

# Personal Budget Policy

Special Educational Needs and Disabilities

## REVIEW LOG

Date	Version	Comments	Approved by
August 2024	1.0	New policy produced.	Children and Education Leadership Team (15.08.24)

This system of recording review dates is designed to ensure staff at all times use the correct version of the up to date policy / procedure. This system is used on all City of Wolverhampton Council, Children & Adult Services Policies and Procedures.

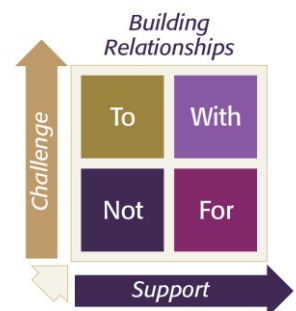
## CONSULTATION

The following people have been consulted on this policy:

- Childrens Service Manager
- Direct Payments Service Manager
- Head of Service Adults and Community
- Head of SEND and Inclusion

## RESTORATIVE PRACTICE

This Policy is underpinned by relationship building and repairing harm, fundamental principles of restorative practice which weaves throughout our social work practice. Restorative Practice means strengthening relationships as well as strengthening social connections within communities. In Wolverhampton, we are committed to restorative core beliefs and principles, embedding restorative practice as a fundamental part of our work within social care. Part of this work should focus on building relationships with children, young people and their families and the society in which they live. It not only helps us to better understand their needs, but also establish positive and sustainable working relationships to improve outcomes.



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## **1.0 Introduction**

This policy outlines how to access a Personal Budget, including all methods of payment for Children & Young People and Adults (with an EHCP) up to 25 years in Wolverhampton.

It gives guidance on uses of Direct Payments and other methods of payment of a Personal Budget, the procedure for accessing the scheme and the responsibilities of the different people involved.

## **2.0 Legislative Framework**

This Policy is underpinned by the following legislation:

- Care Act 2014 Section 32/33,
- The Special Education Needs (Personal Budget Regulations) 2014
- Children and Families Act 2014 Part 3 Section 49.

## **3.0 Context**

For Children and young People / Adult who have special educational needs in accordance with an EHCP or care and support needs under the Children Act/Care Act as part of the discussion for the delivery of provision, a personal budget and a direct payment can be requested provision, a personal budget and a direct payment can be requested.

The legislative framework for Local Authorities in England to agree a Personal Budget is contained within the Care Act 2014 Section 32/33, The Special Education Needs (Personal Budget Regulations) 2014 and the Children and Families Act 2014 Part 3 Section 49. A full explanation of the authorities' obligations can be viewed within the Care Act Guidance and the Children and Families Act Guidance.

Personal Budgets, Personalisation and Self-Directed Support, all describe how individuals can determine how they receive the support they need and have greater control over how their lives and purchase their own support rather than commissioned services. The Care Act 2014 places a duty on all Local Authorities to ensure that every adult assessed as being eligible for funded care and support can access a Personal Budget which is sufficient to meet their needs. Direct Payments are the established route by which an individual can receive their allocated budget if they prefer to arrange their own support rather than receive a commissioned service.

## 4.0 Principles

- Personal Budgets are about individuals having choice and control, promoting independence and enabling individuals to meet their eligible needs in a way that suits them.
- Individuals who have eligible needs should have choice and control over how their outcomes are achieved.
- Individuals should be encouraged to meet their outcomes in creative ways but must have regard to cost effectiveness.
- Individuals should be treated equitably when devising their EHCP or person-centred support plan.
- Provision of support will embrace flexible approaches but must abide by legal constraints as set out in the Care Act 2014, Children and Families Act and Personal Budget Regulations

## 5.0 Process/ The Agreement

Parents and carers have the right to request a Personal Budget. In respect of children and young people with an Education Health Care Plan a Personal Budget request is made when a plan is drafted (Section 38 of the 2014 act) and/ or at a CYP's annual review (Section 44 of the 2014 Act).

The Local Authority must then consider the request. The children and young people's SEND Officer prepares the decision to come to the Funding and Finance Decision Making Panel. Where the request is in relation to another service i.e. Social Care or Health, this will go to the appropriate service for agreement. When the request is made in relation to education, we consider the current funding and provision provided within the education setting. We must also gain the permission of the school if any of the goods or services are to be used or provided in a school and therefore we must seek the consent of the Headteacher, Principal (Personal Budget regulations (9))

In the line with the Personal Budget regulations 6 (c), the Local Authority must be satisfied that the direct payments will not have an adverse impact on other services which the local authority provides or arranges for Children and Young Person/Adult with an EHCP which the Authority maintains and 6(d) that the securing of the proposed agreed provision is an efficient use of the Authority's resources. Once the Personal Budget is agreed, SENSTART will confirm this by including this in Section J of the EHCP and requesting the funds are made available to the parent via either:

- Direct payments
- An arrangement (whereby the LA, school or college holds the funds and commissions the support specified in the EHCP) (Known as an individual Service Fund)
- Third party arrangements (where an individual or organization manage the direct payments on behalf of the Child's Parent or Young Person / Adult

- A mixture of the above

## **6.0 Individual Service Fund**

When a Personal Budget is agreed to be paid via an arrangement i.e. an Individual Service Fund (ISF).

The Council will, make an ISF payment to the Provider who have agreed to manage a service(s) for the Child, Young Person or Adult as set out in their Education Health Care Plan or Personal Support Plan.

A tripartite agreement will be agreed, that details the circumstances and expectations of the Council, the Provider and the Child, Young Person (or his/her parent) or Adult in how the ISF will be administrated and any caveats that are relevant. This document will be signed by all 3 parties.

The Council will:

- pay the Provider the allocated ISF of per week on behalf of the Child/Young Person or Adult. This will be paid 13 weeks in advance.
- Review the Personal Budget annually via the annual review of a Child, Young Person or Adult with and Education, Health and Care Plan.
- Regularly review the Child, Young Person or Adult's Care Plan. If because of the review, there is a change in your needs this may result in a change in the amount of the allocated Personal Budget.

The Provider will:

- work with the Child, Young Person or Adult in a flexible way to provide support to meet their needs and outcomes as set out in the Education, Health and Care Plan or Support Plan and in a way which promotes maximum choice and control
- support the Child, Young Person or Adult in a way that keep them safe, meets their needs and listens to them if they are unhappy with your support.
- notify the Council of any change in circumstances, which may affect the eligibility to receive the Services, or the level of support required.
- keep a clear record of the ISF received and how it is being used to meet support needs
- allow the Council to full access to your records as required for audit purposes.

The Child, Young Person (or their Parent) or Adult will:

- work with the Provider to plan services which meet needs flexibly as set out in the Education, Health and Care Plan or Support Plan
- raise any concerns about how support is being provided.

When A Personal Budget via Direct Payment is Agreed

- The person receiving a Direct Payment will have received a series of Factsheets from the Employer Support Service called Barrie Bookkeeping during the process of setting up their Direct Payment, giving them a range of information about the Direct Payments Scheme. The person receiving the Direct Payment will have received a visit from the Employer Support Service

who will have offered information, given advise on managing their Direct Payment, what to pay the Personal Assistant and to have answered any questions the person may have asked. The Direct Payment Agreement Form will have been part of the information shared at the visit. The Agreement is the document that tells the person about their Direct Payment – their money, how it will be paid and how it will be monitored. The Direct Payment Agreement needs to be read with the Direct Payment Factsheets.

The Direct Payment Agreement is between the City of Wolverhampton Council and the person receiving the Direct Payment, along with the nominated / authorised person who is supporting you with your Direct Payment.

# **Appendix 1 The Direct Payment Agreement**

## **Basis of the Agreement**

The Direct Payment Agreement is made on the basis that:

An assessment of the Child's/ Young Person/ Adult needs has been completed and the Child / Young Person/ Adult is eligible to receive support services as identified/shown in the Education and Health Care (EHC) Plan.

You are willing and able to secure the support/services detailed in the EHC Plan yourself or with assistance (this may be through a nominated person or third party), and we are willing to make the direct payment available to you to enable you to buy the support/services your Child/ Young Person/ Adults needs.

## **About The Direct Payment**

### **When You Will Be Paid**

Payments will be made in advance every four weeks.

### **How You Will Be Paid**

The payment will normally be paid into your direct payment card account unless it has been agreed to make the payment to a Third Party.

All money you receive for the Child's/ Young Person/ Adult needs must be paid into this account.

## **7.3 General Rules About How to use the Money.**

The direct payment is to buy the services as detailed in the EHC Plan and you must ensure that contingency arrangements are in place in case of any emergencies. As discussed with you previously the EHC Plan can be used flexibly, and it will be regularly reviewed and you should contact us if you wish to change anything.

If you wish to use a care agency, we recommend that you purchase care from a provider who is registered with the Care Quality Commission who inspect the standards provided by agencies nationally.

You must use the direct payment legally. If you decide to employ a PA (Personal Assistant) you must meet the legal requirements of being an employer.

If you choose to employ a PA please seek advice from the Support Service Barrie Bookkeeping on becoming an employer.



You are advised to obtain Disclosure and Barring Checks for any PA you intend to employ, and these are facilitated and funded by us. We have a duty to safeguard and promote the welfare of your Child/ Young Person/ Adult and we are obliged to withdraw the offer of a direct payment if you intend to employ someone who is found to be unsuitable following a DBS check.

Your PA cannot assist you with managing your direct payment, i.e., they cannot be a signatory on the direct payment card account or support you with managing the money.

Any third-party person helping you to manage the direct payment cannot have any financial interest / in or be a director of any company providing services funded through the direct payments either as a PA or through a care agency (unless agreed by us).

If you intend to employ a PA, the law says you must buy Employers Liability insurance before your staff start working for you. The policy will also cover you for Public Liability Insurance Policy.

You cannot use the direct payment to employ:

- your spouse (husband or wife)
- your civil partner
- your partner whether you are unmarried or part of a same sex couple or
- a close relative who lives with you or the spouse or partner of that close relative

A close relative means a person that your child / young person/adult is related to in one of the following ways: Parent or Parent-in-Law, Aunt or Uncle, Grandparent, Son/Daughter, /Son in Law/Daughter in Law, Stepson or Daughter, Brother or Sister and Partner of any of the above. We will only agree to this if we feel it is necessary to meet the Child's / Young Persons/ Adult's care needs in this way and we will write to you to confirm this.

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

The direct payment cannot be used to buy goods or services which are to be used or provided on premises where relevant early years education is provided without the written consent of the provider of the relevant early year's education.

You cannot use the direct payment to pay for long term residential or

nursing care.

#### **7.4 What Records You Should Keep**

You are responsible for using the money wisely with the support of your nominated person. Any bank charges, legal charges or HM Revenue and Customs costs will be your responsibility.

You will need to keep copies of any invoices or bills regarding how the money has been spent and any paperwork regarding payroll as the Council and/or HMRC (Her Majesty's Revenue and Customs) can request to see these at any time. This information will also help you, and your nominated person and us to review your child's/Young Person/Adult support and the direct payment at the annual review. You will need to keep these records for at least seven years.

#### **8.0 Review of the administration of Direct Payment**

We must review the administration of the direct payment at least once within the first three months of direct payments being made, and during a review or a reassessment of an EHC plan. The review will help you look back over the year at what your Child/ Young Person/Adult has achieved and we will consider whether:

- The direct payment is to continue.
- The direct payments have been used effectively.
- The payment continues to be sufficient to secure the same provision to meet the assessed needs.
- The decision to make direct payments remains as set out in Regulation 6.
- The conditions set out in Regulation 8 (3) have been complied with.

We may increase or reduce the amount of direct payments depending upon if the person's assessed needs have changed. Where the assessed needs have changed a new assessment as part of good practice may be requested and this is to ensure that any changes made to the direct payment, will not have a negative impact on the person, providing that we are satisfied that the new amount is sufficient to secure the same provision.

Where a Direct Payment needs to cease due to concerns of fraud or mismanagement, a commissioned service may need to be sourced, to continue to meet the needs and maintain support to the person.

You may also request that the direct payment is reviewed, and we must

consider whether to carry out a review and whether:

- The direct payment is to continue.
- The direct payments have been used effectively .
- The payment continues to be sufficient to secure the same provision.
- The decision to make direct payments remains as set out in Regulation 6 .
- The conditions set out in Regulation 8 (3) have been complied with.

The Council may reduce the amount of the direct payment where payments remain unused, and / or request a new assessment of the persons needs to be undertaken to ensure the level of direct payment is still required and effective at meeting the needs and the Council considers that it is reasonable to offset unused direct payments against the outstanding amount to be paid.

Following a review we may:

- Substitute you as the person receiving the direct payment with a nominee, the Child's parent or the Young Person/ Adult.
- Increase, maintain or reduce the amount of the direct payment. This requires that you comply with either or both of these conditions: You must not secure a service from a particular person.
- You must provide information that we consider to be necessary.
- Cease making the direct payment.

## **9.0 Changes to your Personal Budget**

If your needs change which impact on your personal budget being amended, we will give you relevant notice of the reduction or increase and the reasons for our decision.

We are required to reconsider our decision if you request us to do so and in looking at that decision, we will consider representations by you and where the recipient is a nominee any representations made by the Child's Parent or the Young Person / Adult. We will then provide reasons of our decision following reconsideration. However, we are not required to make more than one reconsideration of a decision to reduce a direct payment.

If things go wrong, you should contact the allocated worker / service that supported your Direct Payment / Personal Budget or the Support Service

Barries Bookkeeping ( 01902 912895). They will assist you to find other support to meet your assessed needs. However, if this is unsatisfactory then we will try to provide the necessary services.

If your Child/ Young Person/ Adult goes into hospital or respite please ensure you or someone close to you notifies us as soon as possible.

## **10.0 Repayment and recovery of direct payments**

We may require you to repay part or all of the direct payments if:

- Circumstances of the Child or Young Person / Adult have changed which impact on the appropriateness of the agreed provision.
- All or part of the direct payments have not been used to secure the agreed provision.
- Theft, fraud or another offence may have occurred in respect of the direct payment.
- The Child or Young Person / Adult has died.

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

If we decide that all or part of the direct payment must be repaid, we will give notice in writing detailing:

- The reason for the decision
- The amount to be repaid and
- A reasonable timescale for the amount to be repaid.

We are required to reconsider our decision if you request us to do so and in looking at that decision, we will consider representations by you and where the recipient is a nominee any representations made by the Child's Parent or the Young Person / Adult. We will then provide reasons of our decision following reconsideration. However, we are not required to make more than one reconsideration of a decision to repay part or all of the direct payment.

If we decide that the direct payment must be repaid, then we will write to you with our decision detailing the amount and the timescale for repayment.

Where all or part of the direct payment is to be repaid, we may recover that amount as a debt due to us.

In the event of misappropriation of the use of funds (which could include theft or fraud) may lead to prosecution.

## 11.0 Ending the Agreement

We must stop making the direct payment if:

- You notify us in writing that you no longer wish to receive the direct payment.
- You are no longer eligible to receive a direct payment under Regulation 5(2).
- Following a review under Regulation 11, we consider that; You are not using the payment to purchase the agreed provision, the agreed provision can no longer be secured by means of a direct payment.
- We are aware that the making of the direct payment is: Having an adverse impact on other services which we provide or arranges for Children and Young People/ Adult with an EHC plan which we maintain, or no longer compatible with our efficient use of its resources.
- We have taken reasonable steps under Regulation 15(1) when a Child becomes a Young Person/ Adult to determine whether the Young Person / Adult consents to direct payments and the Young Person / Adult has not informed us that he or she consents to receive direct payments.

We may cease to make payment if you have failed to comply with any of the conditions set out in Regulation 8(3)

If we decide to stop making direct payment, we will give notice in writing setting out the reasons for the decision.

We are required to reconsider our decision if you request us to do so and in looking at that decision, we will consider representations by you and where the recipient is a nominee any representations made by the Child's Parent or the Young Person / Adult. We will then provide written reasons of our decision following reconsideration. However, we are not required to make more than one reconsideration of a decision to stop making the direct payment.

Any right or liability of the recipient to a third party acquired or incurred in respect of a service secured by means of direct payments transfers to us when we stop making the direct payment.

The transfer of the liability under paragraph (6) is binding on third parties, even though apart from this paragraph it would have required the consent of the third party.

Either you or we may terminate this agreement by giving four weeks' notice in writing to the other party.

We may terminate this agreement immediately if, after investigation, it is found you are using the money illegally or not in your Child's /Young Person / Adults best interests or you are not complying with any part of this Agreement.

Before terminating the agreement, we shall work with you (and your nominated person) to find a solution to the problems wherever possible.

You will need to complete all outstanding payments to your employees, HM Revenue and Customs and agencies for us to finalise your direct payments account.

Any money left in the direct payment account will need to be returned to us, but we will write to you regarding this.

In the event of death, we will take into account your legal or employment responsibilities before finalising the direct payments account.

We ask for money to be repaid if it has not been used to buy the support set out in the EHC Plan or you have employed your spouse, partner, or close relative as detailed in paragraph 3.9 above.

## **11.0 Transition**

Where a child who has been receiving direct payments becomes an adult (can consent at age 16 y, we must take reasonable steps to determine whether the young person consents to receive direct payments at regular intervals

If the Young Person/Adult consents in writing to direct payments being continued to be made to the parent or nominee we must do so.

If the Young Person / Adult notifies us in writing that they do not consent to a direct payment we must stop the payment as soon as is reasonably practicable.

## **Capacity**

If the parent lacks capacity within the meaning of the 2005 Mental Capacity Act at the relevant time, references to a Child's/ Young Person/ Adult parent are to be read as references to a representative of the parent within the meaning of section 80(6) of the 2014 Children and Families Act.

Where a Young Person / Adult lacks capacity within the meaning of the

2005 Mental Capacity Act at the relevant time, references to a Young Person / Adult are to be read as references to a representative of the Young Person/ Adult within the meaning of section 80(6) of the 2014 Children and Families Act (check) other than the following references:

- Where the recipient is the Child's Parent / nominee / Young Person / Adult that person will act in the best interests of the Child or the Young Person/ Adult in securing the proposed provision.
- The name of the Child or Young Person / Adult in respect of whom direct payments are to be made.
- The EHC plan is being reviewed or reassessed under section 44 of the 2014 Children and Families Act.
- The circumstances of the Child or Young Person/Adult have changed in a manner which has an impact on the appropriateness of the agreed provision.
- The Child or Young Person / Adult has died.
- Where a Child who has been receiving direct payments becomes a Young Person / Adult we must take reasonable steps to determine whether the Young Person / Adult consents to receive direct payments.

For more information on Personal Budgets please [click here](#) to access the leaflet.

## **Comments, Complaints and Compliments**

You have the right to comment, complain and compliment about the operation of this agreement using our complaints procedure. However, this procedure cannot be used for problems you may have with staff employed directly by you or agencies that you contract with.

For more information on the Council's complaints procedure please [click here](#).

## **How Your Information may be Used**

We work with partners to provide you with public services, in this case relating to support with your Direct Payments. To do this, we will need to share your information. We will do this in a way that protects your privacy. We and our partners may further share information you provide where this is required to fulfil a contract or by law. Such instances can include (but are not limited to) the sharing of your personal data with organisations that provide payroll services, insurance providers or Her

Majesty's Revenue and Customs (HMRC).

We and our partners are also under a duty to protect public funds. We may use any of the information you have provided on this form for the prevention and detection of fraud. We may also share this information with other bodies that are responsible for auditing or administering public funds. More details of how the Council uses personal data can be found in our privacy statement, at:

<http://www.wolverhampton.gov.uk/article/1844/Privacy--cookies>

We and our partners have a duty to keep personal data accurate and up to date, so please let us know when any of your contact details change.

You have the right to know what information we hold about you and we try to make sure it is correct. If you would like further information, visit our website:

<http://www.wolverhampton.gov.uk/article/1937/Data-protection>

## Signatures

Here, all parties are signing up to the agreement. This means that all agree to work to the detail in this document.

<b>1<sup>st</sup> Party Us – City of Wolverhampton Council</b>	
Signature on behalf of City of Wolverhampton Council:	
Date:	

<b>2<sup>nd</sup> Party You – The Person Receiving the Direct Payment</b>	
Signature:	
Print Name:	
P Number:	
Date:	
Child's Name	



Child's P Number:	
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<b>3rd Party Your Nominated Person</b>	
Signature:	
Print name:	
Date:	

Please return to: **Direct Payments Team, Ground Floor, Civic Centre,  
St Peter's Square, Wolverhampton, WV1 1RT**

**Tel: 01902 551294**