dignity and have as much choice and control as possible. We

will talk to the young person and their family, carer(s) or friend(s), (with the young person's consent), regarding their support needs. Support needs could include personal care, such as support for washing, dressing and getting out of bed in the morning, as well as wider support to help people stay active and engaged in their communities.

The national eligibility criteria set a minimum threshold for adult care and support and carer support. The eligibility criteria is set out in the Care Act 2014. Adult Social Care assesses the need for and ensures access where required to a range of support. We carry out a strength based assessment focussed on maintaining independence as much as possible. If the young person has needs that cannot be met without formal support, then the council will either commission a care package for them or they could choose to take a direct payment to commission their own care and support. They will also be financially assessed to see whether they have to pay for any care services themselves, because adult social care is not a free service.

A direct payment gives the young person an agreed amount of money to organise the support that is needed, instead of the council arranging the services. It will be given on a pre-paid card, after the young person has been financially assessed. This pre-paid card gives them the freedom to purchase the services they think best meet their needs, or to employ a personal assistant. These services will be agreed in the young person's Support Plan. Alternatively, the council may arrange services for them, or they could have a mix of both.

12.7 What can Direct Payments be spent on?

Direct Payments can be used to pay for anything that has been identified and agreed in a young person's Support Plan such as:

- Employing a personal assistant to help with personal care
- Support from a care agency of choice
- Support with daily living activities like getting out and about to do shopping, meet family and friends or access educational, leisure and social activities
- Short-term breaks away from home or respite care
- Support for carers to help them continue in their caring role.

12.8 What can Direct Payments not be used for?

The money cannot be used to buy anything other than services that meet identified care and support outcomes, as agreed in the young person's Support Plan, as well as:

- Anything that is illegal
- Alcohol, tobacco, drugs or gambling
- Payment to a close relative who lives with you (except in certain circumstances)
- Withdrawing cash.

Adult social care has a Direct Payments Team that supports people using direct payments to pay for their care and support.

An advisor from the Direct Payments Team will provide practical, one to one, advice and guidance to support a young person to set up a direct payments account and to learn how to

manage it themselves. The support provided depends on what is needed and the choices made about spending direct payments funding. If a young person decides to use a care agency, we can:

- Put them in touch with specialist agencies that meet their needs
- Help to negotiate costs to maximise their budget
- Help to manage the agency and put in place a back-up plan

12.9 How will Direct Payments be paid?

Direct payments will be paid on a pre-paid card or held in a virtual bank account to be used solely for managing an individual's Direct Payments. The Prepaid card and virtual accounts work in a similar way to a normal bank account but offer greater transparency and safety with payments. They are to be used solely for care services as agreed in the young person's Care Plan and must not be mixed up with personal finances.

13. Information, advice, and support

[Personal budgets and direct payments | \(IPSEA\) Independent Provider of Special Education Advice](#)

Further resources on Personal Budgets are available through the DfE-funded 'Making it Personal' project. This includes guidance for parents, commissioners and suppliers and is available on the Kids website – a link is provided in the References section under Chapter 3.