

# Education Health and Care Personal Budgets for Children and Young People (aged 0-25) in Milton Keynes

### Introduction:

This Personal Budget Policy applies to children and young people who have a maintained Education, Health and Care (EHC) Plan. Arrangements for direct payments for adults can be found on <http://www.milton-keynes.gov.uk/social-care-and-health/adult-social-care/paying-for-your-care-and-support>

A personal budget is an amount of funding to deliver the outcomes set out in an EHC Plan. Where a personal budget is agreed, the total amount should be made clear to the parent/carers and to the young person so that they can be involved in all decision-making to choose the right way to meet the outcomes identified in their EHC Plan. A personal budget enables the individual to have choice and control over who provides support. The help will be described as “provision” in the EHC Plan and will have been agreed with the relevant agency. This can be social care, health or education. Not all young people with an EHC Plan will meet the criteria for social care intervention from Children’s or Adult Services.

It is not always possible to offer a personal budget. Where a personal budget is agreed, payments to parents, carers, the young person or his or her nominee, are made under direct payment regulations.

Personal budgets can be managed in the following ways:

- **An organisational/notional arrangement** No money changes hands. Parent / carers / young people find out how much money is available and with support identify the different ways to spend that money to meet the outcomes of the EHC Plan. The services are then arranged on the family’s behalf.
- **Third party arrangement/nominees** A third party organisation, trust or nominated person holds the money and supports parent / carers / young people to decide the best way to spend the funding, they then buy the services chosen.
- **Direct payment** Parent/carers/young people are given the money to buy and manage the services themselves to meet the outcomes identified in the EHC Plan.
- **A combination of the above.**

### Legal Background:

This Policy is framed within:

- The statutory duties on the Council and the Clinical Commissioning Group (CCG) arising from section 49 of the Children and Families Act (2014).
- The statutory guidance in the SEN Code of Practice (2014).
- The personal budget regulations.
- NHS Mandate re Personal Health Budgets 2012.

It builds on the arrangements currently in place for the provision of personal budgets for children and young people with SEN and disabilities. In addition, this relates to adult services provision and the requirements of the Care Act.

This policy acknowledges the different direct payment regulations that apply to:

- Children and Adults Social Care Services: The Community Care, Services for Carers and Children's Services (Direct Payments) Regulations 2009 (the 2009 regulations will shortly be replaced by those made under the Care Act 2014).
- The National Health Service (Direct Payments) Regulations 2013.
- Special Educational Provision on EHC Plans The Special Educational Needs (Personal Budgets) Regulations 2014.

There are common requirements in these regulations, particularly around procedures relating to the proper use of the direct payments, monitoring, review and accountability for their use. Detailed arrangements for direct payments are set out in Section J of the EHC Plan.

## **The Policy**

The SEN Code of Practice says that Local Authorities must:

*..... "provide information on personal budgets as part of the Local Offer. This should include a policy on personal budgets that sets out a description of the services across education, health and social care that currently lend themselves to the use of Personal Budgets, how that funding will be made available, and clear and simple statements of eligibility criteria and the decision-making processes".*

This policy includes information on:

- A: Milton Keynes's personal budget offer: Education, social care and health provision, for which a personal budget may be available for those children with an EHC plan.
- B: Details of organisations that provide advice and help to parents and young people in relation to personal budgets.
- C: The rules, procedures and conditions that must be met before direct payments or a personal budget can be made.

### **Milton Keynes personal budget offer: Provision for which a personal budget may be available for children and young people with an EHC Plan.**

Any parent or young person with an EHC Plan can ask for services to be provided through a personal budget during an EHC annual review or at the point at which a draft EHC Plan is issued:

- Personal budgets can be used to pay for aspects of provision on an EHC Plan. The payment is from the Council or CCG to the parent or young person's nominee. Section C of the Policy explains this in more detail.
- The personal budget must be spent on provision specified in the EHC Plan and be clearly linked to identified outcomes. They can be both short and longer term

arrangements and provide the opportunity for one-off payments. Where an arrangement is in place it will be referred to in section J of the EHC Plan. It will provide detailed information on any personal budget that will be used to secure provision set out in the plan. The arrangements in relation to direct payments by education, health or social care will be set out.

- Any special educational needs outcomes that are intended to be met through provision of personal budgets must be specified.
- There is only a right of appeal to the SEND tribunal for any education elements of a personal budget request. Other matters can be dealt with by through organisational complaints procedures:

Milton Keynes Council <http://www.milton-keynes.gov.uk/search?q=complaints>

Milton Keynes Clinical Commissioning Group

<http://www.miltonkeynesccg.nhs.uk/compliments-comments-concerns/>

#### *Personal Health budgets*

- Personal health budgets can be applied for when children/young people are eligible for 'continuing care' provision, or have long term health conditions.
- Milton Keynes CCG has procured a framework of providers who deliver care packages to meet a child's needs, this ensures that all staff have the necessary understanding, knowledge and skills required to provide excellent care. Families can choose which provider they think will best meet the needs of their children/young people. There is an expectation that providers included in the framework will be able to support packages through a personal health budget as required.
- Website: [www.miltonkeynesccg.nhs.uk/personal-health-budgets/](http://www.miltonkeynesccg.nhs.uk/personal-health-budgets/)

#### *Personal budgets in Children's Social Care:*

- Direct payments are currently available for children who meet the criteria for the Children with Disabilities Team. The team provide services to children with severe disabilities. Following an assessment families can be offered a direct payment to enable them to purchase care **instead of Children's Social Care providing the care directly. Direct payments give families more choice and control over how support services are provided.** Direct payments can also be offered to support the parent in their caring role.

#### *Personal budgets for Education:*

Over the academic year 2014 – 2015, the Council will continue to consider additional areas that could be funded through a personal budget. There will be a link on the Local Offer webpage, for parents, young people and providers to ask questions and tell the Council their views.

Link to local offer website <http://www.milton-keynes.gov.uk/schools-and-lifelong-learning/special-educational-needs/send-local-offer>

The special educational provision specified in an EHC plan includes provision funded directly by the school, setting or college, as well as provision that will be funded directly through the Council's high needs budget. This is part of the overall funding for education and includes the funding for:

- Top-up costs for pupils with EHC plans in schools, colleges and early education settings – this enables schools and settings to ensure higher levels of adult support and to put specialist support in place.
- Specialist teachers and other specialist staff who work with families, education settings and children and young people
- Specialist high cost equipment that is needed by individual children and young people for their education, for example chairs and mobility aids, communication aids
- Some therapy costs – the majority of speech and language that is needed as a special educational provision is commissioned from this funding source.

Parents and young people will be able to ask for some provisions on the EHC Plan to be delivered through a personal budget every time the EHC Plan is reviewed or amended.

What Personal Budgets for special educational provision cannot fund:

- Headteachers can, but don't have to, release funds normally sent to the school to enable the school to secure the outcomes for the young person through the special educational provision for the child. The school's agreement is needed where a service funded by a direct payment is to be delivered on the school premises.
- Personal budgets cannot be used to pay the costs of a school place, including school fees.
- If making a personal budget would lead to an inefficient use of the Local Authority's resources, it may not be possible to make a direct payment for that aspect of the provision.

#### *Personal budgets in Adult Social Care:*

- After assessment, if an adult is eligible, an indicative (estimated) personal budget amount will be calculated from information gathered during the assessment using a Resource Allocation System (RAS). The actual amount of the personal budget may differ from the indicative amount and could be more or less, this will depend on the support that it is agreed is needed to meet the outcomes of the plan. It will only be confirmed after the Financial Assessment and when the Plan has been agreed.

#### *Short Breaks:*

- Short Breaks enable children and young people to try something different and make new friends while having time away from their primary carers; they are also an opportunity for carers to take some time out. All Milton Keynes children and young people with a statement of SEN or those with an EHC Plan are entitled to at least £40 vouchers per child.
- Depending on individual circumstances, some children with complex additional needs are entitled to specialist Short Breaks. However, in some situations it may be that the needs of a child or young person cannot be met by the current Short Breaks

offer, or families may wish to organise their own Short Breaks as part of a wider package of support. In these circumstances, families may apply for a personal budget which would be equal to the value of Short Breaks vouchers they would normally be entitled to.

## **Section B: Organisations that provide advice and help to parents and young people in relation to personal budgets**

- MK SEN and Disability Independent Information and Advice Service (formerly known as the Parent Partnership) provide information and advice. The service can signpost parents and young people to the right person to help them, as well as providing advice on personal budgets. Their contact details are 01908 254518.
- Centre for Independent Living (CIL): 01908 231344.
- Independent Supporters are also provided through a Government funded programme from 1 October 2014. In Milton Keynes this service is available through MK SEND IAS and the Pre-School Learning Alliance. They can be contacted as above or on 01908 263700.
- The Parent Carer Alliance Forum (PACA) will want to know your views about your experiences with the new SEND EHC Assessment and Plan, including personal budgets and can be contacted on 01908 257828 or go to [www.pacamk.org](http://www.pacamk.org)
- The SEN Casework officer will be able to discuss these matters with the young person or parent at the point of reviewing the EHC Plan or transferring the SEN statement to an EHC Plan. The casework team can be contacted on 01908 253414.

## **Section C: The Rules, Processes and Procedures**

Request for a personal budget including direct payments:

A parent or a young person aged 16 or over can ask for a personal budget to help them meet an outcome that is specified on the EHC Plan when:

- They are consulted on the draft EHC Plan, or
- When the EHC Plan is being reviewed or being re-assessed.

When a request for personal budget (the cash allowance for the specified provision) is made, the Local Authority must consider the request. In making its decision, the Local Authority will apply the following criteria.

- The young person or parents will use the direct payments/personal budget to secure the specified provision in an appropriate way.
- The person who receives the direct payment will act in the best interests of the child in securing the provision.
- The allocation of direct payments will not have an adverse impact on other services which the Local Authority provides or arranges for children and young people with an EHC Plan.
- Securing the proposed provision by direct payments is an efficient use of the Local Authority's resources.
- That direct payments cannot be used for the purpose of funding a place at a school or post 16 institution.

Decisions about whether or not personal budget will be made to secure provision on the EHC Plan are delegated to officers in health, social care and education services. Requests relating to personal budgets for education elements of the EHC plan will be considered at the Milton Keynes weekly Inclusion and EHC panel.

If Milton Keynes Council decides not to agree to a personal budgets following a request, it will explain the reasons for the decision to the young person or parent, and will let them know of their right to ask for a review of the decision. The review will enable the young person and/or people to whom direct payments are made to explain their reason for challenging the decision and their views.

The Local Authority can make the direct payments to the young person, the child's parent or a person nominated in writing by the parent or young person. The person to whom direct payments may be made must be capable of managing them, over compulsory school age and with capacity. The Schedule to the regulations also describes as unsuitable those people who are subject to drug or alcohol treatment or who are subject to orders through the criminal justice system.

*The Conditions under which direct payments are made:*

When a decision has been made to provide direct payments to the young person or parent, to secure provision set out on the EHC Plan, the Milton Keynes Council will write to the recipient, and the recipient must notify the Local Authority in writing of their agreement to certain conditions.

1 The Local Authority must write to the recipient and specify the following:

- The name of the child or young person.
- The provision on the EHC Plan to be secured and funded through direct payments.
- Any conditions about how the direct payments can be spent.
- The dates for payments into the bank account that has been approved by the Local Authority.

2 The recipient must notify the Local Authority in writing of their agreement to comply with the following expectations. Normally, there will be a written agreement that the recipient agrees to:

- Use the direct payments only to secure the agreed provision.
- Comply with any conditions specified about how the direct payments may be spent.
- Notify the Local Authority about any changes in circumstances that might affect the need for the provision.
- Use the bank account approved by the Authority solely for the purposes of direct payments approved by the Local Authority or the Health Service.
- Ensure the bank account is only accessible by the recipient or other person approved by the Local Authority.
- Keep a record of money paid into and out of the approved bank account.
- Provide evidence relating to the account and the provision funded through the direct payments.

- A separate correspondence and agreement with the Local Authority, where there is a nominee setting out responsibilities as detailed in the SEN personal budget regulations.

*Direct payments for goods or services which are to be provided in a school, college or early education setting:*

If a parent seeks a personal budget to secure provision to be used or provided in an educational setting, the written consent of the head teacher, proprietor or principal must be obtained.

*The amount of the Direct Payments:*

Where direct payments are agreed, they must be sufficient to secure the provision agreed (families may choose to top up the available funding if they wish to use a more costly option). The amount of direct payments can increase and decrease as long as the Local Authority is satisfied that the amount is sufficient to secure the required provision. Where payments remain unused, the Local Authority can reduce the amount of direct payments where it considers that it is reasonable to offset unused direct payments against the outstanding amount to be paid.

#### *1. Monitoring and reviewing Personal Budgets*

The Local Authority is responsible for monitoring the use of direct payments by the recipient. It must review both the making of direct payments and their use. Direct payments will be reviewed on a quarterly basis.

The review should consider:

- Whether the Local Authority should continue to secure the specified provision through direct payments.
- The direct payments have been used effectively.
- The amount of direct payments is sufficient to secure the provision agreed.(families may choose to top up the available funding if they wish to use a more costly option)the decision making criteria (see section 5 above) continue to be satisfied and the recipient has complied with the requirements. This will be reviewed every six months.

The Local Authority should continue to secure the specified provision through direct payments if:

- The direct payments have been used effectively.
- The amount of direct payments is sufficient to secure the provision agreed. (families may choose to top up the available funding if they wish to use a more costly option).
- The decision making criteria, as above, continue to be satisfied.
- The recipient has complied with the requirements as specified above.

The recipient can ask the Local Authority to review the making and use of direct payments. If this happens the Local Authority will consider if it is necessary to do so, and if it is, the above review considerations will be applies.

#### *2. After a review of direct payments, the Local Authority can:*

- Change the person who receives the direct payments.
- Increase, reduce or maintain the amount of direct payments.
- Decide that the recipient must not secure a service from a particular person.
- Require the recipient to provide required information.
- Decide to stop making direct payments.

*When a decision to reduce the amount of direct payments is made:*

The Local Authority must provide a reasonable notice period and explain its reasons in writing. If asked to do so by the parent or young person, it must reconsider its decision, looking at representations made by the parent or young person. Then the parent and/or young person should be informed of the decision with a further explanation of the reasons. There is no requirement to reconsider the decision more than once.

*Repayment and recovery of direct payments:*

Sometimes it is necessary for the recipient to repay some or all of the direct payments. This would be where one or more of the following apply:

- The circumstances of the child or young person have changed so that there is an impact on the appropriateness of the agreed provision.
- All or part of the direct payments have not been used for the agreed provision.
- Theft, fraud or another offence has occurred in relation to the direct payments.
- The child or young person has died.

Only money not spent on the agreed provision can be reclaimed. When the Local Authority decides that direct payments must be re-paid; written notice must be given to the recipient setting out the reasons, the amount to be repaid and the timescale for repayment. This can be recovered as a debt due to the Local Authority.

*Stopping direct payments:*

The Local Authority is required to stop making direct payments if:

The Council may stop making direct payments if the recipient has not complied with any of the conditions explained above.

- The recipient has written to the Council to say the direct payments are no longer Required.
- The recipient is no longer a person to whom direct payments can be made.
- The recipient has not been using direct payments for the required provision.
- The agreed provision can no longer be secured through direct payments.
- Making of direct payments is having an adverse impact on services provided by Milton Keynes Council for other children and young people with an EHC Plan maintained by Milton Keynes Council.
- To do so is no longer compatible with the authority's efficient use of its resources.



*When a decision to reduce the amount of direct payments is made:*

***Transition – when a child becomes a young person***

When a child becomes a young person, on reaching statutory school leaving age, the Local Authority must take reasonable steps to see whether the young person wants to receive or to continue to receive direct payments. The young person can request that the direct payments are made to his parents or carers or nominee, or that they are made directly to him or her, or that he or she no longer wishes direct payments to be made.

***Capacity***

The right of a young person to make a decision is subject to his or her capacity to do so. This is explained in the 2005 Mental Capacity Act, and in paragraph 8:21 of the SEN Code of Practice (July 2014) and Annex 1 to the SEN Code. As many young people as possible should be empowered to make decisions on their own behalf, and where they cannot decisions taken on their behalf should be in their best interests. The type of decision is important. A young person may not have capacity in relation to some decisions, but may in relation to others.

This is a working document; if you have any comments please send them to [Amanda.Farr@milton-keynes.gov.uk](mailto:Amanda.Farr@milton-keynes.gov.uk)

The policy was last reviewed on 13<sup>th</sup> July, 2015