

What are Personal Budgets/Direct Payments

The Personal Budget sets out the total cost of the provision listed within the Education, Health & Care Plan (EHCP). Direct Payments are one way that the Personal Budget can be managed.

The following is addressed to parents of children and young people but is intended as guidance for anyone involved, including the young person themselves. "Young people" is a phrase which the Children and Families Act 2014 has introduced which means a person between 16 – 25 years of age, in education and with mental capacity.

Personal budget

The Personal Budget is the amount of money calculated to be sufficient to obtain all the therapies, support and care which is detailed within the EHCP. (See our factsheet "Education, Health and Care Plans".)

You are entitled to request a Personal Budget when the EHCP is being prepared, reviewed or re assessed.

What the Personal Budget will look like will vary between local authorities. This is because the law and the guidance have left it to local authority to determine how they will approach Personal Budgets and make their own policies on it. The policy must, however, contain:

- A description of the education, health and social care provision which could be included within the Personal Budget.
- The options of controlling the Personal Budget:
- Direct payments – where you buy and arrange the services yourself.
- An arrangement – where the local authority, school or college hold the funds and arranges the services.
- Third party arrangements – where the funding is paid to a person or organisation who acts on your behalf.
- A combination of the above.
- A clear explanation of how someone would be eligible for the Personal Budget and the various options for controlling the budget.

Direct payments

It is important to know that Direct Payments for social care and Personal Budgets for special educational provision are two separate things.

A Personal Budget in the context of special educational provision is a notional sum of money identified by a local authority to cover certain provision.

Even where a Personal Budget is identified (and there are reasons why local authorities don't have to identify a budget) this does not mean that Direct Payments for such provision will follow: for example, direct payments cannot be made for goods or services to be used in a school without the express written consent of the head teacher.

Direct Payments mean that you can take over control of the funding that is made available for the services within the ECHP. If Direct Payments are made, the local authority will set out which elements of support those payments are expected to cover. The regulations set out that before a local authority is able to make any Direct Payments it must be satisfied that:

- The person receiving the Direct Payments will make proper use of the payments to obtain all of the provision within the ECHP.
- If Direct Payments are to be sent to a third party acting your behalf, that third party will act in the best interests of the CYP when obtaining the provision within the ECHP.
- Making the Direct Payment will not negatively impact other services that the local authority provides to other children with ECHPs.
- The provision of Direct Payments is in line with the "efficient use of [the local authority's] resources".

As such, there are a number of reasons why the local authority may refuse to make Direct Payments. If the local authority does refuse to make Direct Payments, this is challengeable by way of an application for Judicial Review. It is not something that the Special Educational Needs and Disability Tribunal is able to deal with.

Because of the obligations and duties that are carried with Direct Payments, it is advisable that you seek independent legal advice about your situation before deciding on a particular course of action. We are very happy to provide this advice.

You should raise this with the local authority. Initially, it will be for the local authority to seek advice on whether the young person has capacity.

If you have any questions or require advice, please contact the Special Educational Needs team on **0118 467 6547** or senexpertsolicitors@bovesturner.com.

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