



SCHOOLS FORUM

11TH SEPTEMBER 2014

SEND REFORM AND PERSONAL BUDGETS

Content Applicable to;		School Phase;	
Maintained Primary and Secondary Schools	X	Pre School	X
Academies	X	Foundation Stage	X
PVI Settings	X	Primary	X
Special Schools / Academies	X	Secondary	X
Local Authority	X	Post 16	X
		High Needs	X

Purpose of Report

Content Requires;		By;	
Noting		Maintained Primary School Members	X
Decision	X	Maintained Secondary School Members	X
		Maintained Special School Members	X
		Academy Members	X
		All Schools Forum	X

1. To make Schools Forum aware of the responsibility to develop personal budgets and this to include funding in the high needs block.

Recommendation

2. Schools Forum are asked to nominate a member to be part of a small working group of Headteachers, to agree the scope and mechanism to deliver personal budgets for children and young people with education health and care plans

Introduction

3. This report is to make Schools Forum aware of SEND reform, the potential impact of 'Personal Budgets' on the high needs block of the Direct schools grant and the authorities intention to engage with schools to establish a robust and transparent system to fulfil this requirement.

Background

4. The Children and Families Act 2014 requires local authorities to offer families a Personal Budget so that they have more choice and control over the support they need. Personalisation is at the heart of the Special Educational Needs and Disability (SEND) reforms, and is about putting children, young people and their families at the centre of the Education, Health and Care (EHC) process. Leicestershire County Council and health are committed to developing joint arrangements for commissioning services to improve outcomes for children and young people with special educational needs or disabilities.
5. A personal budget is an amount of money that can be used to arrange and pay for the support agreed in Education, Health and Care plans. The amount allocated depends on the needs and outcomes identified in each plan and will alter as they change. Personal Budgets gives parents/young adults more flexibility, choice and control over the way that support is delivered and enables them to be in charge of how the money for support is spent to meet the outcomes outlined in an EHC plan.
6. From the 1st of September 2014 Leicestershire will be offering personal budgets and direct payments in accordance with existing policies and procedures across health and children's/adults social care. Currently there are no 'personal budget options' for education. The scope of Personal Budgets will need to increase over time to achieve the ambition of the legislation.
7. A child or young person who has an Education Health and Care Plan and is resident in Leicestershire may be eligible to have a Personal Budget to meet the outcomes detailed in their EHC Plan. The personal budget may include funding from education, health and social care although the amount of the personal budget will vary depending on eligibility, child's/young person's needs and the outcomes to be achieved. A personal budget will not include the funding for a school place and the scope for a personal budget will vary depending on the school preference, i.e. Some (special) schools Will have services and provisions as part of their school's 'normal' provision which would mitigate against specified [provisions in the Education health and care plan being offered as a personal budget.
8. What is in scope for discussion is therefore element 2 and element 3 (top up funding). Element 2 funding being schools funding for the first £6,000 of a pupils additional needs and access top up funding where the cost of the additional support exceeds

£6,000, whilst schools will continue to meet needs in this manner the funding cannot be used to create a personal budget without the permission of the school.

9. A further consideration will need to include what should also be included in top up funding, for example input from SEN services set out in the child's/young person's education, health and care plan.
10. School's Forum should note that prior to any personal budget allocation being agreed, then for 'special educational provision' the school's agreement must be sought. The current methodology for identifying the needs of individual pupils may need to be reviewed as a result of both personalisation and that in funding terms we are required to fund 'additional' needs rather than special educational needs.
11. From the 1st of September 14 Leicestershire will not be in a position to offer a personal budget for education but we need in the process of developing this to provide young people and families with greater choice and control.
12. In the future this will mean that children and young people who need additional educational support, agreed as part of their EHC plan may be able to have a personal budget from education to arrange the support themselves.
13. Personal budgets are not from a new pot of money they are just a more transparent way to spend the money that is available to support children and young people up to the age of 25 years old with special educational needs.
14. There are four ways in which the young person/parent can manage their Personal Budget. These are as follows:
 - a) Direct payments also referred to as a cash payment, this is where individuals receive the cash to contract, purchase and manage services themselves. A Direct Payment is money given to people to buy the support agreed in the EHC plan instead of Leicestershire County Council, school and/or health commissioning and arranging services for them.
 - b) Third party arrangements also referred to as a third party cash/ direct payment, this is where the money is paid to someone that the family/young person choose an individual or an organisation that runs a payments service. Or the money is sent to a support provider referred to as a Provider Managed Account.
 - c) An organised arrangement also referred to as a managed budget, this is where Leicestershire County Council, school, college or health services hold the funds and commissions the support specified in the EHC plan with contracted providers.
 - d) A combination of the above

15. The code of practice states the following;

*9.112 The **special** educational provision specified in an EHC plan can include provision funded from the school's budget share (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 Personal Budgets, although schools and colleges should be encouraged to personalise the support they provide and they can choose to contribute their own funding to a Personal Budget (this will usually be an organised arrangement managed by the setting, but some schools and colleges, including specialist settings, have made innovative arrangements with young people, giving them direct (cash) payments).*

9.113 High needs funding can also be used to commission services from schools and colleges, including from special schools. In practice, this will mean the funding from the local authority's high needs budget for the SEN element of a Personal Budget will vary depending on how services are commissioned locally and what schools and colleges are expected to provide as part of the Local Offer. The child's parent or the young person should be made aware that the scope for a Personal Budget varies depending on their school preference. For example, as part of their core provision, special schools and colleges make some specialist provision available that is not normally available at mainstream schools and colleges. The particular choice of a special school, with integrated specialist provision, might reduce the scope for a Personal Budget, whereas the choice of a place in a mainstream school that does not make that particular provision could increase the opportunity for a Personal Budget. '

16. Given the complex nature of these requirements, then a working group to work up proposals and policy recommendations regarding this is being recommended. Any working party will need to include parent and young person input.

Resource Implications

17. It is not possible to precisely quantify the financial implications from these requirements but the end point should be a zero impact on spend as personal budgets are a mechanism for transferring the same amount of money from one party to another.

Equal Opportunity Issues

18. These changes should enable greater flexibility and choice for families and young people, deliver a person centred approach to achieving outcomes.

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Background.

The Children and Families Act 2014 requires Local Authorities to offer families a personal budget so that they have more choice and control over the support they need.

Personalisation is at the heart of the Special Educational Needs and Disability (SEND) reforms, and is about putting children, young people and their families at the centre of the Education, Health and Care (EHC) process. It means starting with the person as an individual with strengths, preferences and aspirations, identifying their needs and making choices about how and when they are supported to live their lives.

Scope of this guidance.

This guidance covers the approach taken by Leicestershire County Council and the two Leicestershire Clinical Commissioning Groups (CCG's) for personal budgets where a child or young person has an Education, Health and Care (EHC) plan. This document is intended to draw upon existing policies across Leicestershire County Council and the CCG's for personal budgets and/or direct payments.

This guidance does not replace Leicestershire County Council's duty to Carers and their right to have a Carers Assessment. Information for Carers can be found by following the link below.

[Looking after someone you care about?](#)

Leicestershire County Council and Leicestershire Clinical Commissioning Group Commitment.

Leicestershire County Council and the CCG's are committed to developing joint arrangements for commissioning services, to improve outcomes for children and young people with Special Educational Needs or Disabilities.

For the 1st of September 2014 Leicestershire will be offering personal budgets and direct payments in accordance with existing policies and procedures.

In the future this will be extended to personal budgets across education, health and social care. The scope of personal budgets will increase over time as joint commissioning arrangements provide greater opportunity for choice and control over local provision.

The involvement of children, young people and families is integral to the development of personal budgets and shaping local service delivery. Leicestershire County Council and the CCG's are committed to co-producing all planning of services, policies and procedures with children, young people and families to ensure that they are involved in decision making processes at both an individual and strategic level.

Parents and carers in Leicestershire have described co-production as:

“Co-production should be about children, their parent/ carers, local education authorities, health professionals, social workers and anyone else involved in the child's welfare coming together as equals to achieve a life changing document. Everyone's feelings and ideas should be considered and reflected at every stage and it is imperative that no one takes a role of dominance. The final document should be a shared agreement and understanding”.

“Co-production is the biggest and most exciting change to hit SEND in the years I've been involved. Parents being listened to, being equal partners in decision making and commissioning decisions. Getting away from that awful phrase 'what are they going to do for us?' and exchanging it for 'What can we do for ourselves, with their help?' Parents - and our kids themselves - being involved, empowered and listened to”.

What is a Personal Budget?

A personal budget is an amount of money that can be used to arrange and pay for some of the support agreed in the child or young person's Education, Health and Care plan. The amount that is allocated depends on the needs and outcomes identified in the plan and can alter as they change. Personal budgets gives children, young people and families more flexibility, choice and control over the way that support is delivered and enables them to be in charge of how the money for support is spent to meet the outcomes outlined in an EHC plan.

Eligibility.

A parent of a child and/or young person who has an Education Health and Care Plan and is resident in Leicestershire has the right to request a personal budget to meet the outcomes detailed in their EHC Plan. The personal budget may include funding from education, health and social care although the amount of the personal budget will vary depending on eligibility for the different components, the child or young person's needs and the outcomes to be achieved.

In some cases a parent of a child or young person may have a personal budget from one or more source, i.e. education, social care and/or health. An education, health and social care budget combined is sometimes referred to as an 'Individual Personal Budget'.

A parent of a child or young person may be offered a personal budget for social care or for health support without having an EHC plan, i.e. having an EHC plan is not the only way a personal budget may be offered to meet identified social care or health needs.

Education, health and social care have separate eligibility criteria's for funding and those services that can be provided by a direct/cash payment. There are three main sources of funding for a personal budget, which are:

Education.

A Special Educational Needs (SEN) personal budget may be made available should a child or young person aged 0-25 years have an Education Health Care Plan. A SEN personal

budget is a sum of money made available by the Local Authority because it will not be possible to meet the child or young person's learning needs from the high needs funding made available to schools. The school/college involved has funding for special educational needs through the school funding system and therefore only children and young people with the most severe and complex learning support needs are likely to need a SEN personal budget.

A SEN personal budget will not be used to fund a school place or a post 16 institution. Funding for special educational provision in a personal budget will come from a high needs block (element 3) and will only include funding from a schools notional SEN budget (element 2) with the support and agreement of the head teacher. In addition schools will need to give permission before the Local Authority can agree to fund special educational provision through a direct payment to the family where the service or equipment is to be provided on the school premises.

Not every child or young person with an EHC Plan will have a SEN personal budget. The scope of personal budgets will reflect local commissioning arrangements and will not normally be used for services that a school or college provides, from its own budget, as part of the local offer. In practice this means that the parent or young person will need to be made aware that the scope for a personal budget will differ depending on school placement. It may be that the setting already provides the specialist provision required and in such a case a personal budget would not be available. For example, as part of their core provision, special schools and colleges make some specialist provision available that is not normally available at mainstream schools and colleges. The particular choice of a special school, with integrated specialist provision, might reduce the scope for a personal budget, whereas the choice of a place in mainstream school that does not make that particular provision could increase the opportunity for a personal budget.

From the 1st of September 2014 Leicestershire County Council will not be offering a personal budget for education. We are in the process of working with partner agencies to develop this further to provide young people and families with greater choice and control. In the future this will mean that children and young people who need additional educational support agreed as part of their EHC plan may be able to have a personal budget from education to arrange the support themselves.

Social Care.

A personal social care budget may be made available if a child or young person is assessed as needing additional and individual support at home and when out and about in the local and wider community. This may include, support to help in the home, support to access social activities and/or short break services to avoid family breakdown. Some children and young people may already be receiving a service or a direct payment from social care and this will continue throughout the process and be incorporated in the final EHC plan.

For the 1st of September 2014 Leicestershire County Council will offer a direct payment for eligible children and young people in line with existing policies and procedures for 0-18 year olds and a personal budget for young people aged 18 and above.

A parent of a disabled child or young person can request a Child in Need Assessment. The eligibility criteria used by the Disabled Children's Service primarily surrounds the care of the disabled child and the ability of the parent/carer to continue to care for the child/young person within the family home.

For young people age 18 and above, eligibility for social care support is assessed using Government Guidance on Eligibility Criteria for Adult Social Care. The eligibility decision is based on the risks to an individual's independence and wellbeing.

[Disabled Children and their Families.](#)

[Eligibility for support at home and in the community.](#)

Health.

A personal health budget may be made available should a child or young person be eligible for NHS Continuing Care or have other health needs that the NHS assess are not being met sufficiently through services within the local offer. Children and young people who are supported through NHS Continuing Care funding, will have the right to request a personal health budget from April 2014, and this will become a right to have a personal health budget in October 2014.

There are very few things a personal health budget cannot be spent on, as it is designed to offer flexibility and control to children, young people and families and all proposals will be considered in this context. However, the support purchased must be agreed with the health professional and with the CCG to ensure that it is safe, clinically appropriate and meets the identified health outcomes. For these same reasons, some complex equipment that sustains life, such as a ventilator for example cannot be purchased through a personal health budget.

[NHS Continuing Care for Children.](#)

[NHS Continuing Healthcare.](#)

Preparing a Personal Budget and the process.

Personal budgets are not from a new pot of money they are just a more transparent way to spend the money that is available to support children, young people and families up to the age of 25 years with Special Educational Needs or Disability.

If a child or young person has been assessed as needing an EHC plan, a parent or young person can request a personal budget. Personal budgets are optional and children and young people can continue with their existing arrangements if they want to. The professional coordinating the EHC plan will discuss the option of a personal budget with the

parent or young person and provide information on having and managing a personal budget. A personal budget may also be requested during a statutory review or a reassessment of an existing EHC plan.

It is important that personal budgets are considered as part of the coordinated assessment and EHC planning process, with a clear focus on improving outcomes for children and young people.

How is funding for a Personal Budget determined?

Professionals from services that contribute to an EHC plan (i.e. health, social care and education) will be required to provide indicative budgets based on their assessment of a child or young person's level of need. These indicative budgets will be added together to provide a total budget which is agreed at the EHC panel if an EHC plan is agreed.

For 1st September 2014 existing direct payment mechanisms will be used as part of the offer from the Disabled Children's Service and existing personal budget arrangements for Adult Social Care (young people 18 and above). We are looking to extend this further next year to include personal SEN budgets and the development of a Resource Allocation System.

CCG's are currently developing and trialling their personal health budget offer and children and young people with Continuing Care needs or particularly complex health needs are welcome to request a personal health budget at this time. From October 2014 children and young people with Continuing Care needs have the right to have a personal health budget, and the CCG's are on track to have the process working properly for that time.

Disagreements/Complaints.

If a direct payment for special educational provision is refused on the grounds set out in The Special Educational Needs (Personal Budgets) Regulations 2014 Leicestershire County Council will set out the reasons in writing and inform the parent or the young person of their right to request a formal review of the decision. Where requested to do so, the Local Authority will review its decision and consider any representations made by the child's parent or young person. The Local Authority will write to the child's parent or the young person to notify them of the outcome of the review outlining the reasons for the decision.

Where the disagreement relates to the special educational provision secured through a personal budget the parent or young person can appeal to the First – tier Tribunal (SEN and Disability), as with any disagreement about provision to be specified in an EHC plan.

If the parent or young person is not happy with a decision made in relation to the health and/or social care element of a personal budget the parent or young person will need to be directed to the appropriate complaints procedure for the CCG and/or Social Care.

Different options for managing a Personal Budget.

There are four ways in which a personal budget can be managed.

- Direct Payments are cash payments which enable a parent or young person to organise, purchase and manage services themselves. A direct payment may be utilised to purchase a range of services as part of a child or young person's EHC plan, such as to provide personal care within the home or support to access social activities. A Direct Payment can also be used to employ a Personal Assistant.
- Third party arrangements also referred to as a third party cash/ direct payment, this is where the money is paid to a nominated person, for example, a friend or relative, or an organisation that runs a payments service. Or the money could be sent to a support provider - this is called a Provider Managed Account. An agency acting as a third party may make a charge for doing this.
- An organised arrangement also referred to as a managed/notional budget, is where Leicestershire County Council, the CCG, school or college holds the funds and commissions the support specified in the EHC plan with contracted providers.
- A combination of the above. For example; a direct payment to employ a Personal Assistant to access the local community and a council managed domiciliary care service for support to get up and ready in the morning.

What is included in the personal budget?

From the 1st September 2014 Leicestershire County Council will not be offering a SEN personal budget. However in the future if a child or young person is eligible for a personal SEN budget they may be able to use the budget to fund different ways of meeting the identified education outcome.

Leicestershire County Council and the CCG's have separate guidance which specifies what a direct/cash payment can be spent on. A common theme is that a personal budget can only be used to meet the needs and outcomes agreed in the support plan. Examples of how children and young people are currently using their cash/direct payment in Leicestershire include; short breaks, domiciliary care to provide support in the home, employing a Personal Assistant and support to access social activities.

Information on each agency's direct/cash payment guidance and about services that are available in the area for children and young people to access through a personal budget and direct payment will be made available on the local offer website and will be updated regularly.

What is not included in the Personal Budget?

Information on each agency's direct/cash payment guidance will be made available on the local offer website. The existing guidance outlines what a direct/cash payment can and cannot be spent on. Common themes that a cash/direct payment cannot be spent on include; anything that does not meet an identified outcome within the support plan, anything that isn't safe or legal, to purchase alcohol and tobacco, for betting or gambling, to pay for housing or other household costs, permanent residential/nursing care, to employ someone

living in the same household except where due to exceptional circumstances this is the only available option.

Who can receive a direct/cash payment?

Direct payments for special educational provision, health 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 Payment) Regulations 2013.

The Special Educational Needs (Personal Budgets) Regulations 2014.

The regulations have common requirements including those covering consent, use of nominees, conditions of receipt, monitoring and review of direct payments and persons to whom direct payments must not be made (such as those subject to certain rehabilitation orders). Regulations governing the use of direct payments for special educational provision place a number of additional requirements on both local authorities and parents before a direct payment can be agreed. These include requirements to consider the impact on other service users and value for money and to seek agreement from educational establishments where a service funded by direct payments is delivered on their premises.

Mental Capacity.

Where a person lacks capacity and direct payments are being considered as a means of providing support, professionals must establish that the person lacks capacity by carrying out an appropriate mental capacity test and best interest's evaluation in accordance with the Mental Capacity Act 2005.

The Mental Capacity Act 2005 provides a framework to empower and protect people who may lack capacity to make some decisions for themselves. The Mental Capacity Act make clear who can take decisions in which situations, and how they should go about this. Anyone who works with or cares for an adult (a person aged 16 or over) who lacks capacity must comply with the Mental Capacity Act 2005 when making decisions or acting for that person.

The underlying philosophy of the Mental Capacity Act 2005 is to ensure that those who lack capacity are empowered to make as many decisions for themselves as possible and that any decision made, or action taken, on their behalf is made in their best interests.

The representative who has consented to manage the direct payment on behalf of a person who has been deemed to lack the capacity to consent must always act in the best interest of that person. Representatives and professionals making best interest decisions for a person who lacks the capacity to make specific decisions must evidence that they have acted in accordance with [the Mental Capacity Act 2005](#).

Managing and Using the Personal Budget.

A Parent or young person will be offered advice and support about personal budgets and managing direct payments. This will include employing Personal Assistants and the legal responsibilities of being an employer, i.e. sickness and holidays, tax and National Insurance contributions, Disclosure and Barring checks (DBS) and Employers Liability Insurance.

Information will be made available on payroll services and third party management support and details will be published on the local offer website. Children and young people receiving a direct/cash payment from Leicestershire County Council have the option of using the Local Authorities Payroll Service.

The support provided to parents and young people to set up, manage and review the direct/cash payment will be provided in accordance with Leicestershire County Council and the CCG's existing policies and procedures. A summary of what it involved is outlined below.

A written agreement will need be signed before a payment is made which will outline the responsibilities and obligations of the funding agency and those of the parent or young person. This will include signing to accept the responsibility to arrange and manage the direct/cash payment to purchase support to meet the identified needs and outcomes outlined in the support plan. If a parent or young person does not adhere to the agreement that has been signed, for example, if the money is misused then it may have to be paid back and the cash/direct payment withdrawn or further conditions imposed. CCG's will require a separate agreement with the parent or young person, as it is a separate legal entity to the Local Authority.

A separate bank or building society account will need to be set up for the direct/cash payment to be paid into. If there is a health component to the personal budget, this may be paid into the same bank account so that the recipient has all the money in one place.

Records of expenditure will need to be kept to evidence how the cash/direct payment has been spent. This includes; bank statements, invoices and receipts. These will be audited when the support plan is reviewed in line with each agency's existing policies and procedures.

If there is a surplus of money in the account that has not been agreed for specific expenditure in the EHC plan then this money may have to be returned. There may also be situations where the cash payment may be temporarily suspended for a period of time. For example; if a child or young person goes into hospital. Specific details will be outlined in each agencies direct/cash payment agreement.

Each funding agency will conduct a statutory review of the personal budget in line with their existing policies and procedures. For example: The Disabled Children's Team will review the cash/direct payment 3 months after receiving the direct payment and 6 monthly thereafter. Adult Social Care (if a young person is 18 and above) will carry out a light touch review within 3 months of receiving the cash/direct payment and 12 monthly thereafter

unless a shorter period has been identified. The CCG will review the direct payment at three months and then at six months. After that it will be reviewed six monthly or yearly depending on individual circumstances.

The EHC plan will be reviewed by Leicestershire County Council as a minimum every 12 months. The review will focus on the child or young person's progress and will include information on existing personal budget arrangements across education, health and social care and how they contribute towards achieving the outcomes specified in the EHC plan.

Safeguarding.

The move towards personalisation of services and self-directed support, although a positive step in improving choice and control for parents and young people, does not replace, or reduce the Local Authority's duty of care to ensure that children and vulnerable adults are protected from abuse.

If a safeguarding concern is reported regarding someone who is in receipt of a personal budget, including a direct payment, this will be investigated following the appropriate safeguarding procedure.

Change of circumstances.

If a child or young person's circumstances change in any way then this will be taken into account as part of the annual review of the EHC plan. If there is a significant change in the child or young person's educational circumstances then the parent or young person can request a reassessment or early review of the EHC plan. If there is a change of circumstances or significant change that may affect the social care or health element of the EHC plan then the parent or young person can contact the appropriate lead professional or agency i.e. the Disabled Children's Team/Adult Social Care/ the CCG and request a reassessment.

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