



SEN Education Personal Budgets Policy

This policy and process is for SEN Education Personal Budgets only. Please see Cumberland's Council's Local Offer for further information relating to healthcare and social care personal budgets.

What is a SEN Personal Budget?

A SEN Personal Budget is a sum of money for a child or young person with an Education, Health and Care Plan (EHCP). It is used to fund some, or all of the special educational provision set out in an EHCP (section F). There is no extra money for personal budgets. A personal budget is funded by everyone agreeing to use existing resources differently to tailor support to specific needs. A personal budget is the estimated amount of money needed to cover the cost of making the special educational provision specified in the EHC plan.

When can a SEN Personal Budget be requested?

Personal budgets are optional, you do not have to have one. Young people and parents/carers have a right to request a personal budget, and the local authority (LA) must consider identifying one when:

- When the LA sends a draft EHCP following an EHC needs assessment.
- When an EHCP is being reviewed.
- During a reassessment of needs.

You have the right to request a personal budget linked to an EHCP, but not the right to have one. This will be decided by the LA.

Indicative SEN Personal Budget

When the draft EHCP is being prepared or when the EHCP is being reviewed/reassessed, the LA will indicate the level of funding that is likely to be allocated to a SEN Personal Budget (the 'Indicative SEN Personal Budget'). The Indicative SEN Personal Budget is an estimate of the high needs funding required

to meet the child or young person's special educational needs. It is important to note that special educational provision specified in an EHCP can include provision funded from the school's budget (or in colleges, from their formula funding) and more specialist provision funded wholly or partly from

the local authority's high needs funding. It is this latter funding that is used for SEN Personal Budgets.

The parent/young person can then consider whether they want to apply for a SEN Personal Budget to cover some or all of the SEN provision in the EHCP.



How can a Personal Budget be provided?

There are four ways a Personal Budget can be delivered -

- An arrangement – the LA, school or college holds the funds and commissions the support specified in the EHCP (these are sometimes called notional budgets).
- Direct payments – where the parent/young person receives the funding to contract, purchase and manage services.
- Third party arrangements – where funds (direct payments) are paid to and managed by an individual or organisation on behalf of the child/young person.
- A combination of the above.

What is the difference between a personal budget and a direct payment?

A personal budget shows you what funds are available to make the provision specified in an EHCP, and who provides it. The parent/carer or YP does not manage the funds directly.

With a direct payment, the parent/carer or YP is given the money for some services and manages the funds themselves. The parent/carer or YP is responsible for buying the service and paying for it. A personal budget can include a direct payment if it is agreed that this is the best way to manage part of the personal budget.

Direct payments can be used for special educational provision in a school or college only if the school or college agree. It is also possible to have a third-party arrangement to manage a direct payment

Who is or is not eligible to receive direct payments?

The LA can pay direct payments to the young person (aged 16 and over), their parent/s, or someone they choose. This person will receive the direct payments for them ('the Recipient').

However, a person is not allowed to receive a direct payment if any of the following apply.

The person is:

- Incapable of managing direct payments without assistance or such assistance as may be available to them;
- Still of compulsory school age;
- Lacking capacity within the meaning of the Mental Capacity Act 2005 to consent to the making of direct payments; and/or
- An excluded person, which includes a person:
 - a) who is subject to a drug rehabilitation requirement
 - b) who is subject to an alcohol treatment requirement
 - c) who is released on licence under Part 2 of the Criminal Justice Act 1991
 - d) who has a community rehabilitation order and is required to submit to treatment for their drug or alcohol dependency

e) who is subject to a drug treatment and testing order

f) who is subject to a youth rehabilitation order

For full details see the **SEND Regulations 2014**

Decision Making Process

Every request for a Personal Budget will be considered on an individual basis by the EHC Decision making panel. The request will take into account the wishes and aspirations of the child/young person who has an EHCP, the views of their parents/carers, and the provision and arrangements for the delivery of services and resources currently available in Cumberland. They will also decide if that budget can be given as a direct payment, either fully or partially.

There are restrictions on how a Personal Budget can be used, for example, A SEN Personal Budget cannot be used:

- To make any provision that is not listed in your child's EHC plan.
- To fund a place at a school or a post-16 institution.
- To make any provision that the setting would provide for any child/young person.
- For special educational provision that is being provided as part of a larger budget (for example, a contract with the NHS to provide all speech and language therapy or occupational therapy) and the LA can't separate out or 'disaggregate' the personal budget for your child from that overall larger budget.

If a SEN Personal Budget is agreed and a direct payment has been requested, the panel will decide if this is possible.

A direct payment will only be granted if the panel is satisfied that:

1. The Recipient will use the direct payment to secure the agreed provision appropriately.
2. Where the Recipient is the child's parent or nominee, that person will act in the best interests of the child or the young person when securing the proposed agreed provision;
3. The direct payments will not have an adverse impact on other services which the LA provides or arranges for children and young people with an EHCP.
4. Securing the proposed agreed provision by direct payment is an efficient use of the LA's resources.

What if the LA decides not to make a SEN Personal Budget/direct payment?

You will be advised in writing of the LA's decision, setting out why the application has been refused. You can request a review of the decision by contacting the SEND Team:

SEND@cumberland.gov.uk. If the decision not to issue a personal budget is upheld, you could use the 'Disagreement Resolution process'. In Cumberland, this service is provided by Collis Mediation.

You cannot appeal to the Special Educational Needs and Disability Tribunal over a personal budget refusal.

What if the LA decides to make a SEN Personal Budget?

The applicant will be advised in writing of the LA's decision agreeing to the request. If appropriate, it will set out the amount of the direct payments and when they will be paid.

What can the direct payments be used for?

The LA may only make direct payments in respect of the special educational provision set out in the EHCP and may not make direct payments for the purpose of funding a place at a school or post-16 institution.

The LA may not make direct payments for any goods or services that are to be used or provided in an early years setting, school or post-16 institution without the written consent of the head teacher, principal or equivalent position.

When the LA makes the decision, it will send the recipient a draft agreement setting out:

- What goods or services the direct payments are to secure.
- The proposed amount of the direct payments.
- Conditions on how the direct payments may be spent.
- The dates payments will be made and frequency.

By way of example, the direct payments cannot be spent on:

- Anything that does not meet an identified outcome within the EHCP.
- Placement costs.
- Anything that isn't safe or legal.
- Housing or other household costs.
- Any educational costs when parents exercise their right to electively home educate and the LA considers the provision required can be provided by an educational setting.

The Agreement

The recipient is required to sign an agreement to confirm their agreement to both the budget and the conditions for the receipt of direct payments. Please note that the recipient is required to agree:

- To receive the payments.
- To use the payments only to secure the agreed outcomes.
- To comply with the conditions set out.
- To notify the LA of any changes in circumstances which might affect the need for the payments.
- To set up and use a bank account approved by the LA solely for the direct payments (the Direct Payments Bank Account)
- To ensure that the Direct Payments Bank Account is only accessible by the Recipient, and
- To keep a record of money paid in and withdrawn from the Direct Payments Bank Account.

How Payments will be made

Direct payments are made termly in advance. A one-off payment will only be made when the direct payment is being used to purchase equipment.

Direct payments will be made based on the number of days within the term or other payment period. This means the amount you receive may fluctuate slightly.

The agreement will state how the payments will be made.

The Recipient acting as an employer

If the Recipient chooses to use the direct payment to employ staff (rather than engage a service provider such as an agency) they will become an employer and will be responsible for the aspects of employment law involved in this. This includes making sure that any tax and National Insurance payments are made and planning for other payments that may arise relating to holidays or sickness.

If the person concerned is self-employed, the Recipient must contact HM Revenue and Customs for advice.

If the Recipient uses the direct payments to employ someone, they must ensure they take out Employer's Public Liability Insurance. This ensures they have insurance in place to meet any potential employment claims.

The LA requires the Recipient to show proof of a Disclosure and Barring certificate for any staff they employ or engage. Alternatively, they can sign a disclaimer. This shows they understand the risks and choose to go ahead without the certificate.

The Recipient must ensure they comply with Home Office immigration regulations when employing staff.

The Recipient must ensure they comply with health and safety regulations.

The Recipient must not employ staff before the agreed start date. The direct payment will only fund the service from that date.

Recipient's responsibilities in relation to the Direct Payments Bank Account

The LA is accountable for the public money it manages. This includes money used to fund direct payments. Therefore the LA must set conditions about how the Recipient manages direct payments and what they use them for.

All payments from the Direct Payments Bank Account must only be made by cheque, standing order, electronic transfer, or direct debit. Cash or cash cards must not be used unless for approved purposes.

The Direct Payments Bank Account must not become overdrawn.

The Recipient must not transfer any money from the Direct Payments Bank Account to another account of theirs.

Monitoring and reviewing of the direct payments

The LA will review direct payments for the provision in an EHCP:

- Within the first three months of the direct payments commencing.
- When conducting an annual review or reassessment of an EHCP, and
- When the beneficiary of the direct payments becomes 16.

In addition, the Recipient may request a review of the direct payments if they think it necessary.

The LA may increase the amount paid if necessary or reduce the amount if payments remain unused and if it considers that it is reasonable to offset unused payments against sums yet to be paid.

The LA will require the Recipient to submit bank statements as part of the annual review and any audit of direct payment accounts.

When carrying out the review the LA will consider:

- Whether to continue using direct payments;
- Whether the direct payments have been used effectively;
- Whether the amount is still sufficient to secure the agreed provision;
- Whether the agreements obtained from the Recipient have been complied with and are still sufficient;
- Whether a new person should replace the Recipient in that role;
- Whether to impose new conditions on the continuation of the direct payments.

For example, that (a) the Recipient must not secure a service from a particular person and/or that (b) the person providing the service must provide such information as the LA see necessary.

If the LA decide to reduce payments, it will send the Recipient a notice with reasons.

The Recipient may ask the LA to review that decision, by contacting the SEND Education Team Manager.

In any event, the most the Recipient will be able to retain in the Direct Payments Bank Account is 15% of the annualised value of the direct payments.

When might direct payments cease?

If the Recipient has problems managing the direct payments, the LA will work with them to solve the problems. If the problems cannot be solved within 3 months, the LA may decide to suspend or stop the direct payment and meet the Beneficiary's needs in another way.

If the Recipient makes a genuine mistake, the LA will work with them to sort it out. However, if they do not keep to the terms and conditions of the agreement, the LA may suspend or stop the direct payments. This will only happen after it has carried out a review. Some or all of the payments made to the Recipient may be reclaimed, and the Beneficiary's needs will be met in other ways.

The following are examples of instances where the LA may decide that the direct payments should cease:

- If a condition imposed by the LA is not being complied with, for instance, the payments are not being used to secure the agreed outcomes.
- If there is evidence of theft, fraud, or another offence.
- If the needs of the child/ family have changed e.g., if the child/ young person is in hospital for an extended period of time.
- If the information required for monitoring purposes is not supplied.
- If the Recipient no longer wishes to use direct payments to provide the provision, in which case they will cease as soon as this request is received in writing and alternatives can be arranged.
- If the Recipient becomes an excluded person (see above).
- If the use of direct payments is having an adverse impact on other services provided by the LA or having an impact on the provision for other children and young people with an EHCP or is no longer compatible with the efficient use of the LA's resources.
- If there are changes to the capacity of the Recipient.
- If there has been no consent from the Recipient to receive them.
- If the Beneficiary moves to another educational setting (in which case the current direct payment will cease and must be renegotiated).
- If the Beneficiary moves out of Cumberland.

If the direct payments are to be stopped, the LA will give notice to the Recipient and Beneficiary, in writing. It will set out its reasons for doing so, at least one month before this happens (where reasonably practicable). If the Recipient and/or Beneficiary wishes the LA to review that decision, they may request a review in writing.

Where there is evidence of fraud or misuse of the direct payments the LA reserves the right to stop the direct payments straightaway. It will then meet the Beneficiary's needs in other ways. The LA may take action to reclaim and/or recover any monies paid by means of direct payments. The Recipient may also be liable to criminal prosecution.

In some cases, the LA will require the Recipient to repay part or all of the direct payments depending upon the circumstances of their withdrawal and the factors set out above.



Information, Advice and Support

SEND Education Team

Cumberland SEND Information, Advice and Support Service (SENDIASS)

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