

Warwickshire County Council SEND Social Care Policy; Personal Budgets and Direct Payments for Children and Young People with Disabilities and Their Families

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1. *Why do we have this policy?*

Warwickshire Council is committed to the introduction of personal budgets for all citizens eligible for social care services as an effective way of transforming services promoting personalisation and increasing the choice and control of individual customers within available resources.

This policy supports Warwickshire's broader ambition as a co-operative council to design and commission services in a spirit of co-production with service users. We believe that by working in partnership in a more coordinated way we can provide the right support at the right time to help families help themselves. This will improve efficiency by minimising unnecessary bureaucracy and identifying and tackling issues early before they escalate into problems.

In the past children with disabilities have had their support organised on their behalf by social workers, often in the form of a number of nights at a short break service or a number of hours of paid support from a PA or a provider. Personal budgets are a way in which the Council shares the decisions about support with children and their families, with the belief that if people themselves have more control of the resources available to them they will find flexible solutions and support that work best for them. Families of children and young people with Special Educational Needs and Disabilities (SEND) should have the same opportunity as all families to exercise choice and control over their lives, enabling them to determine their own outcomes, make their own decisions and manage their own risks and become customers rather than service users.

These principles, initially developed in the context of Adults Social Care have been developed in national publications and professional debate over the past five to ten years and are now increasingly being extended to include children's services. The Children & Families Act (2014) requires the implementation of personal budgets where requested to support Education, Health and Care Plans with the intention of integrating funding from all three areas. This Policy document covers Children's Social Care but it is anticipated will provide the foundation for future developments in this area. Milestone documents setting the policy context include:

- Direct Payments Act 1996 and subsequent amending legislation
- Carer's and Disabled Children Act 2000 – carer's services and direct payments.
- Health and Social Care Act 2008
- Children Act 1989
- Children and Young Persons Act 2008

- Statutory guidance on how to safeguard and promote the welfare of disabled children using short breaks
- Children & Families Act 2014

A policy is required to ensure that the Council's responsibilities for public funds are discharged lawfully, equitably and on a cost effective basis. This policy and associated procedures will ensure systems, processes and support to both staff and service users are sufficient, fair, equitable and accessible.

2. Purpose of Personal budgets

Personal budgets are designed to help families of children and young people with SEND who are eligible for funding from social care to have more control over their lives. It places the child at the centre of the support planning process based on the principle that in most circumstances, their families, are best placed to understand their children's needs.

The overall purpose is to increase:

- Choice and control: Increased choice and control is achieved by supporting families as far as they are able to manage their own social care budgets and other income streams (e.g. Disability Living Allowance).
- Flexibility: The intention is that families can vary their support arrangements to suit their children's individual requirements. It can be used for services from both statutory and independent sector providers, mixing and matching what is available from different organisations.
- Social inclusion: Easier for individuals to identify support which enables them to use a wider range of activities in the community and better meet their eligible needs and support plan.
- While implementing personal budgets the Council will also ensure that effective information, advice, and support is made available to:
 - Parents and carers who are funding and organising the support and care for their children
 - Parents and carers whose children have additional needs but do not meet eligibility criteria
 - Individuals and communities who do not easily engage with traditional services

A Personal Budget is an amount of money identified by the local authority to deliver provision set out in an EHC plan where the parent or young person is involved in securing that provision. The funds can be held directly by the parent or young person, or may be held and managed on their behalf by the local authority, school, college or other organisation or individual and used to commission the support specified in the EHC plan.

Direct payments are one way in which personal budgets can be delivered by councils to meet their responsibilities.

3. *Personal budgets in Context: Warwickshire's 'SEND Local Offer'*

The implementation of personal budgets sits in a wider context of effective information, advice and guidance, support from universal services including early years providers, schools and colleges, and strategic commissioning of both universal and targeted services. This mix of provision is what makes up Warwickshire's '*SEND Local Offer*'; the key components of this include:

- Provision of information and guidance to families regarding education, health, social care and other provision available setting out what families can expect these services to provide for every child
- For those with ongoing needs, determination through professional assessment of need eligible to be resourced by the Council. This assessment would include completion of a Resource Allocation System questionnaire to ensure consistency and transparency in the way the indicative value of the support package is calculated
- For those eligible for support, determination as to whether the child's needs would best be met through a personal budget based on an assessment of the parent or carer with responsibility for managing the budget or of the family circumstances
- Informing the family of the outcome of these assessment processes ensuring they are aware of their entitlements and establishing whether they wish to take up the option of a personal budget
- Preparation of a support plan which focuses on outcomes for the child agreed in conjunction with the parent / carer
- Support parents / carers in identifying, planning, and accessing or purchasing what they need to achieve the agreed outcomes
- Ensuring that parents / carers are offered independent support to manage personal budgets and support plans
- Promoting market development and a wider range of service provision through joint strategic commissioning to address identified gaps in provision and to enhance choice
- Under the Breaks for Carers of Disabled Children Regulations 2011 Local Authorities are required to provide, as part of the range of services they offer for families, breaks from caring for carers of disabled children to support them to continue to care for their children at home and to allow them to do so more effectively.

4. *Who is eligible for a Personal Budget?*

Eligibility

Warwickshire's policy is, wherever appropriate to offer personal budgets to all children with disabilities eligible for support for children's social care. The Carers and Disabled Children Act (2000) allowed parents of disabled children in England and Wales to receive direct payments and 16 and 17 year olds to receive them in their own right and this entitlement has been extended by the Children & Families Act 2014 by allowing families whose children have an

Education, Health and Care Plan to request a personal budgets to meet their child's needs.

Not every child with additional needs will be eligible for a personal budget. Social workers will always look first to community resources and activities supporting the child in mainstream services that all children use. The Council will look to these resources first before deciding whether a personal budget is needed.

In cases where there is a dispute about a decision, the matter will be addressed either through Mediation or in line with the Council's complaints policy.

Not every family that is eligible will want to take on the responsibility of managing their child's personal budget. In such cases the indicative budget will still be calculated using the Matrix of Need but support will be accessed by one of the following means;

- an arrangement – whereby the local authority, school or college holds the funds and commissions the support specified in the EHC plan (these are sometimes called notional budgets)
- third party arrangements – where funds (direct payments) are paid to and managed by an individual or organisation on behalf of the child's parent or the young person
- a combination of the above.

Exclusions

a) People who do not have eligible needs

If a child or young person's needs do not meet the eligibility criteria they will not be entitled to Social Care funding. Assistance will be provided to these families to consider their children's needs and how to go about meeting these by providing information e.g. signposting to appropriate services in the community, including suitable Short Breaks local offer services that can be accessed without assessment. If a family's circumstances change then a child's needs can be reassessed.

b) Exclusions based on Safeguarding Considerations

If there are considered to be safeguarding considerations that have the potential to negatively impact on the child or young person, or where there are identified risks based on an assessment of the parent's or carer's ability to effectively manage the budget to the benefit of the child or young person then the option of a Direct Payment may be deemed to be unsuitable in preference to Council-managed services.

c) Looked After Children (Children in Care)

A child is looked after by a local authority if he or she has been provided with accommodation for a continuous period of more than 24 hours, in the circumstances set out in sections 20 and 21 of the Children Act 1989, or is placed in the care of a local authority by virtue of an order made under part IV

of the Act. Personal Budgets are not available for these children as their needs are being addressed through the placement provided by the local authority. In exceptional circumstances where there is imminent risk of the breakdown of a foster placement, then additional support or short term alternative provision may be offered but this would not be appropriate for children placed in residential homes.

5. How are resources calculated to meet an individual's needs?

The Matrix of Need

The Matrix of Need tool was devised in 2011 and provides a way of 'banding' support needs into three groups. The tool does not replace an assessment it merely indicates following assessment the likely support available. Since the tool was developed a number of changes have occurred within IDS Social Care and in the legislation relating to Special Educational Needs and Disability. It is the intention of the Local Authority to replace the Matrix with a tool more consistent with current legislation and expectations, the proposed design of the new tool will be subject to public consultation.

All support offers will be based on the most cost-effective care plans which meet the unmet eligible needs of a young person with regard to risk and personal circumstances. Indicative budgets are based on an annual allocation of funding, which is subject to an annual review process and may be adjusted at this stage. Needs may also change at any point in time for a wide variety of reasons that may trigger a reassessment and result in an increase or decrease in the funding allocated.

Exceptions to the indicative budget - Emergency or Crisis Support

Personal budgets as a planning mechanism assume limited change in the level of support required throughout the year. Where children fall ill, have a family crisis or where additional safeguarding measures are required quickly there needs to be resource and capacity outside the Personal Budget to support rapid response, such as in the offer of short-term residential placement for children whose families are at significant risk of breakdown or children who are being discharged from hospital where the family home has not yet undergone suitable alterations to accommodate the child.

Circumstances where the indicative budget set may be disregarded and where additional resources can be provided include the following:

- Significant risk of family breakdown
- Family Bereavement
- Significant illness
- Housing issues leading to a risk of homelessness

Generally funding or resources provided in such circumstances will **not** be provided as a personal budget as those exceptional circumstances will be time limited and would require frequent review to support the family in

returning to a more stable situation. Personal budgets are not designed to support such fast-changing situations.

6. How can the Personal Budget be used?

In principle a personal budget can be used for any expenditure that meets outcomes defined in the agreed support plan as long as expenditure is lawful, effective and affordable.

- Lawful: The expenditure identified as part of the support plan is legitimate and does not contravene any national guidance on how funds can be used.
- Effective: the proposals in the support plan relate to the agreed outcomes which will meet the assessed eligible needs
- Affordable: the total planned expenditure identified can be met within the personal budget.

The budget can be used for a wide range of activities that support the outcomes in the child's support plan as approved by the Council. These are for the benefit of the child, for example, the budget can be used to support youth and community groups to welcome the child into the activity they want to take part in. This may involve funding training for staff, paying for an additional staff member or paying volunteer's expenses or for equipment to ensure that the child can take part in activities.

- A family can choose staff for the child through employing personal assistants with the personal budget.
- Support can also include activities, transport, accommodation, day trips, short breaks, lower value equipment and small adaptations.

Distinctions should be made between personal care and short breaks which are for the benefit of the child and are clearly eligible and childcare which is principally provided to enable the parents to work and may not be eligible i.e. funds should not be used simply to subsidise the cost of childcare but may be used to ensure the child has equal access to activities with their peers; it is recognised that such distinctions between different categories of activity are not straightforward and therefore such issues need to be negotiated at the support planning stage and clearly agreed and recorded to ensure clarity for all parties.

Allowed Contingency Funds

Service users with personal budgets have the ability to plan for savings across their budgets to enable them to cope with unexpected changes and minor emergencies such as a Personal Assistant leaving suddenly. The contingency may be between 10-15% of the total annual value of the personal budget (the exact percentage will be determined at the support planning stage depending on a number of factors). Service users will be able to carry over up to this specified value in their direct payment bank account before the Council would consider recovering funds.

If service users wish to make larger single purchases or to acquire more expensive types of services, this may be permissible as long as this expenditure is agreed and recorded at the support planning stage.

Further details of the Council's policies and procedures in relation to the Audit of Personal budgets are set out in Warwickshire's Personal Budget Audit Policy

Equipment & Adaptations

Personal budgets may be used to contribute towards or cover the cost of minor adaptations or equipment up to a value of £100. Such items are the responsibility of the family to maintain and ensure the safety and suitability of for their child's use.

Direct payments

Direct payments are made when all or some of the funding from the Personal Budget is transferred to a parent/carer/appropriate representative to manage. Direct payments for children's social care services are governed by Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009. Under those regulations the Council must offer a direct payment if it is satisfied that;

- the person who is to receive/manage the direct payment is an appropriate person and not excluded by the legislation AND
- the needs of the child or young person can be met by securing the provision through a direct payment AND
- the welfare of the child or young person will be safeguarded and promoted by securing the provision through a direct payment

Any social care services agreed through the support plan can potentially be funded through a direct payment subject to the Council being satisfied on the above matters. This includes both day opportunities and overnight respite care.

However parents and carers should be aware that the Council has pre-booked the beds at the John Waterhouse Project to ensure they are available to Warwickshire children when needed. The beds at Holly House and Gramar are funded by health commissioners. These facilities are currently the only specialist overnight residential short break provision for children with disabilities within the county and can only be accessed for social care overnight respite through Council managed provision and not through direct payments. Direct payments cannot be used to buy back services from the local authority or health.

However, each individual case will be considered according to its particular circumstances; and as and when specialist overnight residential short break provision for children with disabilities not managed by a local authority or health body is available, there will be the potential for a direct payment.

What a Personal Budget cannot be spent on

- Anything that is illegal or is illegal to purchase, or that would endanger the child or young person or any other person;
- The baseline allocation for special educational needs which is included as part of the school's funding allocation;
- Gambling;
- Debt repayment;
- Alcohol;
- Tobacco;
- Clothing;
- To pay the family carers who live with the child or young person to provide care for them other than in exceptional circumstances. The Council must be satisfied that such an arrangement is necessary to satisfactorily meet the needs of the child or young person and any such agreed arrangements must be recorded on the support plan.

WCC Short Breaks Framework contains details and costs of the services available to purchase by WCC and Service Users utilising their Personal Budget.

7. What will this mean for customers including parents, carers, their children and young people with SEND?

People whose children need the support of social care will have the opportunity to:

- Decide how their child's personal budget is managed
- Experience greater control over their child's support arrangements
- Access a wider range of services/activities as a customer
- Find ways to have their child's needs met more fully reflecting their cultural needs and requirements
- Receive adequate support in managing their child's personal budget
- Experience improved quality of life and social inclusion

If they choose Direct Payments as a way of managing some or all of their personal budget they will also be responsible for:

- Entering an agreement based on the support plan and the associated expenditure
- Using their personal budget only to meet outcomes identified within their agreed support plan
- Providing information about their use of direct payments so that expenditure can be monitored.

Particular care needs to be taken to ascertain the child's wishes and views about how their needs should be met. Where there is a difference of views between parents and disabled children aged 16 and 17yrs the young person's views will be given appropriate consideration. It follows that there may be situations where it would be right for a young person to receive a personal budget whether the parents agree or not. This should always follow a

comprehensive assessment of need and risk with the young person and their family.

8. How may Resources and Support be Provided?

Social Care resources and support for children and young people with disabilities may be provided in a number of ways listed below, including through personal budgets. It must be noted that in individual circumstances the Council may decide that any of these options are not considered appropriate and may be refused;

Personal Budget options:

A young person or parent /carer may take eligible parts of a Personal Budget in the following ways;

- direct payments – where individuals receive the cash to contract, purchase and manage services themselves
- an arrangement – whereby the local authority, school or college holds the funds and commissions the support specified in the EHC plan (these are sometimes called notional budgets)
- third party arrangements – where funds (direct payments) are paid to and managed by an individual or organisation on behalf of the child's parent or the young person
- a combination of the above

a. Council managed

The young person or parent/carer asks the Council to manage all the arrangements for service provision.

b. Mixed Model - A combination of the above

The young person or parent/carer may take a combination of the above approaches, e.g. Direct Payments for some of their child's support, and asks the council to manage other areas of need on their behalf.

Other than option b. above the Council will no longer be solely responsible for the arrangement, direction, management or day to day organisation of those services; once a young person, parent or carer agrees to receive payments in lieu of services they assume the responsibilities associated with managing their child's support. In the case of payments to third parties (e.g. Brokers, Individual Service Funds), the third party assumes responsibilities associated with managing the support of the service user or carer.

9. What support is available to service users and their carers and representatives?

a. Personal Budgets Guidance Document

Warwickshire Council has developed a comprehensive guidance document setting out the practicalities and implications of this Policy alongside relevant guidance for service users in a number of areas.

b. Approved Providers List

Warwickshire Council has developed a list of approved providers who have undergone a selection process to ensure they have important policies in place and meet expectations for providing a high quality service. While the Council works to make sure this partnership is relevant to families, choice of provider is *not* limited to the providers in this partnership. This is based on feedback from families that they do not wish to be constrained as this could prevent them from meeting their children's individual needs with flexibility. ***Families who use services not on this list do so at their own risk and remain responsible for delivery of the agreed support plan.***

c. Brokerage

Brokerage is a service provided by an organisation or individual that helps families to manage their personal budget and spend it in the most appropriate manner. For instance, a broker could assist getting a particular service, or could sort out paying a support worker.

Services provided include:

- Initial advice on applying for personal budgets and other help available
- Information about the ways a personal budgets can be received e.g. Direct Payments
- Helping individuals with personal budgets to develop their support plan and put it into action
- Support to review the support plan and make changes if needed
- If Direct Payments are being considered:
- Helping an individual employ a Personal Assistant
- Information on managing a Payroll Service (including administrating wages, National Insurance and Tax) and banking service
- Information on setting up an Independent Living Trust.

d. In-House Brokerage – Warwickshire Council’s Personal Budget Support Service

Internal brokerage will be an alternative offer to service users who require assistance managing their personal budget. The primary function of this service is in coordinating support and resources, but will also have some involvement in other areas such as providing advice and planning. Support brokers would work closely with the family’s peer support network.

The menu of services will include:

- Ensuring service users are aware of initial set-up activities, such as PA recruitment, Pre-paid card accounts, Payroll, etc.
- On-going support, where required, e.g. financial management, record keeping, etc.

e. Advocacy / Independent Advice

Service users, carers and others may also choose to independently seek support from other organisations, in particular where they have specialist needs or require an advocate. Advice will be given to individuals about alternative sources of information, guidance, or advocacy services if required.

f. Pooled Budgets

Parents and carers may pool their budgets with other families to jointly provide services. This may allow a group of families to work together to provide a wider mix of services or provide better value for money through shared care. Each family retains individual responsibility for the funds in their child’s personal budget.

g. Family Budgets

If different members of the same family are in receipt of Personal Budgets there is scope to pool budgets within the family to provide similar benefits to those identified for Pooled Budgets above.

10. Transitions

There are a number of changes around legal status and entitlements that impact on a young person when they reach the age of 18 and these consequently impact on the calculations involved in the Personal Budgets processes. The most significant changes are as follows:

- The Fair Access to Care Services (‘FACS’) criteria become applicable at the age of 18 years and are used across England to determine an adult’s eligibility for social care services. There are three distinct stages: enabling people to understand their needs and consider options for meeting them; informing them about which are assessed as eligible needs; and conducting a financial assessment. The outcome of this financial assessment can have a significant impact on the level of support provided

- by the local authority. More information can be found at the following website: <http://www.warwickshire.gov.uk/eligibility>
- Please note from 1 April 2015 revised FACS eligibility will be introduced in line with the Care Act 2014, further details will be made available in due course.
- At the age of 18 an individual becomes eligible for a different range of benefits in their own right and lose their entitlement to benefits solely for children.

During the 12 months prior to a young person with special educational needs or disabilities turning 18, work will begin with the young person's Social Worker or Family Support Worker in planning for the different aspects of transitions to adulthood. Although the approach to service provision in adult's and children's services remains person-centred the above changes mean that the financial value of the needs assessed are calculated differently and are almost certain to change. Transition planning includes preparation for the changes listed above as well as for the personal aspects of this transition to adulthood.

11. Safeguarding

The Council needs to be satisfied that a person providing care to a child or young person under the age of 18 is a suitable person. In making Direct Payments, the Council will need to be satisfied a "relevant individual" (a person who is or has been employed to provide care to a child) is not included on a list established under the Protection of Children Act 1999.

It is the Council's strong recommendation that all personal assistants employed to provide care to a child or young person under the age of 18 should have a background check with the Disclosure and Barring Service (DBS). The DBS helps employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including children. It replaces the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA).

The Council is not legally permitted to insist on DBS checks being completed before personal budgets can be granted, but cannot emphasise strongly enough the need to ensure that all staff employed to work with children and young people are appropriate to do so. Parents and carers are urged to ensure that they have taken suitable steps to safeguard the well-being of their children and young people and to protect them from unsuitable adults.

If the Council receives information that a child may be at risk or harm from a person employed to provide care, personal budgets may be suspended during an investigation into the circumstances and that individual may be referred to the Protection of Children list.

12. Audit & Monitoring Requirements

Warwickshire County Council has a responsibility to ensure that public money is spent and accounted for appropriately and therefore requires a robust and

flexible policy of auditing cash payments to provide confidence that children and young people are achieving the best possible outcomes within the available resources and that funds are being spent appropriately.

The Council may terminate direct payments if the conditions for making a direct payment are no longer met or conditions imposed have not been complied with or in all the circumstances the Council considers it appropriate to terminate the making of direct payments.

The Council may require the payment or part of the payment to be repaid where they are satisfied that—

- (a) the direct payment or part of the payment has not been used to secure the provision of the service to which it relates; **or**
- (b) the direct payment has been used to pay a family carer living in the same household as the child or young person without the agreement of the Council **or**
- (c) any other condition which has been imposed has not been complied with, this includes requirements to provide information

13. Review and Reassessment

In line with normal practice the personal budget and associated funding will normally be reviewed on an annual basis.

14. Disputes

Personal Budgets: Working through disagreements about funding decisions

Introduction

The purpose of this dispute process is to provide information to families about how the council will work to resolve disagreements about how much funding the child receives through a personal budget.

Council staff will follow these guidelines to make decisions about eligibility, support plans and funding. The following process is intended to promote a positive approach to listening to families, ensuring all their views are considered and seeking to work through disagreements. This process does not affect the right of the family to use the complaints procedure at any time or at the end of this process set out below.

A process to resolve disagreements

- The family may challenge the indicative allocation because they do not believe it is scored correctly.
- If this is the case the family will be invited to show where they have been under or over scored and suggest a different score and a rationale. This will be considered by the Social Worker or Family Support Worker.
- If after this reconsideration the family contest the score then the Practice Lead for the worker will be asked to review the contested scores.

- Following the review of the contested scores by the Practice Lead the council will write to the family stating the score and the rationale.
- Where the dispute is not about the scoring the family will be encouraged to plan with the indicative amount. The council can re-evaluate their position best after a support plan has been completed. The support plan process will provide a good test whether assessed need can be met at the price offered by the council.
- If the family remains unhappy after planning then they will be offered a meeting with the Practice Lead who will consider their point of view.
- If the family wishes after this meeting to challenge the allocation or after submitting their plan seek a higher allocation which children's services feel they cannot agree then they may present their points of disagreement to the Operations Manager.
- The Operations Manager will confirm the outcome of the discussion to the family in writing
- The family can be supported in this process by anyone or any organization they choose.