

Personal Budgets (Version 5 – October 2014)

Appendix 5 – Newcastle City Council Personal  
Budgets Policy - October 2014

# Newcastle City Council: Personal Budgets Policy for Children with Special Educational Needs and Disabilities (SEND)

Agreed and Published Version October 2014

(To be reviewed commencing 1<sup>st</sup> of March 2015)

# 1. Background (Education Health and Care Plans and Personal Budgets)

1.1. This policy relates to the duties of Newcastle City Council in relation to personal budgets as outlined within the Children and Families Act, 2014 (section 49), the Statutory Guidance and Code of Practice for special educational needs and disability 0-25 years,2014. The entire code of practice can be found at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/342440/SEND Code of Practice approved by Parliament 29.07.14.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/342440/SEND_Code_of_Practice_approved_by_Parliament_29.07.14.pdf)

1.2. Education, Health and Care (EHC) plans will replace the current Statement of SEN and Learning Difficulty Assessment (LDA). No new Statements of SEN or LDAs will be offered from 1 September 2014, when the new legislation outlined within the Children and Families Act (2014) commences. Education, Health and Care (EHC) plans are a new way of supporting children with special educational needs and disabilities that puts children, young people and families at the centre of the assessment and planning process. Section 9.2 of the code of practice states that:

*“The purpose of an EHC plan is to make special educational provision to meet the special educational needs of the child or young person, to secure the best possible outcomes for them across education, health and social care and, as they get older, prepare them for adulthood. To achieve this, local authorities use the information from the assessment to:*

- *establish and record the views, interests and aspirations of the parents and child or young person*
- *provide a full description of the child or young person’s special educational needs and any health and social care needs*
- *establish outcomes across education, health and social care based on the child or young person’s needs and aspirations*
- *specify the provision required and how education, health and care services will work together to meet the child or young person’s needs and support the achievement of the agreed outcomes “*

1.3. The Education, Health and Care (EHC) plan will offer a personal budget for aspects of the provision outlined in it, if parents or young people wish it and are eligible. The request can be made when the summary of assessment document is shared with the family during the EHC pathway. The request can also be at the Draft Plan stage, or when an Education, Health and Care Plan is being reviewed/ re-assessed. (See appendix 1, Newcastle Integrated Education Health and Care Needs Assessment Process).

1.4 A personal budget is a sum of money that may be available for children and young people who need extra help above that available to most children and young people through universal and targeted services. A personal budget is an amount of money that can be used flexibly to support the extra needs of

the child/young person. 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 the additional needs of the child /young person.

- 1.5 The EHC Plan has a section J which is where information on a personal budget will be set out. Section J does not list all the costs relating to supporting a child or young person. This section will be about how a Personal Budget will be used to deliver an agreed provision and meet agreed outcomes. It will detail arrangements about any direct payments. An explanation of what is a direct payment is provided in Appendix 2: Direct Payments.

## **2. Eligibility for a Personal Budget**

- 2.1 A child may be eligible for a personal budget when they have complex learning difficulties and disabilities within the definitions set out in the Special Educational Needs Code of Practice, 2014, (page 15 section xiv). A personal budget may be provided where a child or young person requires individual tailored support that goes beyond universal and targeted services. In general this means that in:

### **2.2 Education**

Learners aged 0-25 years who have an EHC Plan and who need High Needs funding to meet their needs in education. High Needs funding is also called 'Element 3'.

### **2.3 Social Care**

Children and young people are eligible when they need support beyond targeted and universal services. They need funding beyond this to meet the Children and Young People's Plan priorities of being "Safe, Equal and Achieving" and their families require additional funding to get a reasonable short break. How children are assessed for eligibility is set out in detail on our webpages at <http://www.newcastle.gov.uk/health-and-social-care/disabilities/children-with-disabilities/individual-budgets> within the document "Children with Disabilities Service Access to Support."

### **2.4 Health**

From October 2014 families of children eligible for Continuing Care (CC) as defined by the National Framework for Children and Young People's Continuing Care will have a "right to have" a personal health budget. In the case of children this refers to the element of their care package that would normally be provided by the NHS once they become CC eligible and not the elements of their package provided by social care or education.

Information about NHS Children's Continuing Care can be found at:  
<file:///data/SocServ/TeamShares/Individual%20Budgets/HEALTH%20and%20Personal%20budgets/2014/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](http://www.personalhealthbudgets.england.nhs.uk/library/Resources/Personalhealthbudgets/2014/Personal%20health%20budgets%20right%20to%20have%20guidance.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 Under standing the Regulations March 2014.pdf](http://www.personalhealthbudgets.england.nhs.uk/library/Resources/Personalhealthbudgets/2014/Guidance%20on%20Direct%20Payments%20for%20Healthcare%20Under%20standing%20the%20Regulations%20March%202014.pdf)

### **3 Funding included within a Personal Budget**

3.1 Everything that is included in a personal budget, will be outlined for each child in their EHC Plan. The full costed provision funded through the personal budget element will be clearly set out in Section J of the EHC Plan. Services that are supplied as part of a block contract or are within Universal or Targeted services would not normally be offered as a personal budget because of value for money considerations. This may also apply to some other areas where it is damaging to take out an individual cost from funding that is working well to support several children and young people (Code of Practice 9.103). The following aspects could be included where a personal budget is requested.

#### **3.2 Education**

Mainstream schools and colleges receive funding to support children and young people as follows:

- 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.

In SEND specialist placements (commonly SEND schools, SEND units / additionally resourced centres, SEND colleges, SEND training providers) there

is a commissioned place (Element 1 and 2) plus any Element 3 funding the learner needs above that.

3.3 Element 3 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 element 3 funding into a Personal Budget because it may be part of the existing overall provision. At the discretion of the head teacher/college principal a personal budget could also include all/parts of element 2 funding.

3.4 Any staff employed by parents/ young people to work within a school or college would have to have the school or college permission (usually the Head Teacher of Principal). Therefore this would need to be carefully planned.

### 3.5 Care

Social care funding able to be included within a personal budget is set out in detail on our webpages at <http://www.newcastle.gov.uk/health-and-social-care/disabilities/children-with-disabilities/individual-budgets> within the document "Children with Disabilities Service Access to Support."

In summary 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.

### 3.6 Health

In principle, the amount of money that would have normally been spent on NHS services as part of a child or young person's CC package (except those services excluded as outlined in regulations) could be available to use as a personal health budget. Any agreed budget must be of a sufficient amount to ensure the health and wellbeing outcomes required for a child or young person can be realistically met.

## 4 Calculating the Personal Budget Offer

4.1 The Personal Budget funding offered to support a child's needs is drawn from the sources of funding outlined in section 3 above. Each child or young person is offered a range of funding which relates to their assessed need and eligibility for a personal budget. Newcastle City Council has the following arrangements for making these funding decisions:

#### 4.2 Education

Each individual learner who has SEND will require different levels of support. Learners with the same type of SEND will not necessarily need the same levels of support or provision. Some learners have rare or complex combinations of needs which do not readily fit into a generic system. Given these facts Newcastle has built its high needs banding system upon recognising the individual needs, abilities and aspirations of the learner. Any personal budget assigned to a learner is to achieve two main objectives which must both be addressed:

- Successful inclusion
- Achievable progression, including clarity of next-stage development

Newcastle's High Needs Banding Funding Table (2013-2014) is set out in the document "High Needs Funding Formula". This table is subject to review in 2014-2015.

#### 4.3 Social Care

A similar high needs banding system based on similar principles is applied. In social care this is part of the social care assessment framework which is informed by a matrix of needs and a points based questionnaire. This is called the Resource Allocation System (RAS) and supports the council to make fairer funding allocations. How the personal budget is worked out in detail is presented on the Newcastle web pages <http://www.newcastle.gov.uk/health-and-social-care/disabilities/children-with-disabilities/individual-budgets> within the document "Children with Disabilities Service Access to Support."

#### 4.4 Health

The Newcastle Clinical Commissioning Groups are supported by the North of England Commissioning Support Unit to consider which children would be eligible for a Children's Continuing Care personal budget. More information about the systems used to establish this can be gained from the North of England Commissioning Support Unit.  
<http://www.necsu.nhs.uk/>

### 5. Agreeing the Personal Budget offer

- 5.1 If a personal budget has been agreed, tools are used to support decision making in education, health and care and professional judgement is also used to make sure that the funding offered is right for the child's level of need. These professional judgements about this budget are made when the assessment phase of the EHC pathway is completed and is shared with the family. A potential budget is shared with the family so that detailed discussions can take place to plan the provision required to meet the individual outcomes identified in the EHC plan (see EHC assessment pathway in Appendix 1). The stage "The Final EHC Plan issued" within the EHC assessment pathway in Appendix 1 is when there is a final confirmation of the Personal Budget.

## **6. Managing and using a Personal Budget**

6.1 Parents would have control of the management and spend of the agreed personal budget. From the end of compulsory schooling (Y11) this will change to the young person, unless they were unable to do so under the Mental Capacity Act. Some young people might request that the 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 to manage a personal budget at that point in time.

6.2 A personal budget is not the same as a direct payment. A direct payment is one of several ways that a personal budget can be managed. The following options to manage a Personal Budget or a combination of the options set out below are available:

- 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)
- The personal budget is held by the council
- The personal budget is provided by the council to a service provider to hold as an Individual Service Fund on behalf of the child (e.g. school, health or social care provider)

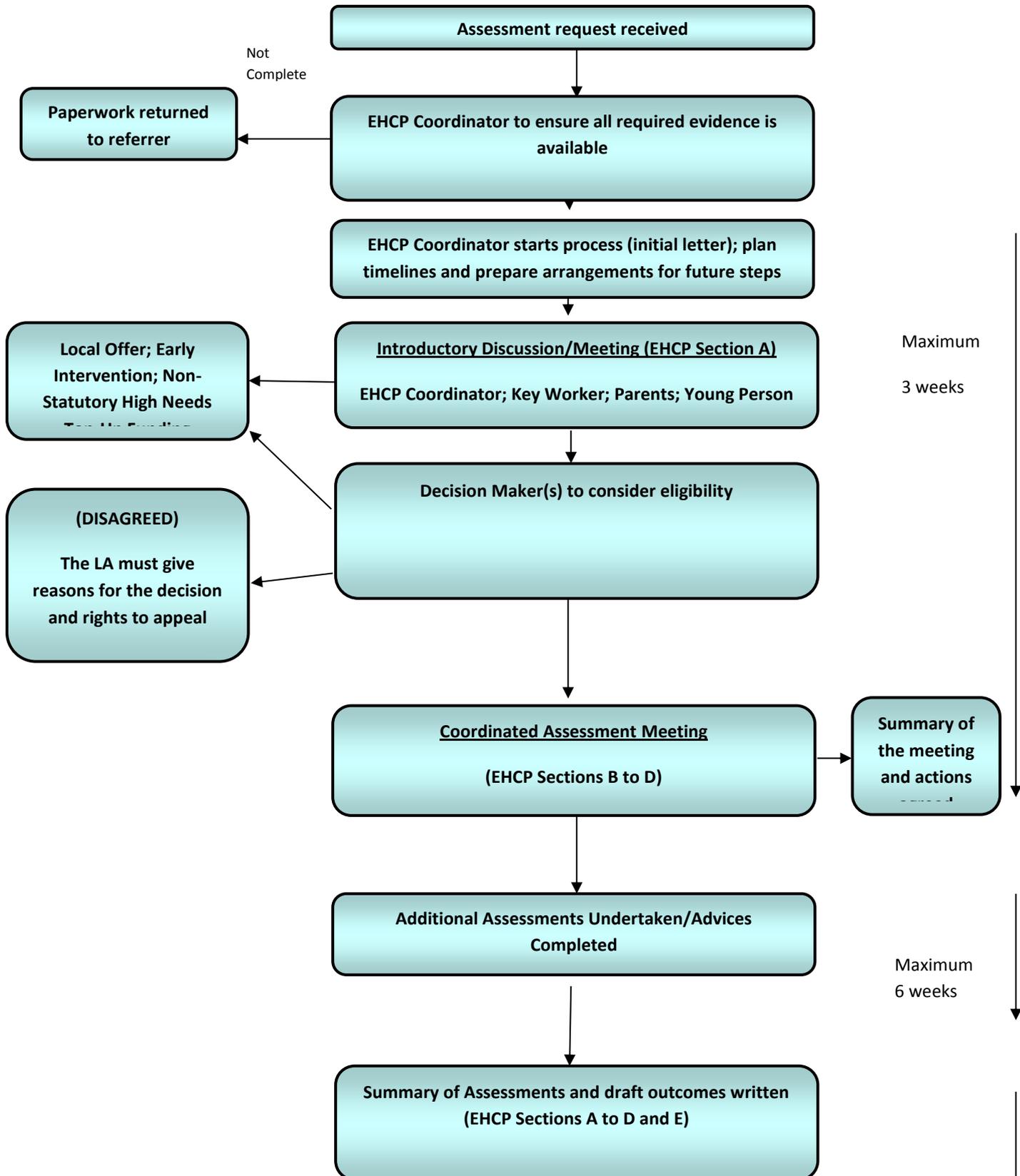
## **7 Negotiation and Disputes**

The council will actively seek to resolve disagreements about the budget, the choice of management of the funding and the use of the personal budget throughout the EHC pathway. Should it not be possible to reach agreement at any stage of EHC pathway then the relevant service manager will be available to seek to resolve the dispute. If this does not result in resolution of the dispute then the matter may be referred to a senior manager.

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

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.

# Appendix 1: Newcastle Integrated Education Health and Care Needs Assessment Process





## Appendix 2: Direct Payments

Direct payments are when public funding is used to provide cash payments to support children and young people who have been assessed as eligible for a personal budget after the approval of their EHC plan. Their purpose is to provide cash payments to families so that they can arrange and pay for the child or young person's education, care and health provision instead of receiving a package of services arranged by the funding agency.

Social care have a long established process of supporting direct payments based upon the national guidance on direct payments set out in the "DOH Guidance on Direct Payments for Community Care, Services for Carers and Children's Services England 2009". Newcastle's way of delivering direct payments can be found at the Newcastle web pages <http://www.newcastle.gov.uk/health-and-social-care/disabilities/children-with-disabilities/individual-budgets> within the document "Financial Guidance for Families who receive Individual Budgets" and "Direct Payment Letter of Agreement"

Local authorities are now also guided by the Special Education Needs (personal budgets and direct payment) regulations which have been laid before Parliament in June 2014 and are now in force. These regulations particularly clarify the obligations of responding to requests for an education personal budget and direct payment arrangement. They are named as "2014 No. 1652 Education, England, The Special Educational Needs (Personal Budgets) Regulations" and can be seen in full at:

[http://www.legislation.gov.uk/ukxi/2014/1652/pdfs/ukxi\\_20141652\\_en.pdf](http://www.legislation.gov.uk/ukxi/2014/1652/pdfs/ukxi_20141652_en.pdf)

In August 2014 the statutory regulations received a small amendment which was passed which made it clear that where funding could not be disaggregated then the council was not obliged to offer these elements of funding as a personal budget. The main amendment reads

"4A.—(1) For the purposes of section 49(2), the particular provision to be secured by an amount identified in a personal budget does not include provision that is specified, or proposed to be specified, in an EHC plan (the "specified provision")—

- (a) which the local authority secures, or proposes to secure, under arrangements within the meaning of paragraph (2); and
- (b) where the conditions in paragraph (3) apply.

(2) "Arrangements" for the purposes of this regulation means any arrangements between the local authority and a third party under which the local authority pays an aggregate sum for special educational provision which includes the specified provision.

(3) The conditions are that—

- (a) the aggregate sum paid by the local authority under the arrangements includes a notional amount for the specified provision; and
- (b) the notional amount cannot be disaggregated from the aggregate sum because the disaggregation—
  - (i) would have an adverse impact on other services provided or arranged by the local authority for children or young people with an EHC plan; or
  - (ii) would not be an efficient use of the local authority's resources."

The full Amendment is named as 2014 No. 2096 Education, England

The Special Educational Needs (Miscellaneous Amendments) Regulations 2014 and can be seen in full at:

[http://www.legislation.gov.uk/uksi/2014/2096/pdfs/uksi\\_20142096\\_en.pdf](http://www.legislation.gov.uk/uksi/2014/2096/pdfs/uksi_20142096_en.pdf)

NHS England has published guidance on direct payments In March 2014 governing the use of direct payments in relation to Personal Health Budgets “Guidance on direct payments for health care understanding the regulations”. The pdf can be downloaded at

[http://www.personalhealthbudgets.england.nhs.uk/\\_library/Resources/Personalhealthbudgets/2014/Guidance\\_on\\_Direct\\_Payments\\_for\\_Healthcare\\_Understanding\\_the\\_Regulations\\_March\\_2014.pdf](http://www.personalhealthbudgets.england.nhs.uk/_library/Resources/Personalhealthbudgets/2014/Guidance_on_Direct_Payments_for_Healthcare_Understanding_the_Regulations_March_2014.pdf)

These documents inform the operation of direct payments in Newcastle.