

Policy

0-25 SEND Personal Budgets

Policy Summary

A description of the services across education, health and social care that can be included in a Personal Budget. Details of how that funding is made available and managed, eligibility criteria, and the decision-making and review processes.

Statutory Basis for the Guidance

The Special Educational Needs (Personal Budgets and Direct Payments) Regulations 2014.

Special Educational Needs and Disability Code of Practice:
0 to 25 years (Section 9).

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1. Introduction

1.1 Personal Budgets

A Personal Budget is an amount of money identified by the Local Authority (LA) and in respect of health needs, the Clinical Commissioning Group (CCG) to deliver provision set out in an Education, Health and Care (EHC) plan where the parent or young person is more involved in agreeing that provision. This Personal Budget Policy document sets out a description of the services across education, health and social care that currently lend themselves to the use of Personal Budgets, how that funding will be made available, clear and simple statements of eligibility criteria and the decision-making processes.

Personal Budgets should reflect the holistic nature of an EHC plan and can include funding for special educational, health and social care provision. They should be focused to secure the provision agreed in the EHC plan and should be designed to secure the outcomes specified in the EHC plan.

Some services, support and funding detailed in the EHC plan will not be available for families to control, and therefore will not be included in a Personal Budget. However, this does not mean that families cannot work with these services to provide the desired outcomes. The EHC plan makes it clear what the total amount of funding available is and which elements of this can be included in a Personal Budget.

The aim of Personal Budgets is to put children and their families more in control of the support they receive, giving them more choice on how this can be managed. Where appropriate a Direct Payment can be arranged, where a proportion of the Personal Budget is paid directly to the family to purchase services outlined on the EHC plan. This will ensure families will have a greater sense of involvement in the decision-making process and choices in accessing the best and appropriate support to meet identified needs.

1.2 Types of Personal Budget & Funding Sources

The EHC plan determines a child's or young person's needs and provides a set of outcomes to meet those needs. A Personal Budget is the funding assigned to deliver the outcomes detailed in the EHC plan following assessments. Depending on the agreed EHC plan there may be some children or young people entitled to a Personal Budget from more than one source.

There are different types of Personal Budget as follows:

- **Social Care Personal Budget**

Available to a child or young person who is eligible for social care support and is assessed as needing additional and individual support at home and in the community. This can help the child or young person access social

activities or provide families and carers with respite to meet needs identified in the EHC plan. Funding is made available through disabled children social care short breaks budgets.

- **Health Personal Budget**

Available to a child or young person who is eligible for continuing care and has complex, long-term and/or life-limiting condition/s and may require a package of continuing care. Funding may be provided by the CCG in the form of a Personal Budget for elements of a child or young person's care package that would normally be provided by the NHS once they become eligible for continuing care.

- **Education Personal Budget**

Available to a child or young person who has special educational needs and requires additional learning support which is more complex than that already provided by the school or college from their delegated funding and is therefore eligible for an EHC plan. Funding is made available from the High Needs Block (HNB) of the dedicated schools grant. Although delegated funding is not readily in scope for Personal Budgets some schools or colleges may choose to offer some of this up towards one. The Education Personal Budget will not represent all of the education resources that are available to support a child or young person, just the amount that can be used flexibly to support the special educational needs of the child /young person. This is because not all educational provision specified in an EHCP can be made available through a Personal Budget. The Local Authority may not be able to separate an individual amount of money for a particular child or young person from the wider block of funding that pays for the service to be provided to all the children who need it.

Where provided, Section J in the EHC Plan will set out information about the Personal Budget. Section J will not list all the funding relating to supporting a child or young person. It will set out how the agreed Personal Budget will be used to deliver an agreed, specific provision and meet agreed outcomes.

LAs must not make direct payments for the purpose of funding a school place or post 16 institution.

2. Who can request a Personal Budget

If a child or young person is eligible for an EHC plan they are entitled to request a Personal Budget. A child's parents/carers or young person can request a Personal Budget at any time in which an EHC plan is being prepared or reviewed. In some circumstances a child or young person may be offered a Personal Budget for social care or health support without having an EHC plan.

3. How a Personal Budget is agreed

3.1 EHC Plan

An EHC plan is an overarching plan which brings together the outcomes and support a child or young person requires across Education, Social Care and Health following on from relevant assessments. Joining up the support given will provide children, young people and their families with a more personalised and holistic approach to planning their care and support.

A child's parent/carer, a young person over the age of 16 (but under the age of 25) has the right to request an EHC assessment from the LA.

The whole process of EHC needs assessment and EHC plan development, from the point when an assessment is requested (or a child or young person is brought to the LA's attention) until the final EHC plan is issued, must take no more than 20 weeks (subject to exemptions). The flow chart in **Appendix 1** shows the process and timescales from request to publication of the EHC plan

Once an EHC plan is in progress a Personal Budget can be requested. Where possible, an indicative amount of funding will be stated relating to the relevant education, care and/or health areas, this is called an Indicative Budget. This may be more or less than the final value of the Personal Budget. The final value of a Personal Budget will be agreed once the assessment is complete and suitable support is arranged. If the management arrangements include direct payments, the child's parent/carer or young person will complete a Support Plan (**Appendix 2**) to outline how the direct payment will be spent to meet the needs and outcomes identified in the EHC plan. This will also detail how the support will be arranged and by who and the cost. All outcomes in the Support Plan will mirror the outcomes detailed in the EHC plan. Before a Personal Budget can be agreed and any direct payment released the LA must agree and sign off the Support Plan via the Special Educational Needs Resource and Assessment Panel (SENRAP).

3.2 Eligibility Criteria for a Personal Budget

Before any final decision regarding funding is made a case will be presented to the LA (for education and social care element) or CCG (for the health element) via the relevant panels and these decisions will be brought together to sign off via the multi-agency resource panel to ensure all elements of Personal Budgets are aligned.

In the case of Education Personal Budgets and where a child or young Person is on the role of an educational Establishment, the Headteacher's views and agreement will be sought before being discussed at panel.

Elective Home Education (EHE) is a parental choice, the Local Authority may agree in limited circumstances to name EHE in part I as parental preference where a mainstream school can also meet needs. Students who are electively home educated can request a Personal Budget when the plan is reviewed annually, or when the plan is first written. A Personal Budget will only be made available for provision that schools/colleges would normally meet with the identified element 3 funding. Personal Budgets can only be used

for provision that is specified within the plan. If the local authority does not agree that elective home education is the right provision, but the parents choose this option, an Education Personal Budget will not normally be available. In some circumstances EHE will be the only option (and therefore not a parental preference) and in these circumstances the Local Authority will consider a Personal Budget. The Local Authority give regard to paragraphs 10.30 to 10.38 of the SEND Code of Practice (2015) when considering this cohort.

- **Education**

SENRAP is made up of representatives from the LA, schools, health (Consultant Paediatrician) and meets weekly for 51 weeks a year. All requests related to statutory SEND functions are discussed at this panel.

A local authority may not make direct payments in respect of any 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.

A local authority may not make direct payments in respect of any 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 years education.

The provision funded through the Personal Budget element will be clearly set out in Section J of the EHC Plan. The funding for elements of the provision included in the Personal Budget will be specified with a view to value for money (e.g. not costing more than services provided directly). Services that are supplied as part of a block contract or are within Universal or Targeted services would not normally be offered as an Education Personal Budget because this expenditure is not allocated to an individually named child or young person. This would also apply to other areas where it is difficult to disaggregate an individual cost from an overall amount, or where doing so would have an adverse impact on services provided or arranged by the local authority for other EHC Plan holders, or would not be an efficient use of the local authority's resources (SEND CoP para 9.106).

3.2.2 Social Care

The children's social care policy for direct payments is currently under review and will be published when completed.

Disabled children and young people aged 0-18 are eligible for social care Personal Budgets when they need support beyond targeted and universal services. The budget could include funding arising from the assessed needs of the child in need and individual funding necessary to provide the family of a disabled child with a short break or family support.

Under no circumstances may a Personal Budget / direct payments be used to fund any provision that is not specified within an EHC Plan as being required.

3.2.3 Health

Anyone receiving NHS continuing healthcare, including a child, is eligible for a personal health budget. This sets out the funding available to meet the health care needs that have been agreed by health professionals, in a care and support plan. This plan helps people to identify their health and wellbeing goals, and sets out how the funding will be spent to achieve them.

CCG's are not obliged to offer a direct payment to someone with a personal health budget. Guidance suggests that a CCG can refuse to allow direct payments if they are deemed to be impracticable or inappropriate or if they are seen as not representing value for money.

Since October 2014 families of children eligible for Continuing Care (CC) as defined by the National Framework for Children and Young People's Continuing Care have had 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. In principle, the amount of money that would have normally been spent on NHS services as part of a child or young person's Continuing Care 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.

The local Clinical Commissioning Group policies for personal health budgets are available at:

[BSW link to be inserted once live]

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

<https://www.gov.uk/government/publications/children-and-young-peoples-continuing-care-national-framework>

3.3 Decisions and Appeals

All requests for Personal Budgets where a child or young person is eligible to receive one will be considered. As detailed above, most decisions are made via a panel process and eligibility criteria. Those responsible for making the decision on the amount of Personal Budget and management arrangement in line with the EHC plan are as follows:

Education Personal Budget - The SEN Resource and Assessment Panel.

Social Care Personal Budget - Direct Entitlement when criteria for accessing the Aiming High Short Break Service is met, Disabled Children's Team Resource Panel and Children and Families, Community Health Care Panel.

Health Personal Budget – Refer to CCG policy

- **Local Authority Appeals Process**

When a decision has been made, a letter will be sent to the child's parent/carer or young person as confirmation. This must set out any reasons for refusing a direct payment and inform the parent/carer or young person of their right to request a formal review. If a family or young person is not satisfied with a decision they have the right to appeal.

In the first instance the case should be referred back to the relevant panel or decision maker with any additional supporting evidence. If the panel or decision maker upholds their original decision they must again provide written notification. If the family or young person still disagree with the decision the following steps should be taken:

Step 1 – SEND Information, Advice and Support Service (SENDIASS)

SENDIASS provide advice and information to children with SEN or disabilities, their parents, and young people with SEN or disabilities. They provide neutral and factual support on the special educational needs system to help the children, their parents and young people to play an active and informed role in their education and care.

These services should provide information to children with SEN or disabilities for whom they are responsible, and their parents, and young people with SEN or disabilities about matters relating to:

- their SEN or disabilities, including matters relating to health and social care
- the take-up of and management of Personal budgets

This should also include:

- Local policy and practice
- The Local Offer
- Personalisation and Personal Budgets
- Law on SEN and disability, health and social care understanding and interpreting information and applying to their own situation
- Information on the local authority's processes for resolving disagreements, its complaints procedures and means of redress

Step 2 – Dispute Resolution & Mediation

Disagreement resolution services are available to parents and young people. Use of the service is voluntary and has to be with the agreement of all parties.

Disagreement resolution arrangements are available for all children and young people with SEND, not just those who are being assessed for, or have an EHC plan. They are available to all parents and young people to help resolve disagreements about any aspect of SEND provision, and health and social care disagreements during the processes related to EHC needs assessments and EHC plans. They can provide a quick and non-adversarial way of resolving disagreements.

Mediation – can take place following decisions by the local authority:

- Not to carry out an EHC Needs assessment,
- Not to draw up an EHC Plan or amended Plan,
- After they receive a final EHC Plan or amended Plan
- Following a decision not to amend a Plan or a decision to cease a Plan

Mediation is distinct from Disagreement Resolution in that DR arrangements are designed to resolve disagreements about the performance of duties, SEN provision, disagreements over health and social care provision and disagreements between health commissioners and the local authority. DR is voluntary and can be used at any time if both parties agree.

The disagreement resolution & mediation service is called Global Mediation and can be contacted by; Telephone 0800 064 4488 or email sen@globalmediation.co.uk.

Step 3 - Complaint

The First-tier Tribunal (SEN and Disability) will not hear appeals regarding personal budgets exclusively. They will hear appeals about the special educational provision to which a Personal Budget may apply.

Should it not be possible to reach agreement at any stage of EHC pathway regarding a Personal Budget, 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.

A complaint can occur under the following circumstances;

- An aspect of provision listed in the Education, Health and Care Plan has not been offered in a Personal Budget which is wished for by the parent or young person if old enough and with the mental capacity to appeal;
- A Personal Budget, or direct payments, have not been offered;
- The monies listed are not sufficient to cover the needs of the young person. Note that in this instance the value of any Educational Personal Budget will be determined by the Swindon Banding Tool which is designed to provide equity in the allocation of Element 3 funds which would make up a Personal Budget. The values identified by the tool are sufficient to meet identified needs when used in conjunction with Element 1 and 2 funding (identified above).

A complaint would then be made to the appropriate senior manager. This must be in writing to;

Head of SEND
Wat Tyler House West
Beckhampton Street
Swindon, SN1 2JG

3.4 Reviews and Updates

Regular reviews will occur as part of the assess-plan-do-review cycle in terms of a child/ young person's development. On a formal basis this will occur as part of the annual review, but can occur for individual elements more frequently as needed. If a significant change in needs occur, then a review sooner than annually will occur in order to make necessary amendments to the EHC Plan. Following any changes to the EHC Plan a review of the impact that this has on Personal Budgets and any direct payments being made will take place, and new arrangements for the provision of an updated Personal Budget / direct payment will be made as soon as is practicable.

Where a child/young person has fluctuating difficulties, for example due to ongoing health needs, this should be taken into account within the EHC Plan. A request could be made for a "top up" amount or there could be a contingency that could be reclaimed by the local authority and / or health at the end of the financial year if unused.

4. Managing a Personal Budget

4.1 Who manages it?

A Personal Budget can be managed in four different ways:

- **Direct Payment**

The parents/carers of a child or young person (over 16) can choose to be paid their Personal Budget by direct payment. This means they will be responsible for the day to day management of this and ensuring it is spent as agreed in the EHC plan and support plan. They will be responsible for providing evidence of spend to the LA as outlined in the monitoring requirement in section 5.

Before making a direct payment the LA and/or CCG must be satisfied of the following;

- There is a clear plan of how any provision will be secured and managed.
- Those receiving the payment on behalf of a child or young person act in the child or young person's best interests when securing any provision.
- The recipient is capable of managing a direct payment. (see Mental Capacity Act 2005 via <http://www.legislation.gov.uk/ukpga/2005/9/contents>).
- The recipient is not a person described in the Schedule. (Refer to The Special Educational Needs (Personal Budget) Regulations 2014. <http://www.legislation.gov.uk/ukdsi/2014/9780111114056>)
- There will be no adverse impact on other LA and/or NHS services and

resources.

- There is a separate bank account to house the direct payment.

If the LA and/or CCG agree to make a direct payment they must confirm in writing to the child's parent/carer or young person and the parent/carer or young person must then respond to accept the terms of the direct payment using the guidance in **Appendix 2**. As payments can only be made direct to a bank account **Appendix 3** will need to be completed by parents/carers and or young person and the LA will return once a decision has been reached along with the Headteacher if a child or young person attends an educational institution.

Direct payments cannot be made for goods or services which are to be used in a school, post 16 setting or early years setting without the written consent of the head teacher, principal or relevant early years provider. LAs must not make direct payments for the purpose of funding a school place or post 16 institution.

The LA and the CCG has the right to refuse a direct payment and should inform the child's parents or young person of this decision in writing, stating the reasons for the decision and their right to request a review if not satisfied.

- **Notional Arrangement**

The LA and/or CCG will manage the agreed funding. A Personal Budget can still be requested, however the LA or CCG will hold the funds and be responsible for commissioning services to deliver the outcomes of the EHC and support plan (this is known as a notional arrangement). Some elements of funding are not suitable to be paid as a direct payment as they affect economies of scale and thus value for money (VfM). The LA and the CCG has the right to refuse a direct payment and opt for a notional arrangement if it is more appropriate. The LA and/or CCG will notify the family of the reasons why.

- **Third Party**

A family may want to instruct a third party such as a broker to manage the funding and commission services on their behalf. The broker will then be responsible for ensuring the funding is used appropriately to meet the needs identified in the EHC plan. The broker will also be required to provide evidence of expenditure to the LA and/or CCG as requested. This option still gives the child's parents or young person some control over the choices of care without the responsibility of accounting for the funds. The child's parents or young person must notify the LA and/or CCG in writing if they wish for a third party to act on their behalf as per **Appendix 6**.

- **Combination**

It is possible for a Personal Budget to be managed as a combination of the above. Part may be direct payment, part LA and/or CCG commissioned and part managed

by a third party.

4.2 Funding Streams

Each individual learner who has SEN and an EHCP will require different levels of support, even if they share types of SEN with other learners. The resources to fund the support needed to achieve the goals and outcomes set out in an EHC Plan are agreed as part of the assessment and planning process and will be determined by use of the new Swindon Statutory EHCP Banding Tool (see below). Final confirmation of the Personal Budget will be recorded in the finalised EHC Plan.

No funding will be available from the local authority except the amount specified within the agreed Personal Budget. Therefore those operating the Personal Budget, whether through direct payments or otherwise, will have access to no further public funds for educational provision to improve outcomes listed in section J on the EHC Plan. Parents/young people in receipt of direct payments must therefore not commit to spending any further amounts unless they are to be covered by other means, such as personal finances or a local charity.

The LA has the right to retain management (notional arrangement) of the budgets if offering them as direct payment could affect VfM. Also where the budget is deployed within an education setting such as a school, the LA must secure the agreement of the setting before a direct payment can be introduced, and without such, the management arrangements would default to a notional arrangement.

The provision funded through the Personal Budget element will be clearly set out in Section J of the EHC Plan. The funding for elements of the provision included in the Personal Budget will be specified with a view to value for money (e.g. not costing more than services provided directly). Services that are supplied as part of a block contract or are within Universal or Targeted services would not normally be offered as an Education Personal Budget because this expenditure is not allocated to an individually named child or young person. This would also apply to other areas where it is difficult to disaggregate an individual cost from an overall amount, or where doing so would have an adverse impact on services provided or arranged by the local authority for other EHC Plan holders, or would not be an efficient use of the local authority's resources (SEND CoP para 9.106).

- **Education Funding**

An Education Personal Budget will consist of the Element 3 funding identified by the current Swindon Banding process until this is replaced by the new Statutory EHCP Banding Tool. The various elements of individual funding for children and young people with SEND are explained below;

School Funding

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 (government prescribed threshold) per pupil per annum of targeted support that the school provides. An Education Personal Budget will not usually include any funding from Element 2;
- Element 3 – the amount of money provided by the Local Authority to meet higher level individual needs as ‘top up’ to Element 1 and 2. This element of funding is allocated to a named child and as such is expected to form the main basis of the Education Personal Budget. See below for how this is calculated in Swindon

At the discretion of the head teacher/college principal a Personal Budget could include all or some of the element 2 funding available within the setting. Where there is a request for a direct payment from a Personal Budget comprising aspects of element 2 discussion with relevant professionals must occur at as an early stage as possible.

In respect of specialist educational placements (special schools, resource centres, specialist colleges, and training providers) it is likely that the ability to disaggregate costs for individual pupils to provide an Education Personal Budget will be very limited and will depend on individual circumstances.

Swindon Education Banding Tool

Swindon currently uses a banding process to identify education funding for higher level needs (Element 3), a new Banding Tool is in development which will in the process order to provide a more objective, transparent, evidence based means to identify need and the associated Element 3 funding. The tool focuses on the 4 key areas in the SEND CoP;

- Cognition and Learning;
- Communication and Language;
- SEMH;
- Sensory and/or Physical Needs.

and links to the published Swindon Core Standards.

Before the SEND Resource and Assessment Panel (SENRAP) provide final agreement to an EHCP, a resource allocation process will be applied using the new Swindon Banding Tool. Evidence gained as part of the EHCP assessment will be used to identify the band and the Element 3 funding that will be allocated to meet the educational needs over and above those met by Elements 1 and 2 funding. The financial value generated by the Tool will be indicative only until authorised by SENRAP.

High Needs Block (HNB)

The HNB is made up of top-up funding and other support services.

Top Up Funding for Maintained Schools and Academies

This is included in the PBF with no restrictions on management arrangements. The EHC plan process, however, contains an in-built control as mentioned at the start of section 4.2, where, if funding is deployed in an educational setting the LA must secure the agreement of the setting before a direct payment can be agreed. Without such agreement the management arrangement would default to notional.

Other Top-up Funding

The remaining HNB top-up budgets including special schools, resourced provision and PRUs are included in the PBF but management arrangements will be restricted to notional. The post 16 top up budget is also included in the PBF but the setting would have to agree a direct payment otherwise the management arrangement would be a notional one.

Support Services

These budgets include in-house services such as learning and sensory support and a range of commissioned support covering speech and language and occupational therapy, tutoring out of school through agencies and payments for extra hours specialist support in the early years sector. These areas have in-house establishment structures in place, contractual arrangements or clear joint commissioning/VfM considerations. Management arrangements are therefore restricted to notional at September 2014.

Specialist Provision in other LAs, Independent & Non-maintained Special Schools

Where the LA is holding and funding the top-up element, funding is included in the PBF, however the top-up follows the delegated funding therefore can only be included as a notional arrangement.

- **Social Care Funding**

LAs must offer direct payments for social care services. The respite and Aiming High one-to-one support is therefore included in the PBF.

- **Health Funding**

From October 2014 families of children/young people who are assessed as, or who are already, eligible for Continuing Care (as defined by the *National Framework for Children and Young People's Continuing Care*) will have a 'right to have' a personal health budget. This refers to the element of their care package that would normally be provided by the NHS once they become eligible for Continuing Care and not the elements for their package provided by social care or education. In principle, the amount of money that would have normally been spend on NHS services as part of the child/young person's continuing care package could be available to use as a personal health budget.

The CCG will aim to include as much as possible in a personal health budget,

however in the short term it may not be possible to release funding from services such as speech and language therapy or physiotherapy which are currently commissioned by the CCG through block contracts with healthcare providers. It may not be cost effective for the CCG to disaggregate the costs for an individual from an overall service. In these circumstances, the CCG will work with parents, children and young people to tailor the support provided for their assessed needs.

The NHS mandate commits to a further roll out of personal health budgets for people of all ages with long-term conditions from April 2015.

4.3 What it can and can't be spent on

A Personal Budget can be spent on a variety of things which support the child or young persons' EHC and support plan. The idea of Personal Budgets is to allow funding to be used more imaginatively and give parents, children and young people the opportunity to access support that would suit their own individual needs. Allowing families to be more involved in the decision making processes will create a unique package of care for each individual child or young person's needs as outlined in the EHC plan.

- **What it can be spent on**

A Personal Budget can be spent on anything agreed in the EHC and Support Plan which may include:

- A range of social care, education support & health services
- Access to local community and groups
- Access to a variety of short breaks
- Training
- Personal Care
- Accommodation
- Day Trips/activities
- Small aids or adaptations
- Personal Assistants – (further advice about employing a PA can be found at the following link - <http://www.skillsforcare.org.uk/Employing-your-own-care-and-support/Being-an-employer/Being-an-employer.aspx>).
- Counselling

- **What it can't be spent on**

Personal Education Budgets cannot be used to fund the costs of a school placement including the Age Weighted Pupil Unit (AWPU) payments for mainstream schools, planned place/ additional place funding for special schools or fees for independent schools. A school or college can agree to contribute some of its own funding to a child's Personal Budget but they are not obliged to do so. Other exclusions include;

- Anything that is not identified on the child/young person's EHC plan;

- Any provision that the setting would give any child/young person;
- A place within a school or post-16 placement.

5. Audit & Financial Monitoring

5.1 Monitoring and Review of Direct Payments

Education Personal Budgets will be subject to review and will form part of the annual EHCP review. Any changes to the value of the Education Personal Budget suggested by the review will require ratification by SENRAP.

A parent or young person may decide that receiving a direct payment is not working for them and in this case the LA must consider with parent or young person what other method of management most appropriate. This may result in a third party managing the Personal Budget or the LA may decide to stop payment and take back the management. If payments are stopped or reduced the LA must notify the recipient in writing with reasons and provide reasonable notice.

What evidence is required?

- EHC Plan.
- Spending Records.
- Bank statements – a separate bank account must be opened in which only the Personal Budget can be used (one individual bank account is required for each child or young person in a household who receives a direct payment). The LA will require full statements with details/evidence of all activity.
- Receipts for all expenditure. Where receipts are not available for transport to school (as this is provided by the parent, family member or friend) attendance records with the school will be checked.
- Wage slip, Inland Revenue payment details, employee liability insurance, payroll invoices and up-to-date CRB/DBS checks for any employees paid by a Personal Budget. (A direct payment cannot be paid unless a valid CRB/DBS is in place, evidence of this will be required).
- Agency invoices if paid by a Personal Budget.

Failure to provide the requested information for review within the specified time may result in suspension of a direct payment.

5.2 Repayment and Recovery

The local authority reserves the right to recover direct payments, in line with the authority's debt recovery policy, in the following circumstances;

- If the direct payment has not been used to provide the provision for which the direct payments have been provided, and as specified within the child or young person's EHC Plan;
- If the direct payments are not being used to meet the outcomes specified in the child or young person's EHC Plan, or if the commissioned provision is failing to meet these outcomes;
- If the direct payments have not been used due to a change in circumstances, whether temporarily or permanently;
- If a direct payment has been overpaid or paid in error;
- If there is a surplus in the direct payment account, which has been accrued above any amount agreed with the local authority;
- If the direct payments recipient has not met any condition which the local authority has properly imposed in the direct payments agreement or any agreed letters;
- If, following termination of direct payments, any direct payment monies remain in the direct payment account.

If there is found to be a build-up of unused direct payment funds in the recipient's direct payment account equivalent to one term's worth of funding without the agreement of the Local Authority, the recipient must return the sums concerned. If this does not happen then they will be notified that these unspent monies will be recovered, and recovery action will be taken by the local authority. Note that Social Care and Health time limits for build up of funds may differ from this and details will be contained within their agency policy on personal budgets.

If the child or young person is no longer entitled to direct payments, or the recipient no longer wishes to receive them, and/or an overpayment has occurred due to an error on the part of the local authority or any other party, the direct payment recipient will be notified that this overpayment must be returned, and recovery action will be taken by the local authority if necessary.

Where it appears that the direct payment recipient has been using the monies received for items or services other than those specified in the EHC Plan and agreed as being available for the use of a Personal Budget, or there is evidence of deliberate misuse of funds, the local authority will undertake a full reconciliation to ascertain the exact amount of money that has been inappropriately used and seek to recover it.

If direct payments have been inappropriately used (either intentionally or unintentionally) due to mismanagement of the direct payment account, or the direct payment account, or the direct payment recipient has shown themselves incapable or unwilling to manage their direct payment correctly, a review will be undertaken as a matter of urgency. If the outcome is that direct payment monies have been inappropriately used, the monies will be recovered.

5.3 Stopping Direct Payments

If a direct payment recipient expresses a desire to terminate the direct payments, the reasons for the termination need to be provided to the local authority. The authority will then work with all relevant parties to plan how the relevant parts of their special educational provision will be met in an alternative way.

The local authority reserves the right to terminate the direct payments if terms of the direct payment agreement are breached. If this happens, the recipient will be informed in writing. In such cases, the local authority will then work with all relevant parties to plan how the relevant parts of their special educational provision will be met in an alternative way.

5.4 Transition to Adulthood

As an eligible young person approaches their 18th birthday they will already be known to Adult Social Care and the Transition workers located within the adult Community Learning Disability Team. Planning will have taken place to consider outcomes and an EHC plan in place to ensure a smooth move from child to adult services. The assessments undertaken prior to 18 will have highlighted if the young person is likely to be eligible for Adult Social Care financial support post 18 and in

line with the Care Act eligibility framework. The direct payment paid by children services will end once the child turns 18 on the basis the EHC outcomes have been finalised. The adult approach is based upon achieving outcomes and a Resource Allocation system will have resulted in an indicative budget being generated by the time the person reaches 18. The person then uses this indicative budget to develop a Support Plan which will evidence how the eligible outcomes can be achieved.

The relevant adult social care team will then continue to work with the young adult to ensure they can maximize their independence and agree a final budget based on eligibility outcomes. The person can then choose how they would like to receive their personal budget for example in the form of Direct Payment.

6. Support for Parents and Young People

6.1 Pros & Cons of Management Method

To enable parents/carer's to make the right decision for them on how their Personal Budget should be managed the below table highlights the pros and cons depending on the management method.

Management Type	Pros	Cons
-----------------	------	------

<p>Direct Payment</p>	<p>More control for families</p> <p>Bespoke packages of care</p> <p>More opportunities for child/young person</p> <p>Access to more services</p> <p>Choice and flexibility</p>	<p>Financial responsibility</p> <p>Keep evidence for audit purposes</p> <p>Limited access to providers</p> <p>Lack of competition in the market place may make costs high</p> <p>No economies of scale to drive costs down</p>
<p>Local Authority</p>	<p>Services/commissioning already in place</p> <p>No financial responsibilities for parent/young person</p>	<p>No control over services provided</p> <p>Limited choice of services</p> <p>No flexibility</p>
	<p>Experience in providing support</p> <p>No need to provide evidence for audits</p> <p>Economies of scale</p>	<p>Less individual opportunities for the child or young person</p> <p>LA decide on the care package</p>
<p>Third Party</p>	<p>Families have some control</p> <p>Services/commissioning already in place</p> <p>No financial responsibilities for parent/young person</p> <p>Experience in providing support</p> <p>Third party will provide evidence for audits</p>	<p>No control over some services provided.</p> <p>Little flexibility</p> <p>Relying on third party judgements</p> <p>Less individual opportunities for the child or young person</p> <p>Will require a payment for third party services.</p>

	Access to more services Economies of scale	
Combination...	...of the above	...of the above

6.2 Local Offer

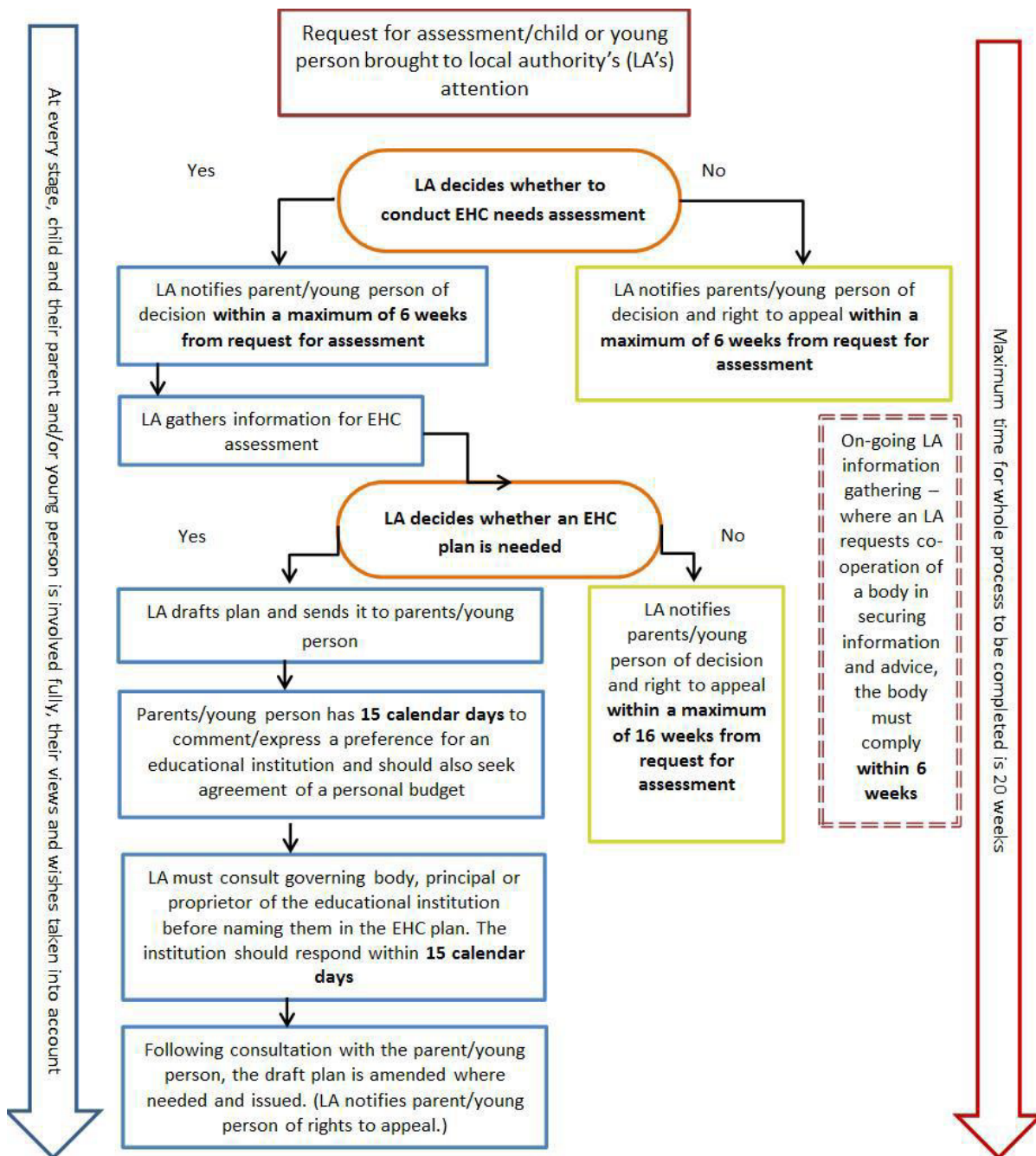
Swindon's Local Offer contains information and advice on a wide range of subjects and can be accessed <https://localoffer.swindon.gov.uk/home/>

7. Safeguarding and Risk Management

Safeguarding and risk management is a key component of Personal Budgets. Allowing families to have the freedom to plan their own child's care minimises the number of professionals a child need come in contact with. Giving them the opportunity to take part in community activities gives the child or young person an identity. There is concern that 'unsafe' people may become involved in supporting a child or young person. By providing families with clear guidance on CRB/DBS

checks and good assessments and support planning ensures safeguarding and risk are at the forefront of any decisions made. Staff are always available to offer support in this area.

Appendix 1 – Statutory timescales for EHC needs assessment and EHC plan development



*Diagram from SEN Code of Practice - June 14

Appendix 2 – Agreement for Direct Payments

Children Services – Personal Budget Direct Payments for
Young People with Education Health and Care Plans

AGREEMENT FOR PERSONAL BUDGET DIRECT PAYMENTS

between

NAME OF PERSON RECEIVING DIRECT PAYMENT
OR NAME OF TRUST

and

SWINDON BOROUGH COUNCIL

1. The Direct Payments Agreement

- a) We wish to give you a direct payment so that you are able to meet the agreed provisions as described in the Personal Budget Provision Agreement.
- b) The amount of money to be paid is based on your child's SEND needs.
- c) In signing the Agreement you are agreeing to the following terms and conditions.

2. Details of your Direct Payments Account

- a) You have opened a separate bank account for your Personal Budget or you are using an existing Direct Payment account. Swindon Borough Council (SBC) and you will hold details of this account.
- b) If you have been offered a one off Direct Payment you do not have to have a separate bank account for this. See 5g below.
- c) When you sign this agreement you are giving Swindon Borough Council permission to request information from you about your Direct Payments bank account.

3. How we will pay the money to you

- a) Unless we have agreed otherwise, you must have a dedicated bank account or a Direct Payments Bank Account at the Bank or Building Society of your choice. This should be a banking account (not savings). You need to be able to make bank transfers from this account.
- b) This account must be in the name of the person receiving the Direct Payments or the name of the trust.
- c) You have chosen to have this money paid into the bank account:

Monthly **Annually** **One off**

4. Using your Direct Payments

- a) You can **only** use Direct Payments to buy products or services to meet the provision agreed in your Personal Budget Provision Agreement.
- b) You **cannot** use your Direct Payment to buy services in advance.

- c) The Direct Payment **cannot** be used to employ a 'close' relative living in your household unless there are exceptional circumstances. If you believe this is your only choice this would need to be discussed with your Direct Payment Advisor and agreed by the Team Manager of the Disabled Children Team before you started employment.
- d) You cannot use a direct payment to purchase a school place.
- e) If you choose to spend your Direct Payments on employing a worker/s you become an employer. As an employer you will be responsible for all the parts of Employment Law relating to employing worker/s. This includes making sure that any Tax and National Insurance payments are made and that you enrol with the Pension Regulator. You can get support, advice and information from the Direct Payments Support Advisor to help you do this.
- f) If the person you have contracted to work says s/he is self-employed they will have an Inland Revenue Registration Number which you must record and then contact the Inland Revenue to confirm that this is current and relates to the service they are providing. The Direct Payment Support Advisor can offer information and advice on this.
- g) It is a legal requirement to take out Employer's Public Liability Insurance if you chose to employ people. The Direct Payments funding can be used to pay for this. You must remember to renew this insurance annually.

5. The management of your Direct Payments

- a) Payments from your Direct Payments Account may only be made by cheque and bank transfers. **Cash must not be used.**
- b) You **cannot** take cash out of your Direct Payments account or transfer any money from this account into another personal account other than for reasons of personal repayments.
- c) The Direct Payments account must not become overdrawn. You will be responsible for any charges the bank may make if this happens. You are also responsible for all bank management fees.
- d) The Direct Payments account must only be used for Direct Payments funding and not for any other purpose.

- e) You need to keep a record of the money you have spent from the Direct Payments account. You will have to give any employees a wage slip. You also need to keep all bank statements, cheque stubs, time sheets for 4 financial years. This is to show what you have spent the money on. Insurance invoices only need to be kept for the current year.
- f) You must let us have a copy of the Expenditure form we provide you with and along with your bank statements. This shows us how you are spending your Direct Payment money.
- g) For one off payments you must keep all receipts, invoices and wage slips. You will be expected to provide these with the Expenditure form that we will provide. This will show us how you have spent the money. If you do not have a separate bank account you will not be expected to show us your statements.

6. Change of Circumstances

- a) You must let us know as soon as possible if you/your child's circumstances or needs change. This may be a change in your personal situation or changes in the nature of the services you are buying. For example you may have been employing someone but now use an agency.
- b) If for any reason you are temporarily unable to receive the services you have contracted an employee to provide, you must contact your service provider or your Direct Payments Support Advisor to seek advice on paying a retainer. If it is decided that the service is no longer needed you will need to follow the process of giving your employee(s) notice to terminate their contract of employment.
- c) Things may change and you may no longer get a Direct Payment. If Swindon Borough Council decides to stop or change the amount of your Direct Payments or you no longer wish or need to receive a Direct Payment, 4 weeks' notice must be given.
- d) If your Direct Payments stop you may have bills that still need to be paid. These bills must be paid within 4 weeks.
- e) You will also be required to return all unspent money and submit a final Expenditure Form within 4 weeks of receipt.

7. Looking at how things are working / Reviews

- a) You will have a review after 3 months of the start date of your Direct Payment. After that your direct payment can be looked at during the Education Health and Care Plan annual review.
However, if you feel you or your child's needs change you can request an updated assessment at any time.
- b) The purpose of this review is to review the assessed needs and to make sure that the services you are buying with your Direct Payments are meeting the needs assessed in your Child's Plan.
- c) There will be a **six monthly** reconciliation of your Direct Payment. The Direct Payment Support Advisor will do this.
- d) The purpose of this review is to check how you are spending your Direct Payments and how much money you have in that account. This is done by filling in and returning the Expenditure forms provided to you along with bank statements.
- e) You will be requested to provide a statement showing the balance of your Direct Payment account on 31st March each year. Any money left from that years funding will need to be repaid back to Swindon Borough Council.
- f) If you receive a one off Direct Payment you will be expected to return any unspent funding to Swindon Borough Council. You will receive an Expenditure form to record all payments made from the Direct Payment funding. This will be returned to the Direct Payment Support Advisor along with all the paperwork stated in 5f above.
- g) There will be a review by your Direct Payments Support Advisor. This will take place within 6 months of starting your direct payment and annually thereafter. The purpose of this review is to check how you are managing your Direct Payments and that you are following Statutory Employment laws. This may be combined with the review done by your case holder/ Social worker if suitable.
- h) If you find it difficult to manage your Direct Payment account we will work with you to help solve any problems. We would not expect this to take more than 3 months. If you continue to have a problem we will hold a meeting to talk about what to do. One of the options may be to suspend or stop the Direct Payment and meet your needs in another way. Another option may be that you need a higher level of support from you Direct Payment Support Advisor.
- i) If you make a genuine mistake we will work with you to try and sort it out. However, if you do not keep to the terms and conditions in this Agreement we may suspend or stop the Direct Payments immediately (without notice). Some or all of the payments made to you may be reclaimed and your needs would be met in other ways. Where

there is evidence of fraud or misuse of the Direct Payments, we reserve the right to stop the Direct Payments straight away. We will then meet your needs in other ways. We will take action to reclaim and or recover monies paid by us as Direct Payment.

8. Swindon Borough Council has a duty to promote the Welfare and Safety of Children and Young People.

As a result we **strongly** recommend that all service users receiving Direct Payments take up valid Disclosure and Barring Service (DBS) checks **before** they start employment of worker/s.

Swindon Borough Council will process and fund DBS checks on your behalf.

If you are using direct payments to purchase care via an agency you **must** ensure that the agency undertakes DBS checks on their staff and that the worker looking after your child has **received** a valid DBS check.

Contact your Direct Payments Support Advisor for information on how to request a DBS check for any worker(s).

You will be asked to sign a separate letter stating you have been given this advice.

Swindon Borough Council are informing you that when purchasing support/employing worker/s via a direct payment you need to be aware there are rules and laws designed to safeguard the welfare of all children under 8 years old.

The OFSTED rules state that **anyone caring for a child under eight for over two hours a day and for payment in their own home have to be registered as a child minder.** The only exceptions to this are if the worker is a relative of the child, a registered or private foster carer, or only looks after the child between the hours of 6pm and 2am, or during the day for less than 14 days a year and have notified OFSTED in writing or email 14 days before starting the provision.

It is your responsibility to be aware of all the rules. You can ask the Direct Payments Support Advisor for more information or contact OFSTED.

If it is felt that your child/young person is being put at risk by the arrangements you are making we will not be able to continue to provide you with a Direct Payment.

9. Contact Details

OFSTED contact details are:

08456 404040

enquiries@ofsted.gov.uk

OFSTED

Royal Exchange Building

St. Anns Square

Manchester

M2 7LA

If you need advice on managing your Direct Payment contact

The Direct Payments Support Advisor
Tel: **01793 464231/ 07785 454360**
mstygall@swindon.gov.uk

Special Educational Needs Disability and Inclusion Service

Tel: 01793 464042
Email: SENAT@swindon.gov.uk

If you have any reason to complain about the service you receive from The Direct Payments Support Advisor please contact Mark Green, Integrated Service Manager Email: mgreen@swindon.gov.uk .

If you have any reason to complain about the service you receive from The SENDI Service contact Joanne Godwin, Interim SEND Lead Email: jgodwin@swindon.gov.uk

10. What to do with the completed Agreement

- a) We will both keep a signed copy of the Agreement.
- b) It is important that you are clear about what you have to do and what you can expect us to do to make sure that arrangements work well.

This agreement is intended to assist the person receiving the Direct Payment and the Swindon Borough Council by setting out the arrangements for a Direct Payment. However, it is not a legally binding contract.

Signed by the Interim SEND Lead on behalf of Swindon Borough Council

Name:

Position:

Signature:.....

Date:.....

Signed by Direct Payment Recipient/s

1. Name:.....

Signature:.....

Date:.....

2. Name:.....

Signature:.....

Date:.....

Where the signatory is a Trustee:

Signed By Trustee/s

1.Name:.....

Signature:.....

Date:

2.Name:.....

Signature:.....

Date:

Timing of the direct payment request

Please check which applies

<input type="checkbox"/>	EHCP is in the process of being drafted or reassessed
<input type="checkbox"/>	The EHCP is being transferred from a Statement
<input type="checkbox"/>	At an annual review

If the request made is outside of the above then the request will need to wait until one of the above applies.

The Proposed Recipient of the Direct Payment

Yes	No	Please tick yes or no for each of the below Are you/have you
<input type="checkbox"/>	<input type="checkbox"/>	Are you in receipt of a Health or Social Care personal budget?
<input type="checkbox"/>	<input type="checkbox"/>	Are you subject to a drug rehabilitation requirement?
<input type="checkbox"/>	<input type="checkbox"/>	Are you subject to an alcohol treatment programme?
<input type="checkbox"/>	<input type="checkbox"/>	Are you released on License under Part 2 of the Criminal Justice Act 1991 subject to a non- standard licence condition requiring the offender to undertake offending behaviour work to address drug-related or alcohol related behaviour?
<input type="checkbox"/>	<input type="checkbox"/>	Are you a person who is required to submit to treatment for their drug or alcohol dependency by virtue of a community rehabilitation order within the meaning of section 41 of the Powers of Criminal Courts (Sentencing) Act 2000 or a community punishment and rehabilitation order within the meaning of section 51 of that Act?
<input type="checkbox"/>	<input type="checkbox"/>	Are you subject to a drug treatment and testing order imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000(d).
<input type="checkbox"/>	<input type="checkbox"/>	Are you subject to a youth rehabilitation order imposed in accordance with paragraph 22 (drug treatment requirement) of Schedule 1 to the Criminal Justice and Immigration Act 2008 which requires the person to submit to treatment pursuant to a drug treatment requirement.
<input type="checkbox"/>	<input type="checkbox"/>	Are you subject to a youth rehabilitation order imposed in accordance with paragraph 23 (drug testing requirement) of Schedule 1 to the Criminal Justice and Immigration Act 2008 which includes a drug testing requirement.
<input type="checkbox"/>	<input type="checkbox"/>	Are you subject to a youth rehabilitation order imposed in accordance with paragraph 24

Please tick and sign below:

I confirm that the above information I have provided is an honest and true representation. I have read the privacy statement and understand how the information I have provided will be verified using the local authority's systems.

Signature..... Date / /

Personal Budget Provision

The Direct Payment can only be made to directly meet the provision in the plan, please work with SENDIT and the head teacher (if a school is named in the Education Health and Care Plan) to complete the below table.

Parent to complete				SENDACT to complete			
What are payments being requested for?	Which provision does this directly relate to?	Annual or Total Cost	Proposed parental contribution?	SENDACT Decision if this meets the provision in the Plan.	Does this have an adverse impact on services provided?	Is it an efficient use of resources?	SENDACT Decision

Local Authorities Decision

Is SENDACT in agreement to the release of the direct payment being requested?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
SENDACT Comments– (please provide detailed reasoning behind decision to issue or decline a direct payment – continue on a separate sheet if necessary)		
SEND Manager Signature	Date / /	

Parent comments		
Name of School on role of:		
Is the school in agreement to the release of the direct payment being requested?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Head Teacher Comments – (please provide detailed reasoning behind decision to issue or decline a direct payment – continue on a separate sheet if necessary)		

Head Teacher Signature	Date
/ /	
Parent Signature	Date
/ /	

Appendix 4– Direct Payment Agreement Letter

The Special Educational Needs (Personal Budgets) Regulations 2014 state that an LA may not make direct payments unless the requirements set out in section 8 paragraphs (2) to (4) of the regs have been satisfied;

(2) The local authority must provide written notice to the recipient, specifying the following -

- (a) the name of the child or young person in respect of whom direct payments are to be made;
- (b) the goods or services which are to be secured by direct payments;
- (c) the proposed amount of direct payments;
- (d) any conditions on how direct payments may be spent;
- (e) the dates for payments into the bank account approved by the local authority.

(3) Upon receipt of a notice under paragraph (2), the recipient must notify the local authority in writing that they agree to -

- (a) receive the direct payments;
- (b) use the direct payments only to secure the agreed provision;
- (c) comply with any conditions specified in the notice under paragraph (2)(d);
- (d) notify the local authority of any changes in circumstances which might affect the need for the agreed provision;
- (e) use the bank account approved by the local authority solely for the purposes of one or more of the following -
 - (i) these direct payments;
 - (ii) direct payments made pursuant to the Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2009(3);
 - (iii) direct payments made pursuant to the National Health Service (Direct Payment) Regulations 2013(4);
- (f) ensure that the bank account approved by the local authority is only accessible by the recipient or any other person approved in writing by the local authority; and
- (g) keep a record of money paid in and withdrawn from the bank account approved

by the local authority and, on request, or at intervals specified by the local authority, provide the local authority with information or evidence relating to -

- (i) the account; and
- (ii) the agreed provision.

(4) Where the recipient is a nominee -

- (a) the child's parent or young person must provide written consent to the local authority to direct payments being used to secure the agreed provision; and
- (b) the nominee must provide written confirmation to the local authority that he or she is responsible as a principal for all contractual arrangements entered into for the benefit of the child or young person and secured by means of direct payments.

For guidance regarding direct payments for personal health budgets please see the National Health Service (Direct Payments) Regulations 2013.

Appendix 5 – BACs payment request

Please complete and sign to confirm Direct Payment Account details and to authorise the credit of SEN Personal Budget Direct Payment funding into this account.

Name of Direct Payment Recipient			
Name of Child/Young Person			
Account Holders Name/s	1 st 2 nd		
Type of account Please tick the appropriate boxes	Current	Savings	Basic
	Single	Joint	In Respect
Name of Bank/ Building Society:			
Sort Code - - -	Account Number - - - - -		
Account Holders Address			

I am signing to confirm that the above information is correct

Sign:

Name (print):

Date: --/--/----

Appendix 6 – Third Party Payment Request

A parent/carer or young person may nominate a third party to receive and manage the direct payment on their behalf. They must do this in writing. The third party then becomes responsible for ensuring the conditions of the direct payment are met. They will also be expected to provide evidence of any spend when reviewed.

It is recommended that the relevant EHCP Coordinator and a SEND Finance Officer meet with the individual third party and explain these responsibilities. The EHCP Coordinator also needs to be satisfied that the individual third party agrees to and is able to manage the direct payment.

Details required:

- Name & Date of Birth of child/young person direct payment is for
- Name of Third Party
- Relationship to child or young person
- Address
- Postcode
- Telephone
- Date of Birth
- BACS details as per **Appendix 5**

All third party payments will need the approval of the appropriate Service Manager