**Wirral Council Personal Budget Policy**

**Relates to Children/Young People aged 0-25 with Special Educational Needs and their Families**

**January 2015**

1. **Background** 
   1. The following policy relates to the duties of Wirral Council in relation to the Children and Families Act, 2014 (section 49) of the Statutory Guidance and Code of Practice for special educational needs and disability 0-25 years.
   2. Wirral Council is committed to developing and implementing a fair system of support to help children and young people achieve their potential and which puts children and young people and their families first.
   3. Parents and young people receive information about Personal Budgets as part of the EHC Assessment Process. We aim to develop a process which embraces the spirit of the SEND Reforms and enables parents and young people who want more choice and control over the services they receive to have it.
   4. It should be understood that:
      * There is no additional funding available.
      * A Personal Budget may not be used to purchase a school place.
      * Not all families want a Personal Budget.
   5. The policy supersedes Wirral’s Statement of Intent on Personal Budgets which was published on our Local Offer from September 2014.
2. **What is a Personal Budget?**
   1. Education, Health and Care (EHC) Plans have replaced Statements of Educational Need and Learning Difficulty Assessments. The purpose of an EHC Plan is to agree the SEN provision to meet needs and secure the best outcomes for children and young people.
   2. The Education, Health and Care (EHC) Plan will offer a Personal Budget for aspects of the provision outlined if parents or young people wish it and are eligible. The request can be made at any time during the assessment or review.
   3. A Personal Budget is a sum of money that may be available for children and young people who need extra help. The Personal Budget is not all of the resources that are available to support a child or young person, just the amount that can be used flexibly by the family or young person to support additional needs.
   4. Section J in the EHC Plan sets out information on the Personal Budget. The section describes how a Personal Budget will be used to deliver an agreed provision and meet agreed outcomes. It will detail arrangements about direct payments.
3. **Who is Eligible for a Personal Budget?**
   1. A Personal Budget may be requested where a child or young person requires individual tailored support that goes beyond universal and targeted services.
      * In Education this means learners aged 0-25 who have an EHC Plan and who need High Needs Funding to meet their needs in Education.
      * In Social Care this means when a child or young person needs support beyond targeted and universal services.
      * In Health this means children or young people eligible for Continuing Care. It would also apply to long term health needs from April 2015 including children who require:
        + - Hospice care
          - Overnight short breaks
          - Specialist equipment Agency care
          - Home-based support

Please see Appendix 4 for details of Health and Social Care

1. **What are the choices for families in choosing how the Personal Budget will be managed?**
   1. Parents can have control over the management and spend of Personal Budgets. See section 9 for exceptions. From the end of compulsory schooling this changes to the young person, unless they are unable to do so under the Mental Capacity Act. Some young people may request that their family manage the funding on their behalf. Decisions and discussions about this will happen at the point of transfer. A social worker or mental health worker would normally make the decision about the young person’s mental capacity.
   2. A Personal Budget is not the same as a direct payment. However, a direct payment is one of several ways that a Personal Budget can be managed as set out below:

* A direct payment managed by the young person (16 plus with mental capacity)
* A direct payment managed by the parent/carer
* A direct payment managed by a third party (family friend, agent, trust fund, finance company, voluntary sector organisation)
* A Personal Budget held by the council
* A Personal Budget is provided by the council for a service provider to hold on behalf of the child or young person (e.g. school, health or social care provider)
* A combination of the above.
  1. The statutory regulations state “*Direct Payments may only be made if the person*

*(a) appears to the local authority to be capable of managing direct payments without assistance or with such assistance as may be available to them;*

*(b) the recipient is an individual , is over compulsory school age;*

*(c) 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 ; (this means the person must have the mental capacity to manage a budget) and,*

*(d) is not a person described in the Schedule*.”(see part 6 of this policy, to say who this applies to)

1. **Process/How will the Personal Budget Element of the funding available be worked out?**
   1. The Personal Budget process will be discussed as part of the EHC assessment. The benefits and responsibilities of this will be explained in an information leaflet provided. Independent support and advice will be available to families/young people, details of which can be found in Appendix 3. An indicative budget will be advised, if possible, at the same time as a Personal Budget is discussed. Some families may already be accessing Personal Budgets in terms of care or health this will be included, in the final EHCP. Not all families will choose to access a Personal Budget; it is likely to be taken up by those children/young people for whom a bespoke package of support is needed.
   2. At the stage when the assessment is completed the views of the parent and child/young person will be taken into account alongside professional reports detailing the provision required. The funding available will be determined by matching of the child/young persons needs into the Council’s High Needs banding system.
   3. When a school/college is named the aspects of a Personal Budget available will be outlined, if parents/young people have expressed a wish to have a Personal Budget. Parents/young person can say which aspects of their plan they would like in a Personal Budget, via written feedback, and/or records from planning meetings.
   4. A Personal Budget will be recorded in Section J of the EHC and will be signed off by the EHC Co-ordinator after presenting it to the Multi Agency Panel. Section J of the EHC Plan will provide a detailed explanation of how a child or young person’s Personal Budget will be used. It will detail the needs and agreed outcomes. It will explain how the resources will be allocated. It will also state how the money will be used and managed including arrangements in relation to any direct payments.
   5. The scope of the Personal Budget will increase over time and the eventual aim will be to develop a single integrated fund.
   6. If a personal budget is delivered as a Direct Payment parents and/or the young person will be expected to sign a Direct Payment Agreement before any payment is made. This will outline the parameters of the payments and how they should be managed. It will also outline aspects, such as employed support staff having to have an enhanced Disclosure Barring Service (criminal record) check. See Appendix 6.
   7. Schools High Needs Top Up funding may be made available for use as a Personal Budget. This can only be included with the agreement of the school or college. It is not always possible for a school or college to release funding into a Personal Budget because it may be part of an existing overall provision. In some limited circumstances the head teacher/college principal may also agree to include all/parts of element 2 funding.
   8. Any staff employed by parents / young people to work within a school or college would have to have the school or college’s permission. This arrangement would need to be carefully planned and agreed.
   9. For a child/ young person attending **Specialist Provision.** Parents/young people will be informed that it is likely that most if not all of the child/young person’s funding will be included in the overall budget of the school and therefore may not be available to be taken as a Personal Budget.
   10. A personal budget may consist of regular and/or one off payments, for instance around specific equipment needs. Equipment including maintenance must meet professional specifications and must be over and above that which should be provided as part of the school’s ‘reasonable adjustments’. See Equalities Act in Appendix 7.
2. **What Could Be Included in a Personal Budget?** 
   1. Education. The exact aspects of what could be included in a Personal Budget, relating to an individual child or young person would be outlined in the EHCP. A fully costed section of the EHCP will outline the costs of the recommended provision and the aspects of it which could be provided via a Personal Budget.
   2. Health. Currently those children who are entitled to Children’s Continuing Care Fund are eligible. From April 2015 it would also apply to other long term health needs as listed in Section 3.1.
   3. Care. When universal and targeted services cannot support the family sufficiently to meet the child’s needs a social care assessment will be carried out at the family’s request. The Personal Budget would include funding provided to meet the assessed additional needs identified within that assessment. The Personal Budget may also include individual funding necessary to provide the family of a disabled child with a short break or family support.

6.4 What cannot be included:

* Services that are supplied as part of any block contract would not normally be offered as a Personal Budget since this would not demonstrate value for money.
* Other services that are difficult to disaggregate an individual cost from an overall amount (Code of Practice 9.103)

1. **Managing and Using a Personal Budget** 
   1. Information about services available in the area that could be used with a Personal Budget will be available via the Local Offer ([www.wirrallocaloffer.org](http://www.wirrallocaloffer.org)) this will be updated on a regular basis.
   2. Each agency will monitor and plan to ensure that outcomes and provision in the EHCP are being met. At a minimum there will be an annual review by Care providers, with at least one including education and health representation. More regular reviews may be required.
   3. If Personal Budgets are not used to meet the provision/outcomes outlined in the EHCP it will be withdrawn and services will be commissioned by the health authority/local authority.
2. **Managing Changes in Circumstances** 
   1. If family circumstances change these will be taken into account as part of the regular review of needs and the personal budget. There should also be feedback from the family/young person to say how a personal budget is working for them.
   2. This review will occur as part of the assess-plan-do-review cycle in terms of a child/young person’s development. On a formal basis this will occur as part of the annual review, but can occur for individual elements more frequently than this. Eg if there has been a significant change in needs
   3. If there are fluctuating circumstances, for instance a child who has different care and health needs dependent upon a health condition, then this will be taken into account in the plan and will be built into the ongoing discussions between the family/ young person and lead worker.
3. **Who cannot hold a Personal Budget?**
   1. The regulations (the legal guidance for the law relating to Personal Budgets) state the following:

“*The following persons may not receive direct payments*

1. *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 or by a suspended sentence order within the meaning of section 189 of that Act;*
2. *a person who is subject to an alcohol treatment requirement, as defined by section 212 of the Criminal Justice Act 2003, 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;*
3. *a person who is released on licence under Part 2 of the Criminal Justice Act 1991* ***(a),*** *Chapter 6 of Part 12 of the Criminal Justice Act 2003 or Chapter 2 of Part 2 of the Crime (Sentences) Act 1997* ***(b)*** *subject to a non-standard licence condition requiring the offender to undertake offending behaviour work to address drug-related or alcohol related behaviour;*
4. *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 or a community punishment and rehabilitation order within the meaning of section 51 of that Act (c);*
5. *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 (d).*
6. *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 which requires the person to submit to treatment pursuant to a drug treatment requirement.*
7. *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.*
8. *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.”*
   1. Anyone who has a child with an EHCP, or who is post compulsory school age can request a Personal Budget to meet their needs as outlined in the EHCP. This would be granted unless
      * Prevented by the direct payment/circumstances described in Appendix 2

* The child is in care (foster parents may access a Personal Budget if there is agreement as part of a care plan).
* The child has a Child Protection Plan. Any use of a Personal Budget would have to be agreed at the multi professional Core Group meeting. If use was felt not to meet the aims of the plan, or compromise safety it would not be agreed
* A person subject to a drug or alcohol treatment programme. If the person wishes to receive a direct payment there will be a discussion between the local authority and person involved to explore their particular circumstances. If a person has a gambling addiction this also may preclude them from receiving a Personal Budget.
* The young person has a youth rehabilitation order

1. **Appeal Process – Negotiation and disputes**
   1. The council will actively seek to resolve disagreements about

* the budget,
* the management of funding
* the use of the Personal Budget.

Should it not be possible to reach agreement then the relevant service manager will seek to resolve the dispute. If this does not result in resolution then the matter will be referred to a senior manager.

There are also disagreement resolution services set out within the Code of Practice.

* 1. Disagreements can occur under the following circumstances:
* An aspect of provision listed in the Education, Health and Care Plan has not been offered in a Personal Budget.
* A Personal Budget has not been offered.
* The funding identified is felt not to be sufficient to cover the needs of the young person.
  1. An appeal would initially go to the appropriate manager to respond in writing. If the parent/young person still disagrees with the decision they would then take the appeal to the next stage.
  2. The first-tier Tribunal does not hear appeals about Personal Budgets, but will hear appeals about the special educational provision to which a Personal Budget may apply.
  3. Due legal process regarding any appeals will be followed as laid out in the Children and Families Act 2014 and/or the Code of Practice relating to the Personal Budgets for SEN and disability aspects of this legislation.

1. **Ceasing Direct Payments** 
   1. Direct payments may cease if:

* The person is in the categories listed in section 9.1
* Payments are found not to be used for the specific purpose outlined in the EHCP.
* If the recipient no longer wishes to receive a direct payment. In those circumstances they will cease as soon as a request is received in writing and alternatives can be arranged.
* There has been no consent from a young person post statutory school age.

**12. Contact Details**

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**Appendix 1**

Frequently Asked Questions

Q1. I have decided that I want to request a Personal Budget and a Direct Payment but my child’s statement was completed recently and may not be updated to an Education and Health Care Plan for two years. Must the Local Authority agree to my request now?

*No - your request will usually be considered when your child receives an Education and Health Care Plan. However, it may be possible to consider some parts of your request, or to bring forward the date for the Education and Health Care Plan. Talk to the professionals working with you and they will try to help find a way forward.*

Q2. How much money will I get?

*This will depend on the plan and will vary from child to child. The Local Authority must make sure that the amount they pay you is enough to meet the need identified and to purchase the support and services agreed in the plan.*

Q3 We both work - does this mean we will not be able to have a Personal Budget?

*No - Personal Budgets are not means tested. However, if ;you child/young person is over 18 and part of the budget comes from Social Care then the family may have to make a financial contribution - you should talk to you social worker about this.*

Q4. I do not really understand the difference between a Personal Budget and a Direct Payment. Can you explain?

*A Personal Budget is the agreed amount you can use to meet the needs of your child. The budget can be used to purchase a range of services including council services. You do not have to handle the money, the budget can be held for you and you can control how it is spent.*

*Some families do not want to manage the money themselves and are happy for the budget to be held for them.*

*However, some families do want all or some of the money to be given to them so they can purchase services themselves. This is a Direct Payment. The money is paid to you and you open a separate bank account for it to be paid into. Any money not used is returned to the council.*

Q5. Once the budget plan is written can it be changed during the year?

*Yes - as long as there is money left in the budget to make the changes and the changes meet the needs of your child and the outcomes identified in the assessment. Any small changes will be looked at by the worker who completed the plan with you to make sure that the change is in the best interests of your child.*

**Appendix 2**

The Children And Families Act 2014 S49 states:

**Personal budgets and direct payments**.

*(1) 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.*

*(2) 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.*

*(3) Regulations may make provision about personal budgets, in particular—*

*(a) about requests for personal budgets.*

*(b )about the amount of a personal budget;*

*(c) about the sources of the funds making up a personal budget;*

*(d) for payments (“direct payments”) representing all or part of a personal budget to be made to a child’s parent or a young person, or a person of a prescribed description in prescribed circumstances, in order to secure provision to which the budget relates;*

*(e) about the description of provision to which personal budgets and direct payments may (and may not) relate;*

*(f) for a personal budget or direct payment to cover the agreed cost of the provision to which the budget or payment relates;*

*(g) about when, how, to whom and on what conditions direct payments may (and may not) be made.*

*(h) about when direct payments may be required to be repaid and the recovery of unpaid sums;*

*(i) about conditions with which a person or body making direct payments must comply before, after or at the time of making a direct payment;*

*(j) about arrangements for providing information, advice or support in connection with personal budgets and direct payments.*

*(4) If the regulations include provision authorising direct payments, they must—*

*(a) require the consent of a child’s parent or a young person, or a person of a prescribed description in prescribed circumstances, to be obtained before direct payments are made; .*

*(b) require the authority to stop making direct payments where the required consent is withdrawn.*

*(5) Special educational provision acquired by means of a direct payment made by a local authority is to be treated as having been secured by the authority in pursuance of its duty under section 42(2), subject to any prescribed conditions or exceptions.*

*(6) Subsection (7) applies if—*

*(a) an EHC plan is maintained for a child or young person, and*

*(b) health care provision specified in the plan is acquired for him or her by means of a payment made by a commissioning body under section 12A(1) of the National Health Service Act 2006 (direct payments for health care).*

*(7) The health care provision is to be treated as having been arranged by the commissioning body in pursuance of its duty under section 42(3) of this Act, subject to any prescribed conditions or exceptions.*

*(8) “Commissioning body”, in relation to any specified health care provision, means a body that is under a duty to arrange health care provision of that kind in respect of the child or young person.*

**Appendix 3**

Organisations that can help families re Personal Budgets are:

**Wirral SEND Partnership (formerly Wirral Parent Partnership)**

<http://www.wired.me.uk/Parent-Partnership.asp>

**Wirral Independent Support**

<http://www.psspeople.com/how-pss-can-help/make-my-family-stronger/independent-supporters>

**Appendix 4**

Health and Care Information:

**Information about NHS Children’s Continuing Care can be found at**:

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213137/National-Framework-for-NHS-CHC-NHS-FNC-Nov-2012.pdf>

**Information from NHS England about Personal Health Budgets can be found at**:

<http://www.personalhealthbudgets.england.nhs.uk/_library/Resources/Personalhealthbudgets/2014/Personal_health_budgets_right_to_have_guidance.pdf>

**Information on Direct payments for health care can be found within the document Guidance on Direct Payments for Healthcare: Understanding the Regulations:**

<http://www.personalhealthbudgets.england.nhs.uk/_library/Resources/Personalhealthbudgets/2014/Guidance_on_Direct_Payments_for_Healthcare_Understanding_the_Regulations_March_2014.pdf>

**Appendix 5**

Glossary of SEN Funding

* Element 1 – standard placement funding. (A personal budget cannot be used to purchase the cost of standard placement funding)
* Element 2 – an amount of money to provide up to £6,000 of extra individual help for lower level needs.
* Element 3 – the amount of money provided by the Local Authority to meet higher level individual needs above Element 2.

**Appendix 6**

Disclosure and Barring Service Checks (previously CRB checks).

<https://www.gov.uk/disclosure-barring-service-check/overview>

**Appendix 7**

Equalities Act.2010 Schedule 13 – Reasonable Adjustments

<http://www.legislation.gov.uk/ukpga/2010/15/schedule/13>