

SURREY COUNTY COUNCIL

**DENISE TURNER- STEWART, CABINET MEMBER FOR
EDUCATION AND LEARNING DECISIONS**

DATE: 26 JULY 2022

**LEAD OFFICER: LIZ MILLS, DIRECTOR FOR EDUCATION AND LIFELONG
LEARNING**

**SUBJECT: SPECIAL EDUCATIONAL NEEDS AND DISABILITIES (SEND)
PERSONAL BUDGETS POLICY 2022/23**



**ORGANISATION EMPOWERING COMMUNITIES
STRATEGY
PRIORITY AREA:**

SUMMARY OF ISSUE:

Each local authority must have a Special Educational Needs and Disabilities (SEND) Personal Budgets policy in place and published on the Local Offer website.

Personal budgets are one element of a personalised approach to supporting children and young people with SEND and should be seen as an integral part of the coordinated assessment and Education Health and Care (EHC) planning process where there is a clear focus on improving outcomes for children/young people with special educational needs and disabilities. A family or young person will be able to request a personal budget at the point where the Local Authority is drafting an Education Health and Care (EHC) Plan or as part of the annual review of an EHC Plan.

The Special Educational Needs (Personal Budgets) Regulations 2014 ('The Regulations') provide the legislative framework for local authorities to follow in offering personal budgets. Personal budgets are offered alongside the introduction of Education, Health & Care (EHC) Plans, and children and young people assessed as needing an EHC Plan have had the option of requesting a personal budget since September 2014.

The proposed SEND Personal Budgets policy 2022/23 sets out the criteria that the local authority will use to determine whether a request for a personal budget can be agreed and in which circumstances this might include a direct payment.

RECOMMENDATION:

It is recommended that the Cabinet Member agrees the proposed SEND Personal Budgets policy for publication by 1 September 2022.

REASON FOR RECOMMENDATIONS:

- The local authority is required to have a SEND Personal Budgets policy in place and published on the Local Offer website.
- The proposed policy meets the requirements set out in the Special Educational Needs (Personal Budgets) Regulations 2014.
- The policy will ensure that there is transparency and consistency in decision making in response to any requests for a Personal Budget and in some cases a Direct Payment.

DETAILS:

1. A copy of the proposed SEND Personal Budgets policy for 2022/23 is attached as Annex 1.
2. The policy complies with the statutory requirements set out in the Special Educational Needs (Personal Budgets) Regulations 2014.
3. Surrey currently has over 12,000 children and young people with an EHC Plan (EHCP). Any young person with an EHC Plan aged 16-25 or their parents of children (under 16) with an EHC Plan can request a personal budget and the local authority must publish a policy which sets out the criteria that will be used to determine whether a personal budget and, in some cases, a direct payment can be agreed.
4. The SEN and Disability Code of Practice (June 2014 paragraph 9.95 defines a Personal Budgets as: *'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.'*
5. The SEN and Disability Code of Practice (June 2014 paragraph 9.98) further goes on to state that *'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.'*
6. There are four ways in which personal budgets can be delivered:
 - 6.1 Direct payments – where the child's parents or young person receive the funding to contract, purchase and manage the services themselves.
 - 6.2 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 arrangements 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.
 - 6.3 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.
 - 6.4 A combination of the above.

7. Options for personal budgets differ depending on the type of educational institution for which parents or young people express a preference. Advice on these options will be provided to families by SEND Case Officers. Families can also access information advice and guidance from the Local Offer website and from SEND Advice.
8. Personal budgets should reflect the holistic nature of an EHC Plan and can include funding for special educational, health and social care provision. They should be focused on the provision agreed in the EHC Plan and should be designed to secure the outcomes specified in the EHC Plan. It is important to note that not everything identified in an EHC Plan is available as a personal budget.
9. The regulations governing the use of direct payments for special educational needs place a number of additional requirements on both local authorities and parents before a direct payment can be agreed. These include requirements to:
 - Consider the impact on other service users and value for money
 - Seek agreement from educational establishments where a service funded by a direct payment is delivered on their premises
10. The process for requesting a personal budget should be a collaborative process involving young people, children, and parents in decision making. The opportunity to consider options, and make a request for a personal budget, is part of the EHC multi-agency assessment process.
11. At the co-production meeting, where the draft 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 and how, if agreed, they would like to manage this.
12. If 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 where the relevant commissioners are represented.
13. If a direct payment is to be made, a formal agreement is set up between the family and the relevant commissioning agency. 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, and where necessary, the recovery of unspent sums.
14. Decisions on whether to allocate personal budgets will be based on the efficient use of existing resources and value for public funding. EHC Plans will be costed within a value for money context (e.g., looking at whether services for which a personal budget has been requested cost more than services provided directly). We recognise that, in some instances, larger organisations, such as the Council or an education provider, can source services or equipment at a better price than an individual could secure. As such, it would not represent value for money to provide a higher amount through a personal budget.

15. Each decision is made on its own individual merits and budgets may be agreed to meet outcomes for a set period. Each funding stream has its own decision-making system for allocating resources. For budgets associated with an EHC Plan decisions will be made by the Education Health Care Plan Governance Board, which includes representation from Education, Health, and Social Care. Terms of reference for the board are available on the local offer website.
16. The key principles in considering any request will be whether:
- 16.1 There is clear evidence of special educational needs which the request is seeking to meet.
 - 16.2 The request is linked to the achievement of specific outcomes in the EHC Plan.
 - 16.3 The request **will not** be met through the education, health and care provision and support allocated within the package.
 - 16.4 The services for which a personal budget has been requested could be commissioned more cost effectively if they were included within the package.
17. The policy will be formally reviewed every three years. Minor amendments may be made by officers on an annual basis, with changes published on the Local Offer website.

CONSULTATION:

18. The draft policy was issued for consultation on Friday, 1 July 2022 and runs until 22 July 2022. This was shared with a range of stakeholders, including schools, parent and carer forums and members of the public. At the time of writing, there have been 8 responses received with no implications resulting in change to the policy. Any further responses will be taken into consideration and a FAQs document will be published to address the questions raised. A supplementary report will be provided to the Cabinet Member following the end of the consultation with any recommendations.

RISK MANAGEMENT AND IMPLICATIONS:

19. The SEND Personal Budgets policy reduces the risk of inconsistent decisions being made in response to requests for personal budgets.
20. The policy ensures clarity and transparency of decision making, thereby increasing parental confidence.
21. The policy ensures that there is accountability for ensuring value for money in all decisions.

Financial and value for money implications:

22. The funding for personal budgets and direct payments can come from education, health, and social care funding streams. Personal budgets can be notional budgets, but where direct payments are agreed, these will always be made in accordance with the published guidelines.

Section 151 Officer commentary:
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23. Although significant progress has been made to improve the Council's financial position, the financial environment remains challenging. The UK is experiencing the highest levels of inflation for decades, putting significant pressure on the cost of delivering our services. Coupled with continued increasing demand and fixed Government funding this requires an increased focus on financial management to ensure we can continue to deliver services within available funding. In addition to these immediate challenges, the medium-term financial outlook beyond 2022/23 remains uncertain. With no clarity on central government funding in the medium term, our working assumption is that financial resources will continue to be constrained, as they have been for the majority of the past decade. This places an onus on the Council to continue to consider issues of financial sustainability as a priority in order to ensure stable provision of services in the medium term.
24. As such, the Section 151 Officer supports these recommendations to ensure appropriate policies are in place to ensure transparency and consistency in decision making.

Legal implications – Monitoring Officer:

25. The draft policy has been written in compliance with the Special Educational Needs (Personal Budgets) Regulations 2014. At the time of writing, the consultation on the proposed new policy is ongoing. When the consultation concludes the Cabinet Member will be provided with a supplementary report which addresses the outcome of the consultation process. In taking her decision to approve the draft policy, the Cabinet Member will need to consider the outcome of the consultation together with the Equality Impact Assessment and conscientiously take it into account.

Equalities and diversity:

26. An EIA is currently being drafted and will incorporate work with Adult Social Care, Surrey Coalition and any views which are collated during the consultation period which is still ongoing.
27. Education, Health, and Care Plans (EHCPs) are available to children and young people up to the age of 25 and any additional needs outside of this would be picked up through adult social care assessment and transition which can take place from year 9. All requests for an EHC assessment are carried out based on need regardless of any protected characteristic.
28. The SEND Personal Budget policy is directly linked to an EHCP and would only be used for an education element of the plan. The policy would not be used for any other purpose.

Other implications:

29. The potential implications for the following Council priorities and policy areas have been considered. Where the impact is potentially significant a summary of the issues is set out in detail below.

Area assessed:	Direct Implications:
Corporate Parenting/Looked After Children	No significant implications arising from this report
Safeguarding responsibilities for vulnerable children and adults	No significant implications arising from this report
Environmental sustainability	No significant implications arising from this report
Public Health	No significant implications arising from this report

WHAT HAPPENS NEXT:**30. Timescales**

- 22 July consultation end and responses will be taken into consideration. A supplementary report will be provided to the Cabinet Member following this with any further recommendations.
- 26 July paper to Cabinet committee
- 27 July CFLL presentation of draft policy
- August – training delivered to staff
- 1 September – policy published on Surrey website Local Offer pages

31. Next steps

- A Frequently Asked Questions document will be published to respond to the questions raised and circulated to respondents.
- Any responses which are raised about protected characteristics will be addressed in the EIA before final sign off
- Signed off policy to be included in Surrey website Local Offer pages so it can be accessed by external visitors.
- Put communication plan in place
- Training session for all staff who need to understand the policy in relation to EHCPs

32. Communication

- The outcome will be communicated via internal and external communication channels to staff, anyone who has been consulted on the issue (officers, members, public, stakeholders, partners).

Contact Officer:

Julia Katherine, Assistant Director Inclusion and Additional Needs (Policy Performance and Practice) Julia.Katherine@Surreycc.gov.uk

Consulted:

Officers of Surrey County Council; the partners of the additional needs Partnership Board; schools and colleges; ATLAS; School SENCos; Surrey SEN Teams; Family Voice Surrey; Director of Education and Life-Long Learning and Assistant Directors; Children's Social Care; Adult Social Services.

Annexes:

SEND Personal Budgets policy for 2022/23

Sources/background papers:

N/A

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