

Personal Budgets and Direct Payments Policy 2024.

**For children and
young people
aged 0-25 years
with Special
Educational
Needs and
Disabilities.**

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Introduction

Choice and control is at the centre of all statutory services being able to offer personal budgets to individual children and young people, with special educational needs and disability, aged 0-25 years.

A Personal Budget (PB) is defined as the total amount of funding made available by the Local Authority/NHS Trust to meet the needs of a child or young person and support them in achieving their outcomes. Direct Payments (DPs) are one way of delivering some, or all, of this agreed funding in which children, young people and their families can direct their own support.

There are several pieces of legislation that relate to personal budgets and direct payments across health, social care and education (see sections 1.1 and 2.3) that place a duty on local authorities and health to provide the option for parents and young people to access personal budgets across education, health, social care and transport.

This policy sets out how Brighton and Hove City Council (“the Council”) will fulfil these statutory duties for social care and education services.

The policy also explains the process for health personal budgets from NHS Sussex and how to access these.

The Brighton and Hove Special Educational Needs and Disability (SEND) Strategy 2021-2026

This policy has been introduced as part of the actions agreed in the SEND Strategy.

The SEND Code of Practice 2015 defines SEND as follows:

A child or young person has SEND if they have a learning difficulty or disability which calls for special educational provision to be made for him or her.

A child of compulsory school age or a young person has a learning difficulty or disability if he or she:

- has a significantly greater difficulty in learning than the majority of others of the same age, or
- has a disability which prevents or hinders him or her from making use of facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions.

The strategy vision was developed in 2021 and states:

‘Our children and young people with SEND and adults with LD will achieve the very best they can so that they can lead happy, healthy and good lives’.

Read more about the SEND Strategy and its ambitions here ([Brighton & Hove Special Educational Needs and Disability \(SEND\) Strategy 2021 to 2026 \(brighton-hove.gov.uk\)](https://www.brighton-hove.gov.uk/SEND-Strategy-2021-to-2026))

The ambition is that all children and young people with SEND and their families are able to say:

- we are listened to and respected.
- our needs are understood, acknowledged and provided for.
- our voice and views are at the heart of all decision making for our child.
- we are involved in co-production of services and support at all levels of the system.
- we have access to good quality and impartial information, advice and support.
- we have regular communication that is tailored to specific needs.
- our needs are identified early.
- the pathways to access help are transparent and equitable.
- we have more help from a range of agencies for our children and young people on SEN Support
- we can access more support at home or locations of our choosing.
- we can access a variety of short breaks and after school activities.
- professionals work in partnership with parents, are well trained and empathetic, and work flexibly around us.
- we are welcomed and included, and we are accessing education, social and leisure opportunities within our local community.
- we are no longer excluded from schools.

The strategy has 6 outcomes to achieve **Better outcomes, Better lives** with 6 priorities to achieve this:

- Inclusion
- Early Identification and Intervention
- SEND Pathways
- Achievements and Outcomes
- Transition and Preparing for the Future
- Sufficiency of SEND services and Provision

The personal budget policy links specifically to 5 priority areas of the strategy:

- Priority 1: Inclusion: We will ensure there is a city-wide commitment to services and support that is inclusive to children, young people and adults with SEND.
- Priority 3: SEND Pathways: access to the right support from services easily and quickly which includes a clear pathway to apply for and access personal budgets.
- Priority 4: Achievement and Outcomes: ensuring children and young people are able to achieve their full potential across health, education and social care which may, in some situations, be best delivered by a personal budget.
- Priority 5: Transitions and Preparing for the Future: We will ensure that children, young people and adults with SEND and their families can access the right support from services – easily and quickly which might be the provision of a personal budget.
- Priority 6: Sufficiency of SEND Services and Provision: ensuring the right provision is available at the right time for all children and young people with SEND which may require the allocation of a personal budget.

Personalisation and personal budgets explained:

Increased choice and control of service provision for families is called 'personalisation'. It is intended that this policy helps professionals, parents and young people understand the choices that can be made.

Personalisation places people at the heart of the assessment and discussions about how they would like their services delivered, ensuring they have as much choice and control over their support plan as possible. It enables the provision of services to be tailored for the individual child or young person.

Personal budgets are one element of a personalised approach to supporting children and young people with SEND.

What is the purpose of this policy and what does it include:

This policy is in 2 sections:

- Section 1: focuses on personal budgets more generally and how they are delivered in health, education, social care and for home to school transport. This section will include:
 - What a personal budget is and how to use them. (section 1.1-1.4)
 - Clear statements of eligibility and the decision-making processes that underpin them. (1.5)
 - An outline of services across education, health, and social care that currently lend themselves to personal budgets. (1.10)
 - Arrangements and processes for making funding available to young people and parents (this includes direct payments, notional budgets, third party arrangements or any combination of these). (1.6-1.9)
 - Monitoring and review, complaints and appeals. (1.11-1.14)
- Section 2: focuses on direct payments which is just one way for a parent/carer of a child with SEND, or the young person themselves, to receive all or part of their personal budget.

This section will include:

- What a direct payment is, principles and legislation (2.1-2.3)
- How direct payments can be used to promote individual choice to meet agreed identified needs and outcomes. (2.4-2.6)
- How the council will meet statutory obligations in relation to direct payments across social care and education. (2.7)
- How parents/carers and young people, not in agreement with a decision made by the council concerning a direct payment, have the right of appeal. (refers back to section 1, 1.11-1.14)

The council is aware that young people, parents, and carers have a great deal of information to digest in their journey. To help, there will be an

implementation plan to ensure the policy is put into practice and part of this will include:

- Process, guidance and support documents for staff.
- Documents to support parents and young people with the process such as flowcharts, frequently asked questions, case examples.

Information and Support

It is important that anyone interested in receiving all or part of their support as a personal budget, receives information from the outset to enable them to understand all the responsibilities involved. Accessible information sheets will be shared with parent carers to reference, plus an online link to the information.

Parents can get information advice and support from Amaze ([Amaze Sussex: for families with disabled children and young people in Sussex](#)). The information on this website can be translated into 31 languages by clicking on the TRANSLATE button at the bottom left of every page. (Amaze can translate pages into approximately 100 languages on request)

For social care personal budgets and direct payments, Possability People and/or People Plus can also offer support (see below for contact details):

- People Plus: give advice around all aspects of Direct Payments. They can give recruitment advice and place adverts for personal assistants (PAs) on Job sites. People Plus work out a budget to pay PA wages. They also give advice on insurance, dependent on client needs. When a young person is over the age of 18, they inform clients about additional financial contributions as appropriate. People Plus also hold and have information about self-employed and employed status documents for the PAs to complete when they sign up to make sure they are on the correct tax code.
- Possability People: are a supported bank and payroll service that help families employ PAs rather than directly recruit them. They make sure all PAs are on the correct tax code and are paid the correct amount of monies owed for time worked, once a timesheet is submitted. They pay invoices that are due to come out of direct payment supported accounts. They make sure that tax and national insurance is paid for PAs and that the correct amount is being deducted from PA pay.

Further information can be accessed at:

Local offer website link ([Special educational needs and disabilities \(brighton-hove.gov.uk\)](#))

Amaze SENDIASS ([Amaze Sussex: for families with disabled children and young people in Sussex](#))

People Plus: www.peopleplus.co.uk Tel:0330 123 1815

Possability People: www.possabilitypeople.org.uk Tel:01273 894060

Section 1: Personal Budgets

1.1 What is a personal budget? Key legislation and guidance

There is a great deal of confusion about personal budgets and direct payments which stems from the way they have developed over time.

The most significant and recent legislation on personal budgets affecting children and young people with SEND (0-25) is contained in **the Children and Families Act 2014** and the statutory guidance on the Act, **the SEN and Disability Code of Practice 2015**. In addition, **the Special Educational Needs (Personal Budgets) Regulations 2014** ('the Regulations') provide further legislative framework which local authorities are required to follow when offering Personal Budgets. The Regulations which apply to education personal budgets are different to those which apply to social or healthcare which means that the rules applying to these different budgets can be different.

The **Care Act 2014** defines a personal budget as a written statement provided to a person with care and support needs (or a carer with support needs) which specifies the cost to the Local Authority of meeting the needs it is either required to meet (under its duty) or decides to meet (under its powers). [Care Act 2014 \(legislation.gov.uk\)](http://legislation.gov.uk)

The **SEND Code of Practice 2015** defines a personal budget in the following terms:

'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.'

SEN and Disability Code of Practice 2015 para. 9.95

'The child's parent or the young person has a right to request a personal budget, when the local authority has completed an EHC needs assessment and confirmed that it will prepare an EHC plan. They may also request a personal budget during a statutory review of an existing EHC plan.'

SEN and Disability Code of Practice 2015 para. 9.98

1.2 How are personal budgets allocated to parents/carers or young people?

There are four ways in which a child's parent or young person can be involved in securing provision:

- **Direct payments** where the child's parent/s or the young person receive the funding to contract, purchase and manage the services themselves (see section 2).
- **An organised arrangement** where the local authority, school or college holds the funds and commissions the support specified in the plan. These are sometimes called 'notional' budgets and can also be used where contractual, or

funding arrangements mean that cash cannot be released as a direct payment or where economies of scale are present.

- **Third party arrangements** where direct payments are paid to and managed by an individual or organisation on behalf of the child's parent or young person (see section 2)
- A combination of the above.

1.3 Using personal budgets

The council and NHS Sussex consider that most children and young people with SEND will have their support needs met by universal, targeted and specialist services available via the council local offer of services. (for a good summary of what a local offer is see: [send reforms - the local offer explained august 2014.pdf \(councilfordisabledchildren.org.uk\)](#)).

A personal budget requirement may arise where a child or young person has needs which cannot be met by these services. (see Appendix 1 case examples)

Personal budgets can be used for any element of care and support that allows a person to achieve their agreed support outcomes. The personal budget should be used to maximise the child or young person's health, education or social care outcomes and support their wellbeing, safety and independence. If a personal budget is agreed from NHS Sussex it is referred to as a personal health budget.

NHS Sussex and the council commission services to provide for children and young people's needs. These are called 'block contracts' and provide services such as speech and language therapy, mental health support or care services. An allocated personal budget cannot include funding already used to commission services. This includes a service delegated to a provider such as a school or college or where it is not possible to separate the funding allocated to the setting. Additionally, where it is suggested, a personal budget is to be delivered in a school, early years setting or college, the Headteacher/Principal must agree that the arrangement is workable. The monetary value of the service will be shown in the EHC plan.

1.4 What a personal budget/personal health budget cannot be used for:

The money must be used in a legal, reasonable and efficient manner. Personal budgets/personal health budgets may **not be used for:**

- Services that the NHS is required to provide [NHS England » Guidance on direct payments for healthcare: Understanding the regulations](#) (for a full list see link)
- Purchase of services provided by the council or any other Local Authority or from the NHS.
- Substitute for Disabled Facilities Grants.
- Funding a school placement, whether in the maintained or independent sector, and whether in an early years setting, school or college.

- Residential costs (except if used for agreed short breaks which are within the limits),
- Payments made outside of tax, NI or pension - for example, 'cash in hand' wages, freelance payments, cannot be made.
- Housing costs such as rent, mortgage and council tax bills.
- General household, grocery or utility bills.
- General household and garden equipment and furniture.
- Warranties, upkeep and maintenance of equipment.
- Purchase of pets or the ongoing costs of keeping an animal, including veterinary bills.
- Direct Payments should not normally be used to employ relatives living in the same household as the disabled child.
- Purchases which couldn't reasonably be used in the best interests of the child are also prohibited by the council. Examples of which include purchase of alcohol, cigarettes or DVDs/computer games intended for an older audience.
- Repayment of debts.
- Any form of gambling.
- Goods or services that are obtained unlawfully or which are illegal (e.g. drugs).
- An item/activity that does not meet need as assessed by the council.

1.5 Who can request a personal budget/personal health budget?

Parents, carers and young people do not need to have an EHC plan to get an assessment for a personal budget from social care and/or health.

For education, the child or young person must have an Education, Health and Care plan (EHCP).

1.5.1 Eligibility for Health:

Only a very small number of children and young people will meet the eligibility for continuing health care and the NHS team will be aware of these families via the health care pathways in place. If a family would like their continuing health care to be provided as a personal health budget, this can be discussed with the health professionals

involved (<https://www.sussex.ics.nhs.uk/your-care/continuing-healthcare/children-and-young-people-continuing-care/>). The personal health budget policy and process for the NHS in Sussex is all age and information can be accessed here ([Personal health budgets - Sussex Health & Care \(ics.nhs.uk\)](#)). A personal health budget can be taken as set out in Section 1.2, by organised arrangement (notional budget), via a third party on behalf of the child's parent or carer or the young person, or by a direct payment.

To clarify:

- Any offer of individual funding (which can be taken as a personal health budget) for children or young people with complex health needs is established by the criteria set out within the Continuing Health Care tool (see link above).
- Personal health budgets are not appropriate for all aspects of NHS care an individual may require. Full details of excluded services are set out in guidance provided by NHS England including primary medical (i.e. GP services) and emergency services (see link in 1.4).
- Since April 2014, anyone receiving NHS Continuing Healthcare (including children's continuing care) has had a right to ask for a personal health budget, including a direct payment. Since October 2014, this group has benefitted from the right to have a personal health budget.
- Children and young people with long term mobility needs (6 months or over) can be assessed for a personal wheelchair budget ([Wheelchair and Specialist Seating Service \(sussexcommunity.nhs.uk\)](#))

1.5.2 Eligibility for Social Care:

For children and young people under 18: If a family or professional consider a package of support is needed to meet the needs of a child or young person over and above that which is provided by universal or targeted services, the family/professional can ask for an assessment. If, following assessment, need is identified that cannot be met by universal or targeted short break services already provided by the local authority (see the Brighton and Hove Local Offer ([Get social care support with special educational needs and disabilities \(brighton-hove.gov.uk\)](#))) it may be appropriate to consider a personal budget/direct payment. A personal social care budget will be focused on the needs of a child, young person and/or the family. This is determined by the child being a 'child in need' as defined in the Children Act 1989. The council wish to develop this area to link meeting need to meeting life outcomes such as gaining independence skills, being more confident when out in the community and learning how to stay safe. The short breaks strategy and developing offer also aims to enable disabled young people to have more opportunity to access activities in the community and does not require an assessment to access these services.

Transition arrangements: When a child, who has already been assessed and whose family is receiving a direct payment and their case is open to the specialist community disability service (SCDS), reaches 14 years their case becomes the responsibility of the 14 – 24 transitions pod in the SCDS social care team. The aim of this pod is to start the transition to adult services process and conversations should start with the family. The young person will have an allocated worker until they are 18 years and will have annual assessments of their needs and their direct payment package. The Transitions Tracking process where all 14 – 17-year-olds are discussed regularly, includes all aspects of their

needs and care, health, education, accommodation, finances etc. The meeting includes partners from other agencies, including adult services, to ensure that the young person is known to them prior to them reaching 18 years and so that plans can be made well in advance.

At 17 years all young people supported by the transitions pod, will have a Care Act assessment which will assess their needs as an adult, including their personal budget and any direct payments package. The social worker will assess their needs and if the direct payment will continue at the same rate, or if they need more or less funding and what that will be used for.

As young people transition to adult services, they may wish to consider if they would like to oversee their personal budget options. A mental capacity assessment may be required to determine if this is possible

The young person's case will be presented at the 18+ panel with their proposed new package of support which might include a direct payment (and will flag any other need such as accommodation or respite) and the package will be agreed or not. If a direct payment is agreed, the social worker will amend this on the social care system and the adults' direct payments team will process.

If a young person has not had a service as a child, but is likely to need one as an adult, they, or any professional working with them, can request a Care Act assessment via Front Door for Families ([Front Door for Families \(brighton-hove.gov.uk\)](http://brighton-hove.gov.uk)). They will then be allocated to the correct social care team. For young people 18 years and over the young person or any professional working with them can request an assessment via the adult social care hub ([Adult Social Care hub \(brighton-hove.gov.uk\)](http://brighton-hove.gov.uk))

For young people over 18: The Care Act 2014 mandates, a personal budget as part of the care and support plan for people over 18 years with eligible care and support needs, or where the local authority decides to meet needs. It also clarifies a person's right to request a direct payment to meet some or all of their care and support needs, and covers people with and without capacity to request a direct payment.

1.5.3 Eligibility for Education:

A young person or their parent/carers have a right to request a personal budget when the local authority has completed an EHC needs assessment **and** confirmed that it will prepare an EHC Plan. They may also request a personal budget during a statutory review of an existing EHC Plan:

- Any funding for a personal SEN education budget must be to meet learning outcomes as set out in the EHC Plan. It is not a fund for additional provisions such as home tuition, after school activities, additional therapies or anything else that is not specified in section F of the EHC Plan.
- The funding from the council's high needs block for the SEND element of a personal budget, will be based on the assessed needs of the child or young person and will usually be for support that is required in addition to the support a school or college is expected to provide from within delegated funding as part of the local offer of services.

- Schools and colleges can choose to contribute from their delegated funding (Element 1 and Element 2). Any provision to be delivered via a personal budget in a school, must be agreed by the Headteacher and Governing Body.
- A personal budget may be considered where a child or young person is to receive 'Education other than at/in School (EOTAS)'. EOTAS provision can only be agreed where the Council has decided that education in a school would be "inappropriate" (section 61 of the Children and Families Act 2014). A SEN personal budget cannot be agreed where it's the Council's view that a child or young person's needs would best be met in a particular education environment, and a family decides not to take up or continue the placement and decides to home educate instead.

1.5.4 Eligibility for Home to School Travel assistance:

If a child or young person is eligible for home to school/college travel assistance under the council's home to school transport policy or post 16 transport policy ([Apply for help with home to school transport \(brighton-hove.gov.uk\)](#)) then it may be possible for travel assistance to be taken as a personal budget. All applications for assistance are assessed on a case-by-case basis by the Council's transport panel. Most personal travel budgets are paid as direct payments and would be for mileage or taxi travel to the nearest suitable school.

1.5.5: Looking holistically

If a child or young person has an EHC Plan, the personal budget should reflect the holistic nature of an EHC Plan and can include funding for special educational, health and social care provision. Any personal budget should be focused to secure the provision agreed in the EHC Plan and should be designed to meet the outcomes set out in the EHC Plan. A child or young person could have a combination of personal budgets from social care, health, education and travel assistance and these budgets can be used flexibly, with the agreement of service leads, to provide a holistic package of support.

It is important to understand that not everything identified in an EHC Plan is available as a personal budget. Options for personal budgets are determined by the assessed needs of the child or young person and influenced by what is already available through the local offer of services, eligibility criteria for different components, local circumstances, commissioning arrangements and other individual factors such as school preference. The local authority will always consider the availability of local services prior to commissioning any alternative provider.

The 'local offer' ([send reforms - the local offer explained august 2014.pdf \(councilfordisabledchildren.org.uk\)](#)) sets out what is available from education, health, and social care to children and young people with special educational needs and disabilities, including those who do not have EHC Plans. ([Special educational needs and disabilities \(brighton-hove.gov.uk\)](#))

Options for personal budgets relate to more specialist or individualised provision for a child or young person.

1.6 Making an application for a Personal Budget

1.6.1 Social Care: For a personal budget from social care services an assessment of need is required. In order to request an assessment for a child or young person, a referral should be made to Front Door For Families ([Front Door for Families \(brighton-hove.gov.uk\)](http://frontdoorforfamilies.brighton-hove.gov.uk)). The child or young person will be allocated to a social work resource officer who will complete an assessment in 45 working days. For adults over 18 years of age a referral needs to be made to Adult Social Care services so that a Care Act assessment can be completed. Once an assessment has been completed and need is identified, each case will be considered at a multi-agency panel for a decision. An amount of funds can be allocated which is the indicative personal budget. This can be taken all or part, as a direct payment (see Section 2).

1.6.2 Education services: There is an application form, available on request from the Special Educational Needs Statutory Service, to assist with providing all the information required for the local authority to make a decision. (add link to LO website when available) The process for requesting a personal budget should be a collaborative one involving children, young people, and parents in decision making. The opportunity to consider options, and make a request for a personal budget, is part of the EHC needs assessment process. When the draft EHC Plan/draft amended EHC plan is developed and outcomes agreed, the child's parents and the young person can indicate if they would like to request a personal budget for any of the available elements of the provision in the EHC Plan and how they can do this. Further help and assistance to complete the application is available from Amaze SENDIASS (<https://amazesussex.org.uk/>).

If a personal budget is agreed, this is then included in the draft EHC Plan ready for the consultation phase with the family and the appropriate educational institutions, and final approval by the decision-making panel. If a school is to be involved in delivering a personal budget, the Headteacher and Governing Body will need to agree to this.

A similar process is followed for EHC Plan annual reviews. If, as part of the annual review process, a parent/carer makes a request for a personal budget for any of the available elements of the provision in the EHC Plan, this must be considered. The same application and decision-making process applies. If a school is to be involved in delivering a personal budget, the Headteacher and Governing Body will need to agree to this.

If it is agreed that a Direct Payment is to be made, a formal agreement is set up between the family and the council. This includes monitoring and review arrangements to ensure the direct payment is used to buy the service which the child/young person has been assessed as needing as part of the EHC Plan. It is important to read section 2 of this policy which specifically deals with direct payment arrangements.

In Brighton and Hove, there will be further information for young people and families setting out the possible routes to a personal budget, how these are applied for and what sort of things they can be requested for. (see Appendix 2 for a flowchart of the process)

1.6.3 Home to School Transport: If a child or young person qualifies for home to school travel assistance then the application process for a personal travel budget is set out in policy ([Apply for help with home to school transport \(brighton-hove.gov.uk\)](http://applyforhelpwithhometoschooltransport.brighton-hove.gov.uk)).

The personal budget is tailored to meet high levels of need where the council agree a family can arrange their own travel provision for their child's needs.

The resource panel will only agree a personal travel assistance budget where it is cost effective to do so. This can be taken as a direct payment (see section 2).

For children and young people who are eligible for a personal travel assistance budget (PTB) to assist them to attend an educational establishment, a daily amount will be allocated after journey prices to and from home have been estimated (either for mileage or taxi provision). The young person or parent/carer of an eligible child is then able to arrange their own transport. The direct payments will be made three times a year at the end of each school term or pro rata depending on the time the application is agreed.

If a personal budget for home to school transport is agreed and this is taken as a direct payment, then parents/carers will become responsible for the commissioning of that service and any staff who transport their child.

1.7 Coproduction with families and young people and where information advice and support can be accessed

Co-production should be at the centre of the approach to supporting children and young people with additional needs/SEND and their families to access a personal budget if needed. The social care and SEN Statutory Service will work with all partners, families, young people, parent carer forums and local providers to achieve this.

Personal budgets should create opportunities to:

- Meet presenting needs that require individualised support.
- Give greater choice and control to children and young people with SEND and their families.
- Meet stated outcomes in EHC Plans/care support plans, where these cannot be met by existing services.
- Use resources in the most effective way, to achieve individual EHC plan/care support plan specified outcomes.
- Ensure support interventions are integrated into the holistic support for the child.

Advice and support with understanding personal budgets and the application process can be sought from Amaze SENDIASS (the local SEND information, advice and support service) ([Amaze Sussex: for families with disabled children and young people in Sussex](#))

Appendix 3 sets out a number of frequently asked questions which can be updated as the policy is reviewed.

1.8 How are decisions about personal budgets made?

It should be clear how a decision about a personal budget has been made by the LA. If a request is refused the explanation should be understood by everyone in the process. There is a review and appeals process explained in sections 1.12-1.14)

Each decision is made on its own individual merits and budgets may be agreed to meet outcomes for a set period. The NHS and council services have their own decision making system for allocating resources.

Decisions on whether to allocate personal budgets will be based on:

- Value for money. Do the council already provide a service that can meet an assessed need at a lower cost?
- Whether there is clear evidence of the special educational needs and/or disability which the request is seeking to meet?
- Whether there is an existing service (eg short break) that could meet the identified needs?
- Whether the request is linked to the achievement of specific outcomes in the EHC Plan/care or support plan and the likelihood of a personal budget being an effective method to meet these.

1.9 Managing a personal budget

There are different options for managing a personal budget including a Direct Payment. These are set out above in section 1.2. For clarity these options are further explained below:

There are four ways in which a child's parent or young person (over the age of 16 with capacity to make decisions) can be involved in securing provision:

- **Direct payments** where the child's parent/s or the young person receive the funding to contract, purchase and manage the services themselves (see Section 2 for details). The direct payment is paid into a separate supported bank account belonging to the parent/carer or young person or uploaded to a prepaid card. The parent/carer or young person then organises the services themselves and arranges payment to meet their needs and outcomes. Spend and accountability is monitored by the council.
- **An organised arrangement** where the local authority, school or college holds the funds and commissions the support specified in the plan. These are sometimes called 'notional' budgets and can also be used where contractual, or funding arrangements mean that cash cannot be released as a direct payment or where economies of scale are present.
- **Third party arrangements**, where direct payments are paid to and managed by an individual or organisation on behalf of the child's parent or young person. This is usually the case for social care direct payments where Possability People are commissioned by the council to provide HR services for families. This is independent of the council and a small fee is charged to help manage the personal budget. This fee will be included within the personal budget/direct payment allocation. (see page 5 for contact details)
- **A combination of the above** where the parent/carer or young person take some of the personal budget as a direct payment to organise and pay for some services themselves and ask the council to continue to manage the rest of the services and payments. This can work well if there are only a couple of areas where the young person or parent/carer would like to directly manage organisation and payment for support.
- If a parent/carer has requested their personal budget allocation to be delivered as a direct payment and this has been agreed, section 2 of this policy will then govern the allocation, monitoring and review of that funding.

- There will be regular reviews of direct payments/personal budgets through council set meetings and the statutory annual review process.

1.10 Examples of personal budgets?

The council will not agree personal budgets that will result in the duplication of services that are already in place.

Examples of personal budget arrangements and direct payments are set out in Appendix 1.

An important question to consider is how a personal budget fits with other sources of support, access and opportunity in the community, at school, college or in training. Personal budgets, and how they might be used, are only one part of a much wider system of opportunities, support, and activities available to children and young people who need additional individual resources to enable them to make good progress.

1.10.1 Education

The council is not currently able to offer a direct payment for services which are fully commissioned from in house providers.

A personal budget may be considered where a young person is recorded as in 'Education Other Than at/in School' (EOTAS). However, if at all possible, services will be provided by those commissioned by the local authority.

High needs 'top-up' funding (Element 3) currently goes to schools and colleges to provide the support required by the child/young person to meet their identified outcomes. The scope of a personal budget for special educational needs will vary depending on a young person's or child/parent's preference for school or educational institution. For example, as part of their core provision, special schools, and colleges make some specialist provision available that is not normally available in mainstream schools and colleges. The choice of a special school with integrated specialist provision may reduce the scope for a personal budget.

1.10.2 Health

NHS Sussex uses a 'resource allocation tool' based on the child or young person's assessed health needs and outcomes, to determine the level of personal health budget awarded. The amount of budget is based on the identified and assessed health needs. If a direct payment is agreed, typically this would be the employment of trained carers to support the child in school or at home. ([Personal health budgets - Sussex Health & Care \(ics.nhs.uk\)](https://www.ics.nhs.uk))

1.10.3 Social Care

All funding requests and arrangements will be considered and agreed by a multi-agency resource panel and recorded in council systems. All funding is assessed on an individual basis dependent on the needs of the family.

The resource panel must be satisfied that the support plan will meet the child/young person's assessed needs before it will confirm the final amount of the personal budget. This information will be recorded within the child's care plan, and this will be reviewed annually or sooner if there is a change of circumstances. The support plan will provide the evidence to establish the final cost. These are specialist 'Short breaks' packages of support for children and young people, agreed as part of a support plan/adult care plan and must be reflected in their EHC Plan. ([Find short breaks for children with special educational needs and disabilities \(SEND\) \(brighton-hove.gov.uk\)](#)) If a personal budget is agreed, some or all of that can be used as a direct payment (see Section 2).

1.10.4 Home to School Transport: please see section 1.6.3.

1.11 Monitoring and Review

All personal budgets/direct payments are subject to review and will either be a part of EHC Plan annual review process, transport review or social care annual review processes. If an early review is called for any reason, the personal budget will be reviewed as part of that.

Any review is held in consultation with parents, young people and schools. The council or NHS Sussex has discretion to decide whether it will continue to provide a personal budget/personal health budget for a child/young person.

The review will address whether the agreed outcomes for the personal budget/personal health budget are being met and that any stipulations or requirements made by the council or NHS Sussex have been followed.

Reviews will also note changes in needs and circumstances. The amount of money allocated to a personal budget/personal health budget may change as the result of a review.

When a young person reaches the age of 16 they will be at the centre of creating their own support plan if able to do so. Advice can be sought from Amaze ([Amaze Sussex: for families with disabled children and young people in Sussex](#)).

The council and NHS Sussex have a responsibility to ensure that the personal budgets/personal health budgets they agree represent value for money through robust care planning and monitoring.

The council and NHS Sussex also have a responsibility to ensure that public money is spent and accounted for appropriately. Personal budgets/health budgets will be audited (targeted and random) to provide assurance that children/young people are achieving the best possible outcomes within the available resources, and that funds are being used for the purpose intended.

Audits (particularly for direct payments, see Section 2) will require access to records of payments/contracts including invoices and bank statements among other things. These checks will provide assurance both to the council and NHS Sussex that the funds are being used effectively in accordance with approved support plans and as set out in the

funding agreement. The use of funds for any items not agreed with the council or NHS Sussex could be a breach of this policy and guidance.

For travel assistance direct payments, receipts and attendance records must be submitted at the end of each term, so that payments for the following term can be calculated. Any days where the student has not been able to attend their course will be deducted from the next payment.

Personal budgets are not a welfare benefit and do not represent an entitlement to a fixed amount of money. Money that has not been used and has accumulated may be recovered by the council or NHS Sussex. Please see section 2.7.10 for further information.

For social care and health personal budgets, it is available for families to use a third-party organisation to manage their direct payments and ensure that the money is used to support the child and pay any necessary expenses for carers (i.e. national insurance). This service is available on an individual basis and will be discussed during the assessment (see Section 2).

1.12 Complaints and reviews/appeals

Complaints about the process of setting up, administering and monitoring the personal budgets/health budgets will be managed under the council and the NHS Sussex complaint procedures.

If following assessment, it is decided that an individual is not eligible for a personal budget/health budget, the individual, or parent/carer of the child will be sent a letter detailing the reasons why. The letter will give the details of how to ask for a review/appeal the decision and the timescale in which the appeal should be received.

The following issues can be dealt with through the Appeals Process:

- Eligibility status
- The 'final decision' response by the panel following assessment and presentation
- The amount of the indicative budget (for example if it is felt that the resource panel was not provided with all available information when calculating the budget).
- Limitations within the support plan

If the individual, or parent/carer of the child need help to ask for a review/make an appeal they should contact Amaze SENDIASS in the first instance ([Amaze Sussex: for families with disabled children and young people in Sussex](#))

1.13 How appeals are administered.

1.13.1 For personal budgets provided by **social care** the individual or parent/carer of the child will need to contact the person working with them in relation to the assessment and support to explain they would like to ask for a review/appeal against a decision and provide the details. The appeal can be made in writing, by phone or by email.

The appeal will be considered, in the first instance, by the Head of Service and the individual notified in writing within 10 working days of the date of their appeal against a decision. ([Children's services complaints \(brighton-hove.gov.uk\)](http://childrens-services-complaints.brighton-hove.gov.uk))

1.13.2 For personal health budgets provided by NHS Sussex the appeal will be reviewed in the first instance by the Head of Service with a further right of appeal to the NHS Sussex exceptional funding panel. ([Comments and complaints - Sussex Health & Care \(ics.nhs.uk\)](http://comments-and-complaints-sussex-health-care.ics.nhs.uk))

1.13.3 For personal budgets provided for Education, Health and Care Plans any dispute relating to the request for a personal budget or its contents, should be pursued by way of a request for a review in the first instance to the Head of Service and this will be reviewed by a panel.

Any representations made by the parent/young person must be considered as part of the review. Following the review, the decision, with reasons, must be given in writing.

If the Council refuses to identify a personal budget, individuals cannot appeal to the Special Educational Needs and Disability Tribunal against that decision. This does not affect the right to appeal to the Tribunal if the disagreement relates to other sections of the child/young person's EHC Plan.

1.14 Local Government Ombudsman and Parliamentary and Health Service Ombudsman

If individuals are not satisfied with the outcome of their appeal or complaint, they can contact one of two Local Government Ombudsman services to look into the matter. The Local Government Ombudsman is responsible for complaints about councils and the service they provide.

The Parliamentary and Health Service Ombudsman is responsible for complaints about NHS services. Both offer independent, impartial and free services that deal with complaints about public bodies. The Appeals Process does not affect an individual's rights to contact an Ombudsman at any time. However, they will only usually investigate a complaint after the local authority/NHS Trust has been given the opportunity to consider it first.

Details about complaining to the Local Government Ombudsman can be found here:

[Make a complaint - Local Government and Social Care Ombudsman](#)

Details about complaining to the Parliamentary and Health Service Ombudsman can be found on the Ombudsman's website ([Making a complaint | Parliamentary and Health Service Ombudsman \(PHSO\)](#)).

Section 2: Direct Payments

This part of the policy focuses on the provision of Direct Payments as part of the overall Personal Budgets policy to children and young people with disabilities up to the age of 25, and their families.

2.1 What is a Direct Payment?

Direct Payments are payments that are paid to either a young person, aged 16 years and above, or to the parent or carer of a child or young person with SEND up to the age of 25, or to a nominated third party. The payments are made in lieu of direct provision of some or all the service. Direct payments can promote independence, choice and inclusion by enabling the purchasing of support and services by, or on behalf of, a family.

For social care services, they are made available to those children and young people who have been assessed as meeting the threshold for social care support and existing universal and/or targeted services alone, cannot meet their needs.

Personal budgets taken as direct payments can be made for, health and social care provision or SEND education. Please see Section 1.

2.1.1 A personal social care budget refers to the budget that will be made available, if following an assessment, a child or young person needs additional and individual support at home or when out and about in the local and wider community. Some or all of this personal budget can be taken as a direct payment to purchase personal assistant support, or a service known as 'short breaks'. A personal social care budget may also be offered to purchase equipment (see below). A direct payment gives the service user flexibility to look beyond 'off-the-peg' service solutions at options that may include employment, education and leisure activities as well as personal assistance to meet their assessed needs. Many people using direct payments have experienced the benefits of increased opportunities for independence, social inclusion and enhanced self-esteem.

2.1.2 A personal health budget can be used for Children/Young People who have complex, long term and/or life limiting conditions and meet the criteria for NHS Continuing Health Care. A personal health budget can be taken as a direct payment and may be used to fund care or to purchase equipment or other services. Personal Health Budgets in Brighton and Hove are awarded through NHS Sussex and are subject to individual assessment and review.

2.1.3 A personal SEND education budget is the amount of money required to meet the needs of a child or young person with an EHC Plan for some or all of the education provision set out in the plan and the outcomes to be met. Taking all or some of this as a direct payment can help give more control over what the money is spent on. (see Section 1)

2.2 Key Principles

2.2.1 All Direct Payments must be made based on an assessment which has established that the child/young person has eligible need, and the parent/carer or young person has decided that they would like to receive some or all of their services as a personal budget that they wish to self-manage. This is then termed a direct payment. This will be following one or more of the assessments below:

- A social care assessment (such as a strengthening families assessment) leading to an allocation of resources to meet care needs,
- The child or young person has continuing health care needs.
- An Education, Health and Care (EHC) needs assessment leading to an EHC plan or a review of an existing EHC plan leading to an amended EHC plan.

2.2.2 The key factor is whether the allocation of a personal budget, as a direct payment, will help that individual achieve the outcomes as laid out in their care plan/EHC Plan. It is therefore essential that the allocated worker/case worker is clear about what the agreed outcomes are for the child or young person, and that this information is clearly recorded in the EHC Plan/care plan and communicated to parents/carers and young people. Payments must be used to pay for arrangements to meet the needs and outcomes as specified in the plan.

2.2.3 The council must be satisfied that the child or young adult's welfare will be safeguarded and promoted by the means of a direct payment. This will be determined as part of the consideration of a request for a personal budget and taking some or all of that as a direct payment. The allocated worker should ensure that the making of a Direct Payment is an appropriate and safe way of meeting assessed needs as set out in the support plan.

2.2.4 Who can receive direct payments for education?

Where a child or young person has an EHC Plan, direct payments can be made to:

- a person who is a parent of the child;
- the young person if they are over 16; or
- a nominee who has been nominated in writing, by the child's parent or young person, to receive the direct payments on their behalf.

2.2.5 Who can receive direct payments for social care?

- Those with parental responsibility for a disabled child under 16 years old

You can receive direct payments for a disabled child if you have parental responsibility and the child has been assessed by the local authority as eligible for a service. A needs assessment will have been carried out by the local authority prior to your application for direct payments. The assessment must

consider the needs of the family as a whole unit, rather than just the needs of the child.

- Disabled young people aged 16 and above following a mental capacity assessment, who meet the threshold for the service and have the mental capacity to consent to receive a Direct Payment and have given that consent.
- If there is a disagreement between the young person and their parent about who should manage the direct payment, the council will provide the direct payment to the young person, where it believes that the young person is able to manage the direct payments with appropriate support and the arrangement of safeguards and promotes their welfare themselves.
- The person must be able to make choices and to select how the personal budget, to be paid as a Direct Payment, is used to meet the agreed outcomes.
- The person must be capable of managing a Direct Payment by themselves or with such assistance as is available. Support would be considered and organised by the social care lead.
- The recipient (parent or young person) is not subject to certain mental health or criminal justice legislation.

2.2.6 Individuals who cannot receive a Direct Payment from the council:

- Persons who have been placed under certain conditions or requirements by the courts in relation to drug and or alcohol dependencies (Compulsory Treatment Programs or similar schemes).
- Disabled children and young people who are under the age of 16.
- Carers of disabled children, who do not have parental responsibility for that child, where the payment is made in respect of services for that child.

2.3 Legislation

Direct payments (DPs) can be provided to an individual, or their representative, with assessed eligible needs. However, legal frameworks vary within which direct payments can be provided.

The legislative framework is contained in the following:

Social care

- Children Act 1989.
- Health & Social Care Act 2001
- Community Care, Services for Carers & Children's Services (Direct Payments) Regulations 2009.

The council is under a duty to offer direct payments as a way of meeting any duty it must to disabled children to provide services under Section 17 of the **Children Act 1989**. However, it is not possible to compel someone to accept services by way of direct payments if they do not want this. If direct payments are refused, any services for which the individual is eligible must be provided by the local authority either directly or indirectly.

In making direct payments, the council is subject to the general duty to safeguard and promote the welfare of children in need (**Children Act 1989**) and to promote their upbringing by and within their families when making these payments in exactly the same way as when providing direct services.

Education

- Children and Families Act 2014 and
- Special Educational Needs (Personal Budgets) Regulations 2014).
- SEND Code of Practice 2015

Young people aged 16-25

- Care Act 2014
- Care and Support (Direct Payments) Regulations 2014
- Care and Support Statutory Guidance.

In principle, any person assessed to have eligible needs, including carers, can receive a DP to arrange their own care. However, there are conditions that apply to this relating to a person's capacity, capability and the appropriateness of providing a DP to an individual.

Due to the differences between children and adult services legislation, transition arrangements are in place as set out in Section 1.5.2.

2.4 How Can Direct Payments Be Used?

A personal budget given as a direct payment must be used lawfully to meet the child/young person's assessed needs and support them to achieve outcomes as agreed between the recipient and council. The young person or their parents/carers are required to sign a personal budget agreement where a direct payment is chosen. This agreement explains what the person managing the budget must do to comply with council and/or NHS Sussex requirements. Young people and their families should read this carefully, as the council or NHS Sussex may stop making personal budget payments if there is a failure to comply with requirements. Details of who to contact with any query will be included in the letter that accompanies the agreement documentation.

2.4.1 These are possible options of how direct payments can be used to meet assessed needs (this list is not exhaustive):

- For the purchase of short breaks as set out in the council short breaks statement and short breaks offer ([Find short breaks for children with special educational needs and disabilities \(SEND\) \(brighton-](#)

hove.gov.uk) that could meet specific outcomes in the support plan. These are play, leisure and respite activities that require a small payment to be made.

- For play, youth and leisure services commissioned for an individual that are not available within the short breaks offer but are agreed as meeting an outcome in a support plan.
- To employ people directly in line with the legal requirements of an employer including staff recruitment practices which would include a DBS check, employment contract and compliance with tax, NI and pension regulations. This might be for a PA, mentor, tutor or other agreed professional input.
- Equipment can be considered for purchase using direct payments provided that a relevant professional such as an Occupational Therapist (OT) has carried out an assessment and the equipment is in line with the recommendation of the professional.
- For SEND educational services to meet outcomes in a child or young person's EHC Plan, as agreed by that service, as being an acceptable method to deliver that support.
- For the purchase of overnight short breaks within the parameters of the short breaks regulations. Direct Payments cannot be made in relation to the provision of residential accommodation for a disabled child for, any single period in excess of 17 nights, nor for any more than 75 days in any 12-month period. This would have CLA (child looked after) status implications. ([Statutory guidance on how to safeguard and promote the welfare of disabled children using short breaks \(publishing.service.gov.uk\)](#))
- Personal Budgets taken as Direct Payments are designed as an alternative way of meeting assessed needs therefore some types of purchases are not permitted. It is not to be used as an additional income and/or benefit for the family. The personal budgets policy sets out a list of items that cannot be purchased via a personal budget/direct payments. (see section 1.4) This list is not exhaustive.

2.4.2 In addition to note for all direct payments:

- A one-off lump sum can be agreed.
- A one-off lump sum can be used for occasional or fluctuating use (such as support on hospital discharge).
- Direct Payment recipients can be permitted to pool their payments to enable several disabled children/young people to participate in shared activities. Such possibilities are being considered in Brighton and Hove but, are not currently available.

- It may also be possible for a family to purchase additional support or services above the costs of the identified assessed needs and “top up” the direct payment funds at their own discretion. Any such requests should be discussed with the relevant professional, with management oversight.
- They do not affect benefits for the recipient.

2.4.3 Should a parent, carer or young person wish to use their direct payment in ways which are not explicitly permitted or prohibited above, they should seek the opinion of the service who granted the personal budget. The service will use usual processes to consider the impact of the proposed use on the planned outcomes for the child/young person in determining whether this should be permitted, and the Service Manager may approve their response. Any decision will be made on a case-by-case basis.

2.4.4 For travel direct payments, the parent/carers will also be required to sign an agreement confirming that they take responsibility for getting that child/young person to and from their school/educational establishment for the full or remaining part of the academic year.

2.5 Employing staff

2.5.1 Where a direct payment is used to employ staff, the young person or their parent will be the employer. This means that they will have to fulfil all the duties of the employer, for example obtaining appropriate employer’s liability insurance.

2.5.2 The council and NHS Sussex do provide support with direct payments through an employment support agency. Many families find using a third party arrangement easier than directly appointing staff. For personal health budgets NHS Sussex can advise families about this. For social care direct payments the council currently use 2 organisations to support families. (see details on page 5).

2.5.3 The council and NHS Sussex do not usually allow family members living at the same address as the child or young person to be employed to support them, but this can be discussed with social care staff in exceptional circumstances. In some cases, it may be very difficult to employ the right PA and siblings or extended family members (over the age of 18 years) may be well suited to support.

2.5.4 Young people and parents/carers are responsible for ensuring that the direct payment funds are spent only on the assessed needs to meet identified outcomes in their child’s social care plan or EHC plan. If a parent, carer or young person is having difficulty recruiting a personal assistant, alternative options can be explored to meet identified needs if agreed with a social worker/social work resource officer.

When a personal assistant cannot be recruited and or a decision is made with a social worker/social work resource officer that alternative provision

can be identified this needs to be planned so that the funds in the account appropriately cover these alternatives.

2.6 Safe care and travel arrangements

A Disclosure and Barring Service (DBS) check must always be obtained for anyone working with children/young people (this applies 0-25 years for children and young people with SEND), together with a complete employment history. A DBS check is a police check to confirm that the person has not committed crimes that would bar them from working with children and young people. ([DBS checks for childminders and childcare workers - GOV.UK \(www.gov.uk\)](http://www.gov.uk)). The council will fund these checks.

Where the person employed or the care purchased as part of a personal budget involves a delegated nursing task, there must be an appropriate scheme of training, competencies, and on-going oversight of the provision of care. NHS Sussex reserves sole discretion to agree or refuse a personal budget that involves delegated nursing tasks.

The council and NHS Sussex expect parents/carers or family members to accompany the child/young person on transport in the majority of cases. For those young people 16+ this may not be necessary (unless their care and support needs suggest otherwise).

When arranging transport, it is important to use licensed companies that carry out DBS checks on their drivers. Anyone is entitled to ask the taxi company they plan to use to confirm that DBS checks have been carried out on their drivers. We advise parents/carers to seek confirmation of DBS checks in writing.

If a private individual and/or friend of the family is asked to transport a child or young person, then it is the parent/carer's responsibility to check that they are a suitable person to be responsible for the child or young person.

2.7 The Process

2.7.1 Agreement of Direct Payments (please refer to the flowchart attached as Appendix 2)

Each agency will have internal process maps but in summary:

Home to School Transport: Personal transport budgets (PTBs) are considered as part of the home to school transport application process. If a PTB is agreed, an agreement letter is sent detailing the payment schedule.

Social Care: Following social care assessment and care/support planning, the parent/carer or young person will be advised about the option of receiving services via a direct payment. Requests will go to panel and decisions will be fed back to the allocated worker who will inform the parent/carer or young person.

For social care, the direct payment administration officer prepares the personal budget/direct payment agreement for the parent to sign and return before any funds can be released.

Education: Following an EHC needs assessment or as part of the EHC Plan annual review the parent can apply for a personal budget on a form, available on request, from the SEN Statutory Service. This needs to be returned to the service to decide about the allocation of the direct payment if this has been requested. Decisions will be fed back to the allocated worker in the usual way and the parent informed. Agreements will be sent out to the recipient to be signed and returned.

For equipment requests/one-off short-term need: usual council process will be followed and the parent/carer/young person informed. Equipment for education, to be part of a personal budget request, can only be requested for a new EHC Plan or at EHC Plan review.

One-off arrangements should only be used where an on-going agreement is not suitable or necessary.

If the application for a one-off payment is approved, a one-off direct payment agreement letter must be sent which explains to the family in general terms the “assessed outcomes” that the one-off direct payment is intended to meet and may include any reasonable limitations to the choices that the family can make about their purchases.

The direct payment recipient agrees to purchase goods or services of the type outlined in the letter within a specified period. They also agree to send in details of their purchases (within 6 months) and the family write/email to say how they've spent the money for council audit purposes.

If the payment is a one-off payment to meet a temporary change of circumstances for a child where the parent is already receiving direct payments, no new agreement is required as the existing on-going direct payment agreement is still applicable.

If there is not agreement to the decision to allocate a direct payment, a letter will be sent to the parent/carer explaining how this decision was reached, and they will have the right to appeal this decision. (see Section 1.12-1.14)

2.7.2 Frequency of Payments

Payments will be made to the recipients depending on the individual service arrangements. For social care this is weekly, for other agencies this is usually monthly or termly. This will be clearly set out in the funding agreement.

All recipients of direct payments (except for recipients of one-off payments) are required to have a separate and suitable bank account before any payment is made or use a pre-paid card. All new recipients will be required to have a supported bank account if a pre-paid card cannot be used. The reasons for this are:

- The money remains the property of the council until the recipient has spent the money on agreed services. Please refer to section 2.7.10.
- HM Revenue and Customs can more easily identify this money as “ring fenced” to discount it as income for tax purposes.

- The Benefits Agency can more easily “disregard” this money as income for means tested benefits if it is clearly separated. Direct Payment is the same term used by the Department for Work and Pensions and therefore could be confused as income.
- Direct Payment recipients are required to have a supported bank account, or use a pre-paid council payment card, to allow access to their bank account/statements to enable the council to adequately audit the payments and purchases which are made.

2.7.3 Direct Payment Account Options

At the current time, both dedicated bank accounts and supported bank accounts exist for the purpose of direct payments. We have agreed to move to supported bank accounts or prepaid cards for all.

Responsibilities of the parent/carer or young person:

- The parent/carer or young person will need to open a supported bank account.
- Any parent/carer or young person that has a dedicated bank account (prior to this policy coming into force) will need to complete and submit quarterly financial reconciliations which detail their spends. Direct payment recipients are required to keep and provide adequate records of how they spend their DP money, submitting receipts to evidence spends.
- Payment receipts must be kept for a period of 6 years (for those who do not have a supported bank account) in case HMRC requires a more detailed audit.
- Full employment records need to be kept for HMRC purposes.

The council can use pre-loaded payment cards for some aspects of children and young people’s direct payments and the use of pre-loaded cards may expand in the future.

2.7.4 Direct Payment Agreement

Individuals opting to receive a direct payment are required to sign a direct payment agreement. Currently these vary across agencies and council departments but will be rationalised over time. Agreements exist for NHS Sussex, Social care, Travel assistance and SEND education.

Good practice requires that the allocated worker discuss the Direct Payment Agreement with parents and young people so that the potential recipient has adequate opportunity to ask any questions about the clauses.

The agreement will be signed by the allocated worker on behalf of the council and the recipient of the direct payment.

No payments should be made until a Direct Payment Agreement has been completed and signed by the council employee and the direct payment recipient. A copy of the signed agreement is kept on the child/YP’s file with a copy being sent to the direct payment recipient.

2.7.5 Late or Missing Returns

For those still using dedicated bank accounts, if parents/carers fail to send the appropriate paperwork to the direct payment's administrator or business support manager, by the due date, they will be sent one reminder giving one whole month as a final deadline.

If the returns are not received by the deadline, future payments will be suspended with immediate effect. Payments will not be reinstated until the issue is resolved or suitable alternative arrangements are put in place. The allocated worker is copied in on all correspondence.

Where families are unable to comply with the monitoring requirements on a temporary basis, perhaps due to short term difficult circumstances, they should let the Direct Payments Administrator, or their allocated worker know, and alternatives can be explored.

2.7.6 Review

All recipients of a direct payment will have an allocated worker who remains responsible for the support provided. The allocated worker is responsible for communication with the family about decisions relating to the personal budget/direct payment.

The council will keep in regular touch with the recipient over the first 6 months to ensure that the direct payment is being used for the services it was intended to provide for, and no large surplus of funds is being built up due to services or PAs not being available. This is to ensure that the council know how the family is finding the process and the recipient is confident to manage the payments and so that any further support can be offered as is necessary.

The council is aware that PA recruitment has been difficult, and steps are being taken to provide a PA register. All monitoring of unspent funds will be carried out understanding this difficulty and helping families resolve these issues and securing alternative provision when a PA cannot be recruited.

Financial monitoring will continue throughout the year. The purpose of financial monitoring is to:

- Collate information about how the recipient is using the money to guide decisions about whether the spending is appropriate to meet the assessed needs.
- Obtain a view of how well the family are managing the Direct Payment.
- Audit the use of payments to meet the council's own internal audit requirements.
- Provide information about surplus funds or lack of funds in the account and suggest possible reasons for this.

The direct payment together with the overall package of support will be reviewed at least once per year through a formal review process (such as Child in Need review/EHC Plan annual review/Pathway plan review/care act review). This is to

ensure that the care needs, outcomes and conditions of the direct payment agreement are being met, and to double check that all the required set up processes have been completed.

The processes for review of direct payments and the overall package of support must be in line with the team's practice guidance.

The direct payment agreement must be reviewed each year and an updated copy issued if necessary and placed on file.

2.7.7 Direct payment rates

Direct payment rates will be reviewed taking a one council approach across both adults and children's services. It is expected that there will be annual review of direct payment rates which will be made in line with inflation/cost of living index and that rates will also be considered in light of any legislative change, national minimum wage/living wage and national benchmarking. There is no expectation that there will be an annual increase.

2.7.8 Discontinuance of Direct Payments

A decision to discontinue a direct payment can be made by, NHS Sussex, the SEN Statutory Service, the Social Work team, the Home to School Transport Team or the direct payment recipient.

The normal notice period for termination in either direction should be at least four weeks. In coming to a decision or accepting a request to end a direct payment, the allocated worker should consider the following:

- Have the child's needs changed?
- Was the funding provided sufficient to enable the parent to secure the relevant support?
- Was the person able and willing to manage the Direct Payment?
- Does the person wish to continue to receive a Direct Payment?
- Has the support paid for been received?
- Has all the money been spent on the support for which it was intended?
- Has the money been spent appropriately?
- Has the person been adequately supported to manage the Direct Payment?
- Has the parent acted in the "best Interest" of the child or young person?
- What alternative provision has been considered to meet assessed need if a PA/service has not been found?
- Can the agreed provision no longer be secured through a Direct Payment?
- Is the making of a Direct Payment having an adverse impact on services provided or arranged by the Council for other EHC Plans they maintain?
- Is the making of a Direct payment no longer compatible with the Council's efficient use of resources?

Details of this discussion and the reasons for the decision should be recorded.

Where it is necessary to discontinue a direct payment either temporarily or permanently consideration should be given to any on-going contractual

responsibilities which may need to be met.

In the event of a dispute with the council regarding use of a direct payment, individuals may wish to get advice from Amaze. (see page 5) or to use the council complaints service ([Make a complaint using our corporate complaints procedure \(brighton-hove.gov.uk\)](https://www.brighton-hove.gov.uk))

Direct payment recipients must be informed, in writing, of any changes to their anticipated payments with a copy sent to the children's finance team.

In social care, the direct payments administrator is responsible for altering payments on the council system and will send a new payment schedule to the family.

If there are concerns that an individual's support provider or employee is unsuitable for the child, stopping the direct payment can be considered in accordance with the guidelines above.

When the recipient would prefer to use an agency, the council would make the necessary arrangements and payments directly to the identified agency.

Discontinuance at 18 years for recipients of direct payments from social care

Please see section 1.5.2 for transition arrangements. Payments may change or cease at 18 years dependent on the outcome of the 18+ panel.

Transition planning will have taken place by the allocated worker in the transition pod in partnership with adult services. This will allow for ongoing appropriate support to be coordinated. Should the young person not meet the criteria for continued payments, the direct payment will cease, and advice and support will be offered as to what alternatives might be available.

Temporary discontinuance: Some children may not use or need a direct payment for a short period because of hospital admission, loss of their personal assistant or some other unforeseen eventuality. If this period is longer than four weeks, a review should be carried out and consideration given to whether there are grounds for reducing, suspending or discontinuing the payment for that period. The allocated worker must notify the children's finance team of their decision.

2.7.9 Discontinuance related to incorrect use of funds

Councils have found that instances of fraud are rare, and fears of fraud should not deter staff from promoting Direct Payments. (See section 2.7.10 for surplus funds)

It is a requirement that personal budgets/direct payments are used to meet the eligible assessed needs of the individual, in accordance with any conditions imposed in the personal budget/direct payment agreement and relevant policy and guidance. If the council or NHS Sussex suspect that a personal budget/direct payment is being misused, the following action will be taken:

a) The council and/or NHS Sussex will investigate the incident(s) and will hold a review with the family to determine what has happened and why. The council approach will be one of support and, in the majority of cases, a review will resolve matters.

b) Depending on the outcome of this investigation and review, if there is cause for concern then the direct payment may be suspended. Allocated workers should not suspend or withdraw the direct payment option at the first sign of difficulty.

The allocated worker must advise direct payment recipients at the outset that the council might require some, or all, of the direct payment to be repaid if the council is not satisfied that the money has been used to meet the outcomes identified in the support plan/EHC Plan or the individual has breached any of the terms and conditions of the direct payment agreement.

If a decision to discontinue a direct payment is to be made, a full and frank discussion with everyone involved should take place prior to the decision being confirmed. The allocated worker should explain the rationale for the decision very clearly to all parties and record this on the case file including the date that the direct payment will be discontinued, and alternative service options offered.

Financial Regulations require all suspected financial irregularities to be reported (in writing) to the Head of Internal Audit and Counter Fraud so that an internal audit investigation of the allegations may be undertaken. In the unlikely event that fraud is confirmed (i.e. intentional misuse of public funds), this may lead to prosecution and a criminal record. Notice of withdrawal of the direct payment will be given in writing; there is no fixed notice period for stopping a personal budget.

If a young person, or parent/carer of children receiving a personal budget, managed by others, has concerns about the potential misuse of the personal budget they can request that it be audited. Repayment will not be sought from a direct payment recipient if they have been the victim of fraud, but the council retains the right to take necessary action against the perpetrator of such fraud.

A direct payment for travel assistance may be stopped if the child's/young person's attendance is not satisfactory or if the parent/carer can no longer manage to deliver the transport arrangement. The parent/carer should provide 28 days' notice if they wish to change the agreement. Any monies paid for days the parent/carer will no longer transport the child/young person will have to be returned to the council before alternative arrangements commence.

2.7.10 Surplus and High Balances

For those receiving direct payments, the council will keep in regular touch with the recipient over the first 6 months to ensure that the direct payment is being used for the services it was intending to provide for, and no large surplus of funds is being built up due to services or PAs not being available. This is to ensure the recipient is confident to manage the payments and so that any further support can be offered as is necessary.

The council complete quarterly reconciliations on all accounts. There is an allowable excess of 8 weeks. If funds are more than 10-12 weeks in excess at the quarterly reconciliation, the council will contact the family to establish why this has

happened and will seek to find agreement for how this surplus will be managed. This may include the recovery of some unused funds back to the council, if any underspend is not allocated or is not to be allocated to a child or young person's support plan.

2.7.11 Contingency and Emergency Payments

If the local authority becomes aware that someone is or will be unable to secure the services to meet their child's needs through their own arrangements, either temporarily or in the longer term, then the council will need to take steps to meet its statutory responsibility which may include to provide or arrange alternative provision of services for that child.

Allocated workers should discuss the need to have contingency arrangements in place with direct payment recipients at the outset, and at reviews, to ensure that the child is more likely to receive the education care they need should the usual arrangements break down.

The council will also need to be prepared to respond in these circumstances just as it would with any other person receiving support. It may decide to step in and arrange the services where this is necessary to meet its responsibilities. If this happens a pro-rata number of payments would usually be recouped at a later stage.

Alternatively, the council could also discuss other ways of the family continuing to manage their own care by using the direct payment. For example, use of agency staff if their own personal assistant is unavailable particularly if the difficulty is temporary or unforeseen.

Policy Review

This policy will be reviewed every three years from the date it is ratified or sooner as required by legal or local necessity.

Glossary of terms

SEND	Special Educational Needs and or Disabilities
LA	Local Authority
LD	Learning disability or difficulty
Amaze	Local parent advice and support service for children and young people with SEND
PaCC	Parent and Carers' Council
SENDIASS	Special Educational Needs and Disabilities Information Advice and Support Service
EHC	Education, Health and Care
EHCP	Education, Health and Care Plan
NHS	National Health Service
NHS Sussex (ICB)	Local health integrated care board area
SCDS	Specialist Community Disability Service
PB	Personal Budget
DP	Direct Payment
PA	Personal assistant
EOTAS	Education Other than at School
LO	Local Offer
DBS	Disclosure and barring service
PTB	Personal Transport Budget
PHB	Personal Health Budget
EPB	Education Personal Budget
HMRC	His Majesty's Revenue and Customs

Accessible information

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