

Appendix 7

Legislation and relevant guidance from SEND Code of Practice regarding Personal Budgets

1. Legislation:

- Education Act 2011 Section 75
- Children and Families Act 2014 Section 49
- The Special Educational Needs (Personal Budgets) Regulations 2014
- The National Health Service Regulations 2013
- NHS Personal Health Budget 2014

2. Guidance from SEND Code of Practice (COP):

- a. Setting and agreeing the Personal Budget the following SEND code of practice applies:

✓ **Section 9.102**

The child's parent or the young person should be given an indication of the level of funding that is likely to be required to make the provision specified, or proposed to be specified in the EHC plan. An indicative figure can be identified through a resource allocation or banded funding system. As part of a person-centred approach to the development of the EHC plan, the local authority should agree the provision to be made in the plan and help the parent or young person to decide whether they want to take up a personal budget. Local authorities should be clear that any figure discussed at this stage is indicative and is a tool to support the planning process including the development of the draft EHC plan. The final allocation of funding budget **must** be sufficient to secure the agreed provision specified in the EHC plan and **must** be set out as part of that provision.

✓ **Section 9.103**

Details of proposed personal budget should be included in section J of the draft EHC plan and, where the proposed budget, this section must include the SEND and outcomes to be met by the payment. The child's parent or young person should confirm their decision and agreement of the budget. Where appropriate, this must include their agreement, in writing, of conditions for the receipt of payment, alongside any request for a particular school, college or other institution to be named in the EHC plan. Where the child's parent or the young person has nominated a person to receive payments on their behalf, the agreement must come from the proposed recipient.

✓ **Section 9.104**

Where a direct payment is proposed for special educational provision, local authorities **must** secure the agreement of the early years setting, school or college, if any of the provision is to be delivered on that institution's premises. Local authorities should usually do this when they consult the institution about naming it on the child or young person's EHC plan. The local authority should also seek assurance from the child's parent, young person or nominee that any person employed by the child's parent or young person, but working on early years, school or college premises, will conform to the policies and procedures of that institution and may write such an assurance into the conditions for receipt of the direct payment.

✓ **Section 9.105**

Where agreement cannot be reached with the early years setting, school or college, the local authority must not go ahead with the direct payment. However, they should continue to work with the child's parent or young person and the school, college or early years setting, to explore other opportunities for the personalisation of provision in the EHC plan. Local authorities may wish to discuss the potential for arrangements whereby the local authority, the early years setting, school or college, holds a notional budget with a view to involving the child's parent or the young person in securing the provision. The broader purpose of such arrangements is to increase the participation of children, their parents and young people in decision-making in relation to special educational provision.

Education

✓ **Section 9.112**

The special educational provision specified in an EHC plan can include provision funded from the school's budget share (or in colleges from their formula funding) and more specialist provision funded wholly or partly from the local authority's high needs funding. It is this latter funding that is used for personal budgets although schools and colleges should be encouraged to personalise the support they provide and they can choose to contribute their own funding to a personal budget (this will usually be an organised arrangement managed by the setting, but some schools and colleges, including specialist settings, have made innovative arrangements with young people, giving them direct (cash) payments).

✓ **Section 9.113**

High needs funding can also be used to commission services from schools and colleges, including from special schools. In practice, this will mean the funding from the local authority's high needs budget for the SEND element of a personal budget will vary depending on how services are commissioned locally and what

schools and colleges are expected to provide as part of the Local Offer. The child's parent or the young person should be made aware that the scope for a personal budget varies depending on their school preference. For example, as part of their core provision, special schools and colleges make some specialist provision available that is not normally available at mainstream schools and colleges. The particular choice of a special school, with integrated specialist provision, might reduce the scope for a personal budget, whereas the choice of a place in a mainstream school that does not make that particular provision could increase the opportunity for a personal budget, some specialist provision available that is not normally available at mainstream schools and colleges. The particular choice of a special school, with integrated specialist provision, might reduce the scope for a personal budget, whereas the choice of a place in a mainstream school that does not make that particular provision could increase the opportunity for a personal budget.

Health

✓ Section 9.114

Personal healthcare budgets are not appropriate for all of the aspects of NHS care an individual may require. Full details of excluded services are set out in guidance provided by NHS England and include primary medical (i.e. GP services) and emergency services

✓ Section 9.96

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 education, health and social care services that might be offered as part of a personal budget and how that funding will be made available.

✓ Section 9.106

Local authorities **must** consider each request for a personal budget on its own individual merits. If a local authority is unable to identify a sum of money they should inform the child's parent or young person of the reasons. For example, the local authority might agree that the provision is needed but may be unable, at that point in time, to disaggregate funding that is currently supporting the provision of services to a number of children and young people.

- b. When Local Authority cannot offer a Personal Budget the following SEND code of practice applies

Comment [BP1]: Where is a)?

✓ Section 9.106

Local authorities must consider each request for a personal budget on its own individual merits. If a local authority is unable at that point in time, to disaggregate funding that is currently supporting provision of services to a

number of children and young people identify a sum of money they should inform the child's parent or young person of the reasons. For example, the local authority might agree that the provision is needed but may be unable, at that point in time, to disaggregate funding that is currently supporting provision of services to a number of children and young people.

✓ **Section 9.107**

If the local authority refuses a request for a personal budget for special educational provision on the grounds set out at regulation 7 of the SEN (Personal Budgets) Regulations 2014 (see paragraphs 9.119 to 9.124 below) the local authority must set out their reasons in writing and inform the child's parent or the young person of their right to request a formal review of the decision. The local authority must consider any subsequent representation made by the child's parent or the young person and notify them of the outcome, in writing, setting out the reasons for their decision.

✓ **Section 9.108**

Where the disagreement relates to the special educational provision to be secured through a personal budget the child's parent or the young person can appeal to the First-tier Tribunal (SEND and Disability), as with any other disagreement about provision to be specified in an EHC plan.

✓ **Section 9.109**

Decisions in relation to the health element (personal health budget) remain the responsibility of the CCG or other health commissioning bodies and where they decline a request for personal budget; they must set out the reasons in writing and provide the opportunity for a formal review. Where more than one body is unable to meet a request for a Personal budget payment, the local authority and partners should consider sending a single letter setting out the reasons for the decisions.