

Personal Budgets Policy

Special Educational Needs and Disability (SEND)

Contents and quick read guide

We want to make this plan easy to read. By explaining below what each of the main sections contains, you can go straight to the part you want.

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Version control

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POLICY

1.1 Introduction

The Government has introduced a programme of change to the way that children and young people with special educational needs and disabilities (SEND) and their families are supported. Personalisation is at the core of the Special Educational Needs and Disability (SEND) reforms, and is about putting children, young people and their families at the centre of the Education, Health and Care (EHC) process. It means starting with the person as an individual with strengths, preferences and aspirations, identifying their needs and making choices about how and when they are supported to live their lives.

The central focus of the new reforms is to raise aspirations, improve the outcomes for children and young people and to give them and their families a greater say on what support and services that are available to them. It is the intention of the reforms that Education, Health and Social Care Services work more closely together to deliver what a child or young person needs to help them achieve positive outcomes.

Personal budgets are designed to pay for the elements of provision that the local and health authorities have agreed can be offered as a direct payment. A direct payment will be the mechanism of receiving the personal budget. This policy will set out how personal budgets will be made available, who is eligible and the decision making processes to be followed.

1.2 Who does this policy apply to?

The policy applies to any child or young person with SEND, who has an EHC plan and where a personal budget has been requested and agreed. The EHC plan will offer a personal budget for aspects of the provision outlined in it, if parents or young people wish it. The request can be made either during a statutory assessment (at the draft plan stage), or when an EHC plan is being reviewed/ re-assessed.

Parents have control of a personal budget up to the end of year 11 (post compulsory school age). It is then the young person who has this responsibility, as long as they have the mental capacity as defined by the Mental Capacity Act, unless they elect for their parent/carer to manage their funding.

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 right of a young person to make decisions is subject to his or her capacity to do so. This is explained in the 2005 Mental Capacity Act, and in paragraph 8:21 and Annex 1 of the SEN Code of Practice⁴ (July 2014)

Conditions for receipt of a Personal Budget

To receive a personal budget for a child or young person you must

- Be a parent with a child who has an EHC plan or be a young person over compulsory school age who has a current EHC plan and has mental capacity as set out in Mental Capacity Act 2005;
- Appear to the local authority to be capable of managing direct payments with the help that is available and agree in writing to the conditions set out and the outcomes that the funding will support;
- Use the money to pay for the support that will meet the outcomes stated in the child/young person's EHC plan;
- Have agreement from your child/young person's education provider if it involves the support being delivered on the education providers premises; and
- Agree to repay any money that has not been spent on the identified support back to the Local Authority.

Where the personal budget is for a ***child in need***, the Council must be satisfied that the service safeguards the welfare of that child.

Where the personal budget is for an adult, the Council must be satisfied that the service provided effectively meets the needs of the assessed person and promotes their independence, choice and well being.

Where the personal budget is to meet health needs then the persons providing must be competent to perform the required tasks.

The services purchased should not cost more than if provided by the Local Authority. The resource allocated within the personal budget and paid as the direct payment, will be sufficient to enable securing a standard of service that is reasonable to meet the

individual needs/outcomes. The Local Authority is not obliged to fund the particular costs associated with a person's preferred method of securing services if the costs exceed the Authority's estimate of the reasonable cost of securing it.

Personal budgets will **not** be allocated to people:

- Subject to drug rehabilitation or need alcohol treatment.
- Who have been released from gaol on licence or be subject to youth rehabilitation.
- Excluded under the Direct Payments regulation.

1.3 Policy Drivers

The SEND Code of Practice sets out guidance for all council services. Section 19 of the Children and Families Act 2014 states that local authorities, in carrying out their functions under the Act in relation to disabled children and young people and those with SEND, **must** have regard to:

- The views, wishes and feelings of the child or young person, and the child's parents.
- The importance of the child or young person, and the child's parents, participating as fully as possible in decisions; and being provided with the information and support necessary to enable participation in those decisions.
- The need to support the child or young person, and the child's parents, in order to facilitate the development of the child or young person and to help them achieve the best possible educational and other outcomes, preparing them effectively for adulthood.

These principles are designed to support:

- The participation of children, their parents and young people in decision making.
- The early identification of children and young people's needs and early intervention to support them.
- Greater choice and control for young people and parents over support.
- Collaboration between education, health and social care services to provide support.
- High quality provision to meet the needs of children and young people with SEND.
- A focus on inclusive practice and removing barriers to learning.

- Successful preparation for adulthood, including independent living and employment.

In relation to personal budgets the SEND Code of Practice requires the Council to 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 appropriate for the use of personal budgets, and how that funding will be made available, with clear and simple statements of eligibility criteria and the decision-making processes.

1.4 Policy Objectives

The objectives of this policy being to ensure the Local Authority and CCG meet their statutory responsibilities within the Children's Act and Children and Families Act and comply with the new SEND Code of Practice and associated regulations:

- Recognise the local authority's duties under section 49A of the Disability Discrimination Act 1995, to eliminate discrimination, to promote equality of opportunity and to encourage participation by disabled people in public life.
- Promote the personalisation of services and improve the engagement of parents and young people in shaping their own provision and in a manner which mobilises their social capital. Parents and young people will be supported to articulate their life goals, design, set up, pay and review their individually tailored support plans that aim to achieve these goals.
- Provide a framework in which need is measured to inform the commissioning processes; and which reflects Continuing Care Guidance for children. Bury Council and Bury's Clinical Commissioning Group will keep under review the funding streams that may be available for a personal budget.
- Provide service pathways, good quality information and improved sign posting – with joint working across services to reduce the complexity of assessment processes.
- Within the Bury Child and Family Single Continuous Assessment Framework to provide effective multi disciplinary input and improved management of risks ensuring that appropriate care plans are put in place in a timely manner.

- That decision making processes use a transparent set of criteria to inform funding and provision of services, and ensure parent carers are made aware whether they are eligible for services.

Our approach will be underpinned by the following principles:

- We will support will actively seek to promote the self -reliance, and social inclusion of the young person.
- We will be review the policy framework annually and consult with Bury Parents Forum and parent carer groups and representatives when doing this.
- We will offer information advice and support necessary to help families consider options for, and to take up and manage, personal budget.
- We will include pathways for personal budgets within the EHC assessment and planning process in procedures.
- We will provide training to the workforce with the cultural changes necessary for a person centred approach.
- We will ensure that where payments are devolved to parents that the arrangements are safe and appropriate and satisfy clinical governance in the case of health provision.
- We will seek to ensure that the arrangements deliver value for money for the Bury taxpayer in all circumstances, and explain circumstances in which payments are being made or declined.
- We will seek to develop a unified payment and support infrastructure for the different elements where a direct payment is offered.

1.5 What is a personal budget?

A personal budget is an amount of money identified by the Local Authority to deliver provision which will meet the eligible and assessed needs and outcomes of the child or

young person as agreed within their EHC plan. A personal budget can include funding for special educational, health and social care provision. It must be used to secure the provision and meet the needs and outcomes that are described in the EHC plan.

Personal budgets are optional and are not available in relation to all parts of the EHC plan. Section J of the EHC plan (Personal Budgets) should provide a detailed explanation of how a personal budget will be used to deliver agreed provision, the needs and outcomes it will meet, and will explain how the money will be used, spent and managed including arrangements in relation to any direct payments.

The scope of the budget will vary according to the needs of the individual, the eligibility criteria for different components and how it is delivered. Within the planning process the expectation will be that the family will identify natural support and the contributions that the parents and other informal circles of support will make.

During the EHC assessment process parents/the young person will be given an indication of the level of funding or the delivery of a service that will be specified in the EHC plan. As part of the development of the plan with parents, the young person and other professionals there is the opportunity to explore whether any elements of the plan may be available as a personal budget and if this is the best way to secure this provision.

Parents or a young person will then be able to formally request that a personal budget is included in the final EHC plan.

The types of services across education, health and social care that might be available are described in more detail in section 1.7 of this policy.

Please note that:

- The new legislation about EHC plans says that the EHC plan should be clear about the amount of money to be spent, and what outcomes should be achieved, and so the family should be able to see how much everything costs.
- Parents and young people can decide to only use a small amount of the funding available as a personal budget if they so wish. They can, in discussion with the person helping them decide to maintain many of the services which are currently

working well for their child and only use a part of the funding as a direct payment.

- In developing the EHC plan with parents, the young person and other professionals you will have the opportunity to explore which elements of the plan may be available as a personal budget and to agree if this is the best way to secure this provision.
- The funding must be used to secure the provision and the outcomes that are described in the EHC plan.
- The Council and Health Services retain a duty to ensure that the arrangements made via a personal budget are safe and appropriate, and also deliver value for money.
- Every request for a personal budget will be considered on its individual merits. If the Local Authority or Health Service cannot agree to the request for a personal budget then the reasons for this will be explained in writing and parents or the young person will be able to ask for a formal review of this decision. Where the request relates directly to the special educational provision then parents or the young person have a right of appeal and this will be explained at the time.
- Personal budgets will be subjected to audits by the council to ensure the outcomes agreed for a personal budget are being achieved.

1.6 Funding streams available for personal budgets

The funding streams available will change year on year as commissioning arrangements are reviewed. Within this section we identify how education, health and social care funding is available and within the next section include a table which identifies services where a personal budget is not currently available.

Health Services

Most children and young people with special educational needs or a disability will not require any more support from Health than other children. They will be able to access the support they need through universal services. This includes the General Practitioner (GP), hospital consultants and specialists, therapy services such as speech and language, occupation and physiotherapists.

However, a small number of children and young people have very complex, long-term and possibly life limiting conditions. This might include children who cannot breathe

without ongoing support, or have severe epilepsy that is not controlled by medication or who have a significant health need which means that someone has to be with them all the time to keep them as healthy as they can be.

Children and young people in this situation are referred to as having 'continuing care needs' and they may have had a 'Continuing Care Assessment'. For this small group of children once the assessment has been completed separate reports are then produced for the Complex Case Panel. The panel includes representatives from Bury CCG and the Council, who will authorise the proposed budget once it is satisfied of the assessed needs and that the proposed arrangements will meet these needs.

Personal budgets for health require the young person to be registered with a Bury GP and the agreement of a Care Plan between the recipient of budget and Bury CCG. If a personal health budget is agreed then there will be checks in place to ensure that the family are using staff or an agency, who are approved by Bury CCG to ensure that they are competent and trained in undertaking the required tasks. In all such cases there will be a requirement to ensure that the arrangements are safe and sustainable.

Social Care Services – Children

Most children and young people with a special educational need do not receive support from social care, either because they do not meet the criteria for this support or because they choose not to use it. Where either a social care or health budget is to be considered it will be provided after a social care or health assessment that confirms there are eligible needs. As these needs may fluctuate during the course of the year they will be assessed for and reviewed as the needs of the child and family dictate.

If a child or young person's needs do not meet the eligibility criteria for assessment they will not be entitled to Social Care funding. To be eligible the child or young person must be aged 0-18 and have a disability which means that their daily lives are profoundly and substantially affected by one or more of the following:

- a severe or profound learning disability or global development delays
- a severe physical disability and health related conditions
- a substantial degree of sensory impairment
- complex Autistic Spectrum disorders
- complex Social Communication disorders

Substantial impairment is defined as lasting more than 12 months - permanent.

Meeting the above criteria would qualify your child for an assessment for support from social care, which would always be completed by a social worker. These assessments are required by law and are known as a Child and Family assessment.

Where children and young people have additional needs but are not eligible guidance will be provided to these families to consider their children's needs and how to go about meeting these by providing information e.g. signposting to appropriate services in the community, including suitable mainstream activities.

Distinctions are also made between eligible personal care and short breaks and which are directly for the benefit of the child, and childcare which is principally provided to enable the parents to work and may not be eligible. Funds should not be used to subsidise the cost of childcare, but to ensure the child has access to activities with their peers. It is recognised that such distinctions between different categories of activity are not straightforward and therefore such issues need to be negotiated at the support planning stage and clearly agreed and recorded to ensure clarity for all parties.

The social care element being provided where; a child or young person is assessed as needing additional and individual support at home and when out and about in the local and wider community.

Children's Services may include:

- Paying for a Personal Assistant – to support the child or young person
- Activities which support your child to enjoy time with their friends.
- Staffing support so that a child can be part of a family day trip, weekend away or a holiday.

Children's social care services generally would want to offer direct payments to enable you to recruit your own staff rather than you using service providers or agencies.

Children's social care services currently commission a range of service providers who provide for support in the home and with community activities. We generally do not provide personal budgets to buy services directly from these providers as this would involve additional costs and not represent value for money. Where you need regular support from the service providers we will arrange this on your behalf and arrange the support plan with you and the provider to ensure it is person centred and reflects what you need.

One option that might be suitable for your child and family is to pool part of your personal budget. With pooled budgets, a number of families can join together to pay for a service that would be too expensive or too impractical to deliver on a one-to-one basis. Pooling part of your budget may mean that you can access a service that is better suited to your child and family and cheaper than it might be otherwise.

Where the child is in care and in long-term foster care the foster parents may access a personal budget if there is agreement as part of their care plan.

Where the child has a Child Protection Plan, any use of a personal budget would have to be part of the plan agreed at the multi-professional Core Group meeting. If the use of it was felt not to meet the aims of the plan, and to compromise the safety of the child/ young person, it would not be agreed.

The social care element and how this is managed will be identified in Sections H1, H2, and J in the individual's EHC plan.

The Council has a duty to ensure that the arrangements are safe and appropriate, and may decline requests where it is not satisfied that this is the case. Where the Council refuses a request for a personal budget for social care provision, the parent will be advised in writing of the reasons and how to make representations to request a review of the decision.

You can find more information about children's social care personal budgets and eligibility criteria by following this link:

<http://www.bury.gov.uk/index.aspx?articleid=4272>

Social Care Services - Adults

For people over 18, an assessment of need will identify the support being offered by family and friends and other community services. This assessment will determine the person's eligibility for adult care services. If the person is eligible a support plan will be produced which builds on their existing support. The assessment will generate a notional budget (sometimes also called an indicative budget). A personal budget is the overall financial commitment to meet the person's assessed needs once the other support they receive has been factored in.

The services this might typically include are to

- help with personal care;
- enable access to the community;
- reduce risk; and
- support and enable independence.

The social care element and how this is managed will be identified in Sections H1, H2, and J in the individual's EHC plan.

Where the Council refuses a request for a personal budget for social care provision, the parent will be advised in writing of the reasons and how to make representations to request a review of the decision.

Education Services

Most children or young people with SEND attend school or college and receive the support they need through the resources that are already available. The school or college will make it clear to parents and young people what additional support they provide. You can also find additional information about what support and services are provided by the Local Authority and Bury's Local Offer. You can find this information on the Bury Directory and by following this link: [Bury Directory | The Bury Directory](#).

Those children and young people who have an EHC plan will have some of the special educational provision funded from the school's budget share or in colleges their formula funding. More specialist provision will be funded through the Local Authority's high needs budget. It is this funding that may be able to be taken through a personal budget.

The scope for a personal budget will vary depending on the type of school that is requested. For example if a special school makes specialist provision available as part of their core provision then it would not be possible to make this an element of a personal budget if this was the school or college selected.

Personal budgets to support learning outcomes for goods or services which are used or provided for in an Early Years setting, school or post-16 institution are not automatically available for direct payments without the written consent of the principal or head teacher of the institution. In effect, should a child or young person require

additional resources to access learning on site, in most cases this will be provided directly to the educational setting as per the agreed outcomes on the EHC plan. The educational setting will, during the annual review process, be held to account as to how this funding was spent and the impact it has had.

Early Years nursery setting

Core funding – The Council provides funding to providers via an Early Years Single Funding Formula for up to 15 hours per week statutory entitlement. Funding is based on participation/attendance and paid as an hourly rate per child.

SEND funding - The Council provides a Borough-wide portage service to prepare and support children with SEND for nursery provision.

Providers can submit requests for “top-up funding” where a child has additional needs – these requests are considered by the Local Authority’s SEND panel.

Mainstream Schools

Core funding - The Council provides funding to schools and academies via a local formula which provides an age-based basic per pupil entitlement for every pupil plus allocations for deprivation, low prior attainment, etc.

SEND funding - The school can submit requests for “top-up funding” where a child has additional needs – these requests are considered by the Local Authority’s SEND panel.

Special Schools

Core /SEND funding - The Council provides a fixed amount of funding per planned SEND place.

The Council provides “top-up” funding via a SEND banding system which recognises the type and level of additional need of each pupil.

The Council provides “supplements” for Speech and Language, and Paediatric therapy for eligible pupils.

Where an independent school is required the Council commissions places and provides bespoke funding which recognises the pupil's needs.

Further Education College and other post-16 Training Providers

Core funding - The Education Funding Agency provides funding for students based on a national formula which recognises that some learners will have additional needs

SEND funding - The Council provides "top-up" funding via a SEND banding system which recognises the type and level of additional need of each student.

Home to School transport

The Council arranges appropriate methods of transport for SEND pupils which may include the provision of Passenger Transport Assistants (escorts).

Equipment

Items of equipment may be considered if assessed or prescribed by an Occupational Therapist or Physiotherapist.

1.7 Exclusions

Direct payments will not be appropriate for all aspects of Education, Health or Care. The following table identifies those areas which are exempt.

It is to be noted that any provision to be delivered by a direct payment in an educational institution must be agreed by that institution.

All services commissioned by Bury CCG such as Health Visiting, Primary Care (GPs) School Nursing, Physiotherapy, Occupational Therapy, Speech and Language Service CAMHS Audiology Service, Nutrition and Dietetics, Dental Services, Orthotics Ophthalmics, Wheelchair Services, Hearing aids. It is important to note that personal budgets for health cannot be used to support young people whilst they are in a hospital setting. The following Council services are **NOT** available as a direct payment on the basis that the Council has to maintain the stability of current provision. The list also includes areas of activity where funding may not be used.

Education	Social Care
<ul style="list-style-type: none"> ▪ Mainstream or special school or college places ▪ Pupil Referral Unit places ▪ 2, 3 and 4 year old nursery places ▪ Resourced/ specialist nursery places ▪ Independent Specialist Providers places (19-25 years) ▪ Training providers ▪ Out of School Care ▪ Element 1 and 2 funding ▪ Children’s centre services ▪ Behaviour support ▪ Outreach support ▪ Sensory support ▪ Education psychology ▪ Parenting support ▪ Connexions services ▪ Pupil premium ▪ Parent Partnership ▪ Teaching Assistant support ▪ Youth services 	<ul style="list-style-type: none"> ▪ For buying services from the Council, Health Services or Housing ▪ To employ a member of the household who lives with the child or young person ▪ Social work services ▪ To buy long term residential care /school provision ▪ To buy short breaks foster placement ▪ Support where the provision is not cost effective – usually where additional costs of brokerage, insurance ▪ Sensory or other equipment to meet an assessed health need ▪ Holiday and activity scheme provisions ▪ Regular support from provider agencies within children’s services / unless VFM is confirmed ▪ Youth service provision ▪ Any client contribution for a community care package within adult services ▪ Household repairs ▪ Utility or household bills / council tax / rent / relocation costs / debts or financial arrears ▪ Prescription charges / dental care ▪ Alcohol, gambling, tobacco ▪ Games consoles / I-Pads ▪ Cars / vehicle maintenance ▪ Transport costs unless specified ▪ Beds / furnishings ▪ Clothing / jewellery ▪ Overseas holidays / flights

1.8 Equal Opportunity Implications

This policy framework is designed to ensure equity in the allocation of resources on the basis of assessed needs.

It is designed to be compliant with the Human Rights Act 1998 and Race Relations Amendment Act 2000 and Equality Act 2010.

Universal services will be able to meet the needs of those children and young people who require little or no additional support and are expected to make reasonable adjustments to enable them to access services as required under the Disability Discrimination Act 1995 and Disability and Equality Act 2010).

The framework specifically seeks to preclude discrimination on the grounds of gender, ethnicity, sexual orientation, religion, personal relationships or age.

In the co-ordination of services, consideration will be given to the cultural needs of the child and family. Signing and Translation service will be offered as required.

The Bury Parent Forum and parent carers will be asked to contribute to service reviews, new service procedures, tendering processes and in the recruitment of staff. Parent representatives will be supported to attend key working groups.

A reference group of young people will be supported to ensure young people's views are represented.

A separate Equality Impact Assessment is available.

Personal Budget Procedures

2.1 Requesting a personal budget

Young people and parents of children have a right to request a personal budget, once the authority has confirmed that it will prepare a draft EHC plan. They may also request a personal budget during a statutory review of an existing EHC plan. The draft EHC plan will state which outcomes it is proposed might be met by a personal budget, if a personal budget is agreed. The scope of the budget will vary depending on the needs of the individual and eligibility criteria. At present, a Personal budget may consist of elements of funding from education, health and social care, with the following mechanisms used to determine funding:

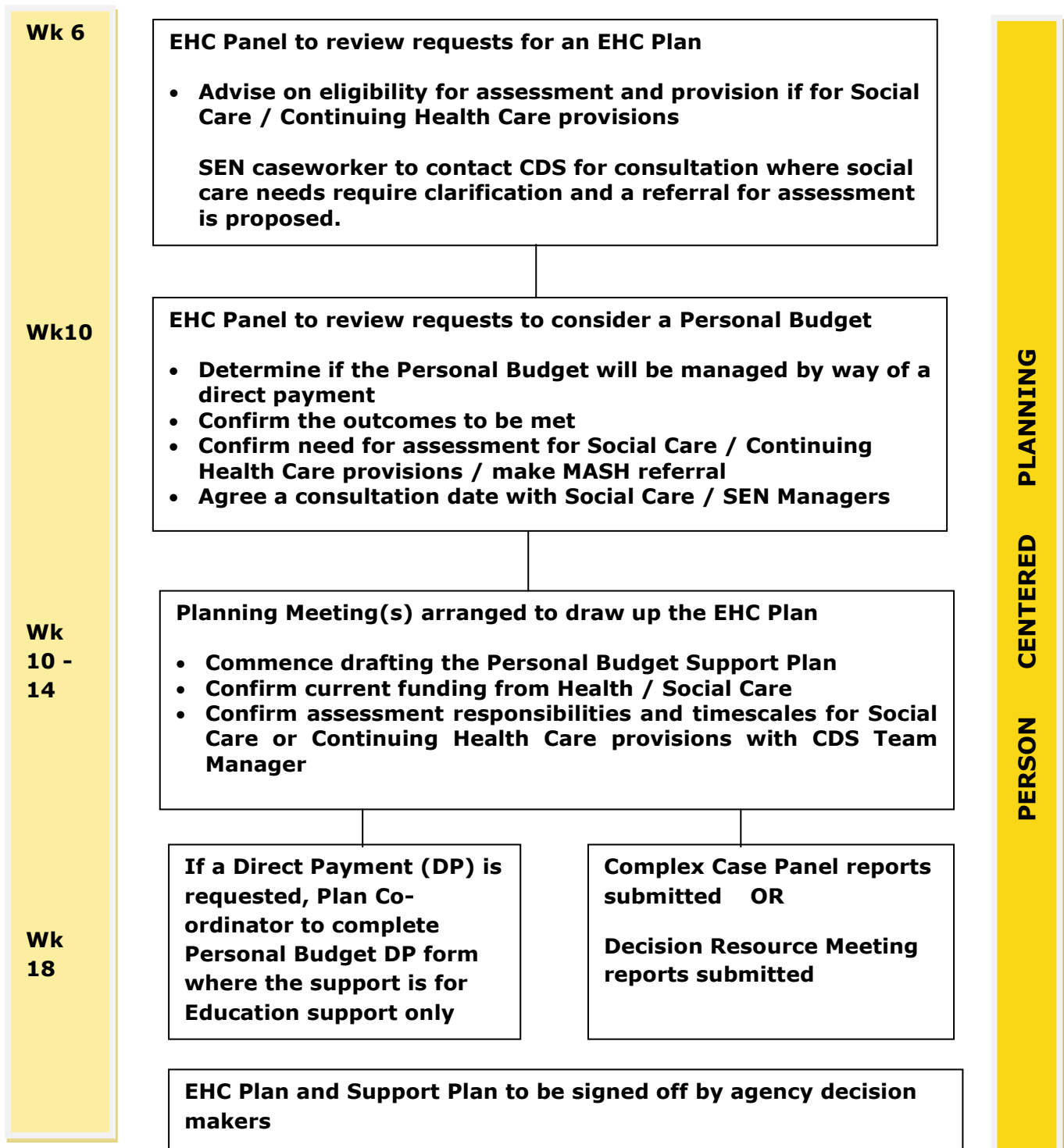
Education – element 3 (top-up funding)	The Costed Provision Map
Health – Continuing Care (CC) funding	The Decision Support Tool being used to confirm eligibility for services – with a health assessment and Continuing Care Panel application
Social care –assessed by the Children with Disability Service	The Child and Families Assessment and a Support funding application

The Council will be examining the potential for a Resource Indication Questionnaire (RIQ) to shape decisions about funding levels for personal budgets. The purpose of the tool when developed will be used to help moderate decision making across services to ensure that there is a consistency of resource allocation.

Through joint commissioning Bury Council and Bury CCG will seek to increase choice and control over time through a wider range of budget areas being available.

A personal budget and in particular a direct payment cannot be made in respect of provision which will take place in a school, post-16 institution or early years setting without the written consent of the head teacher, principal or the person occupying an equivalent position. The options for a personal budget within a special school maybe more limited than that of a mainstream school as the provision is more integrated.

2.2 Personal budget pathway for new referrals



2.3 Personal health budget pathway

Where a Personal Health Budget is requested the CCG lead nurse will need to confirm that the referral screens in for continuing care funding.

Where it is confirmed that the health needs screen in for continuing care funding joint visits will be undertaken to consider parental requests and preferences. Health professionals from the CCG and Social Care will jointly consider whether the funding

request is appropriate in terms of being both safe and appropriate and that clinical governance can be satisfied.

Where Complex Case Panel reports are to be submitted further Multi disciplinary meetings may be required to confirm the health needs to be met and consider the proposed care package and provisions.

See the Complex Case Panel Pathway as attached.



Complex Care Panel
Pathway.docx

2.4 Mechanisms for delivery of a personal budget

Personal budgets can be managed in a number of different ways:-

- Direct payments - where individuals receive the cash to contract, purchase and manage services themselves.
- An organised arrangement (sometimes referred to as a notional budget) where Bury Council or Bury CCG makes the arrangements for the care.
- Third party arrangements/nominees – where funds are paid to an individual or another organisation on behalf of the parent/young person and they manage the funds.
- A combination of the above.

2.5. Monitoring and Reviewing Personal Budgets

Personal Budgets will be considered as part of the annual EHC plan review to confirm the outcomes set out in the plan are appropriate. Where families are in receipt of a Direct Payment they will be reviewed within three months of the establishment of the Direct Payment Agreement and within each review or re-assessment of the EHC Plan. If Bury Council or CCG become aware, or are notified, that the person's circumstances or needs have changed, they will consider whether it is appropriate to carry out a review of the Direct Payment Agreement to ensure the individual's needs are still being met. Similarly, if they become aware, or are notified that the direct payment has been insufficient to purchase the services agreed in the Direct Payment Agreement, a review will be carried out as soon as possible.

Any review will consider whether the agreed provision should continue to be secured by means of a personal budget, addresses the needs of the young person and that the

agreed outcomes are being met. It will check that the personal budget is being used effectively and appropriately and that the level of funding remains sufficient to secure the required provision

Direct Payments

3.1.1 Decision to make a direct payment

Young people and parents of children have a right to request a personal budget, once the authority has confirmed that it will prepare a draft EHC plan. They may also request a personal budget during a statutory review of an existing EHC plan. An EHC plan is the product of a co-ordinated assessment which specifies the outcomes sought for the child or young person across education, health and social care. The EHC plan will clearly state which outcomes can be met by a personal budget (if a personal budget is agreed).

3.1.2 Decision not to make a direct payment

If a direct payment is not approved the family will be informed of the decision in writing, and reasons as to why the decision to make a direct payment has been refused.

If any dispute cannot be resolved, an appeal of this decision can be made and the process to appeal can be found in section 7 of this policy.

3.2 Consent and capacity to consent

3.2.1 Consent

Direct payments can only be made where appropriate consent has been given by:

- a person aged 16 or over who has the capacity to consent to the making of direct payments to them;
- a person **nominated** in writing by the child's parent or the young person to receive direct payments on their behalf
- the **representative** of a person aged 16 or over who lacks the relevant capacity to consent;
- the **representative** of a child under 16.

The direct payment can be received and managed by the person who gives their consent, or that person can identify a nominee to receive and manage it for them. Where a person lacks the capacity to consent, direct payments can be given to their authorised representative, if they consent to receiving the payment on the person's

behalf. In the case of children, direct payments can be received by their parents or those with parental responsibility for that child.

The person receiving direct payments (the individual themselves if direct payments are made to them, or their nominee or representative) will be responsible for ensuring that the money is spent in line with the Personal Support Agreement.

3.2.2 Capacity to Consent

Under the Mental Capacity Act 2005 a person lacks capacity if they are unable to make a decision because of an impairment of, or a disturbance in the functioning of, the mind or brain. Broadly speaking, 'mental capacity' means the ability to make a decision in question at the time it needs to be made. Where there is reasonable belief that a person is unable to make a decision about the making of direct payments to them, Bury Council and/or the CCG will assess the person's capacity to consent.

3.2.3 Fluctuating Capacity

Where a person who has consented to the making of direct payments to them subsequently loses their capacity to consent, for instance due to mental health issues Bury Council and/or the CCG may, where it is satisfied that the loss of capacity is temporary, allow a representative to be appointed to receive direct payments on their behalf, or an existing nominee to continue to receive them, until they regain capacity. In these circumstances, the role will be similar to that of a representative for someone who has been assessed as not having the capacity to give consent. Bury Council and the CCG will prioritise continuity of care, ensuring that any disruption is as minimal as possible.

3.3 Managing the money

When deciding whether or not someone has the ability to manage direct payments (including a representative or nominee), Bury Council and/or Bury CCG will consider:-

- whether they would be able to make choices about, and manage, the services they wish to purchase
- whether they have been unable to manage either a health care or social care direct payment in the past, and if their circumstances have changed; and
- whether they are able to take reasonable steps to prevent fraudulent use of the direct payment and/or identify a safeguarding risk and if they understand what to do and how to report any concerns if necessary.

If a decision is made that someone is not suitable to manage direct payments, the person will be informed in writing, stating the reasons for that decision.

3.4 Nominees and representatives

If a person aged 16 or over who is receiving care has capacity, but does not wish (for whatever reason) to receive direct payments themselves, they may nominate someone else to receive them on their behalf (a nominee). A representative (for a person aged 16 or over who does not have capacity or for a child) may also choose to nominate someone (a nominee) to hold and manage the direct payment on their behalf.

3.5 Transition: When a child becomes a young person

Where a young person in receipt of direct payments becomes an adult (i.e. on their 18th birthday), the local authority must take reasonable steps to ascertain whether the young person consents to receive direct payments. Bury Council/Bury CCG children's services will continue to support children young people and families through this transition and plan for adulthood.

3.6 Receiving a direct payment

3.6.1 Once it has been agreed that a person can have a direct payment, Bury Council will issue

A **Service Level Agreement** specifying the following

- the name of the child or young person for whom direct payments are to be made;
- the proposed amount of direct payments and schedule of payments;
- any conditions on how direct payments may be spent; and
- the dates for payments into the bank account approved by Bury Council.

A **Support Plan** specifying the following

- the needs to be met;
- risk assessments and contingency arrangements;
- training and support to be offered; and
- review arrangements.

3.6.2 By signing Service Level Agreement, the person is agreeing to

- receive the direct payments;
- use the direct payments only to secure the agreed provision;

- comply with any conditions specified;
- notify Bury Council of any changes in circumstances which might affect the need for the agreed provision;
- use the bank account approved by Bury Council solely for the direct payments and ensure it is only accessible by the recipient or any other person approved in writing;
- keep a record of money paid in and withdrawn from the approved bank account; and
- provide Bury Council with information or evidence relating to the account and the agreed provision when requested.

3.6.3 Where the recipient is a nominee

- the child's parent or the young person must consent in writing to direct payments being used to secure the agreed provision; and
- the nominee will be required to sign the Support Plan and the Service Level Agreement outlining their responsibility as a principle for all contractual arrangements entered into and secured by means of direct payments, for the benefit of the child or young person.

3.7 Amount of Direct Payments

Whilst the level of the direct payment made may vary, Bury Council and Bury CCG will ensure that the amount of direct payments is sufficient to secure the agreed provision.

3.8 Stopping or Reducing a Direct Payment

The size of the direct payment may be increased or decreased at any time, if Bury Council and or Bury CCG are satisfied that the new amount is sufficient to cover the full cost of the Service Level Agreement. Before making a decision to stop or reduce a direct payment, wherever possible and appropriate, Bury Council and/or Bury CCG will consult with the person receiving it to enable any misunderstandings or inadvertent errors to be addressed, and enable any alternative arrangements to be made.

Whenever a direct payment is reduced or stopped, Bury Council will ensure that the person receiving the direct payment is given an explanation regarding the reasons for the decision, in writing.

Direct payments may be reduced

- where Bury Council and/or Bury CCG are satisfied that a reduced amount is sufficient to cover the cost of the Service Level Agreement; and
- if a surplus payment has accumulated that has remained unused. A surplus may indicate that the individual is not receiving the care they need or too much money has been allocated. Bury Council and/or the CCG will establish why the surplus has built up.

Where direct payments have been reduced, the person receiving care, a representative or nominee may request Bury Council and or the CCG to reconsider the decision, and may provide evidence or relevant information to be considered as part of that deliberation. Where this happens, Bury Council and/or Bury CCG will inform the person receiving care and any representative or nominee in writing of the decision after reconsideration, and state the reasons for the decision. Bury Council and/or the CCG is not required to reconsider any such decision more than once.

Direct payments will be stopped if

- a person, with capacity to consent, withdraws their consent to receiving direct payments;
- a person who has recovered the capacity to consent, does not consent to direct payments continuing; or
- a representative withdraws their consent to receive direct payments, and no other representative has been appointed.

Direct payments may be stopped if Bury Council and/or the CCG are satisfied:

- the person no longer needs care;
- direct payments are no longer a suitable way of providing the person with care;
- There is reason to believe that a representative or nominee is no longer suitable to receive direct payments, and no other person has been appointed;
- a nominee withdraws their consent, and the person receiving care or their representative does not wish to receive the direct payment themselves;
- the person has withdrawn their consent to the nominee receiving direct payments on their behalf;
- the direct payment has been used for purposes other than the outcomes and or services agreed in the Personal Support Agreement;
- fraud, theft or an abuse in connection with the direct payment has taken place; or
- the person has died.

If, for whatever reason, the person receiving care is no longer able or willing to manage the direct payment, Bury Council and/or Bury CCG will be responsible for fulfilling the contractual obligations the person entered into. After a direct payment is stopped, all rights and liabilities acquired or incurred as a result of a service purchased by direct payments will transfer to Bury Council and/or the CCG.

3.9 Repayment of a Direct Payment

In some circumstances, Bury Council and/or the CCG may ask for all, or part of, the direct payment to be repaid (the decision to seek repayment, and the amount of money to be reclaimed will be at the discretion of Bury Council and/or Bury CCG).

Direct payments may be reclaimed if

- they have been used to purchase a service that does not meet the agreed outcomes as identified in the EHC plan or;
- theft, fraud or other offences have occurred;
- the person receiving care has died, leaving part of the direct payment unspent (unless exceptional circumstances apply);
- the EHC plan has changed substantially resulting in surplus funds;
- the individual's circumstances have changed substantially, such as admission to hospital resulting in the individual not using the direct payment to purchase their care; or
- a significant proportion of the direct payment has not been used to purchase services to meet the agreed outcomes as specified in the EHC plan resulting in money being accumulated.

If Bury Council and or Bury CCG decide to seek repayment, they will give the relevant person reasonable notice in writing, stating

- the reasons for their decision;
- the amount to be repaid;
- the time in which the money must be repaid; and
- the name of the person responsible for making the repayment.

On receipt of notice from Bury Council and or Bury CCG, the person, representative or nominee may request a reconsideration of the decision. They may also provide additional evidence or relevant information to inform that decision. Bury Council and/or the CCG must reconsider their decision in light of any new evidence, and then

notify and explain the outcome of their deliberation in writing. Bury Council and/or Bury CCG can only be required to reconsider their decision once.

3.10 Using a Direct Payment to Employ Family members

A direct payment can only be used to pay a family member or a friend if Bury Council and or Bury CCG is satisfied that to secure a service from that person is necessary in order to satisfactorily meet the person receiving care's need for that service; or to promote the welfare of a child for whom direct payments are being made. Generally payments will not be made for children and young people to family members or persons living in the same household. Judgements are made on a case by case basis. The same restriction applies for adults where the relationship between the two people is primarily personal rather than contractual, for example if the people concerned would be living together in any case.

3.11 Indemnity and Direct Payments for Healthcare

Direct payments for healthcare can be used to pay for a personal assistant (PA) to carry out certain personal care and health tasks that might otherwise be carried out by qualified healthcare professionals such as nurses, physiotherapists or occupational therapists. In such cases the healthcare professional will need to be satisfied that the task is suitable for delegation, specify this in the Personal Support Agreement and ensure that the PA is provided with the appropriate training and development, assessment of competence and have sufficient indemnity and insurance cover.

Providers of some services may need to conform with prospective legislation which will implement the Finlay Scott Recommendations (June 2010) on indemnity cover and Article 4(2)(d) of Directive 2011/24/EC53 with regards to indemnity cover requirements. PAs employed via a direct payment do not need to comply with the legislation that will require them to have indemnity cover if practising unless they are a member of a regulated health profession, even if carrying out activities which might otherwise be performed by health professionals. Bury CCG will consider and discuss with the person, their nominee or representative, the potential risks associated with the clinical tasks being carried by the PAs on a case by case basis and this will form part of the risk assessment and care planning process and outcome recorded in the Personal Support Agreement.

In the first instance, it will be the responsibility of the person buying the service to check the indemnity cover of the provider from which they are buying services. They must make enquiries to ascertain whether the provider has indemnity or insurance, and if so, whether it is proportionate to the risks involved, and otherwise appropriate. However, the person buying the service can ask Wigan Council to undertake these checks on their behalf.

3.12 Registration and Regulated Activities

If someone wishes to buy a service which is a regulated activity under the Health and Social Care Act 2008, e.g. care worker support, they will need to inquire as to whether their preferred provider is registered with the Care Quality Commission (CQC). A direct payment cannot be used to purchase a regulated activity from a non-registered service provider.

If a person employs a care worker directly, without the involvement of an agency or employer, the employee does not need to register with CQC. CQC guidance makes it clear that where a person, or a related third party on their behalf, makes their own arrangement for nursing care or personal care, and the nurse or carer works directly for them and under their control without an agency or employer involved in managing or directing the care provided, the nurse or carer does not need to register with the CQC for that regulated activity. A related third party means:

- a)** An individual with parental responsibility for a child to whom personal care services are to be provided.
- b)** An individual with power of attorney or other lawful authority to make arrangements on behalf of the person to whom personal care services are to be provided.
- c)** A group or individuals mentioned in a) and b) making arrangements on behalf of one or more persons to whom personal care services are to be provided.
- d)** A trust established for the purpose of providing services to meet the health or social care needs of a named individual.

This means that individual user trusts, set up to make arrangements for nursing care or personal care on behalf of someone are exempt from the requirement to register with the CQC. Also exempt are organisations that only help people find nurses or carers, such as employment agencies (sometimes known as introductory agencies),

but who do not have any role in managing or directing the nursing or personal care that a nurse or carer provides.

In some circumstances, the provider may also need to be a registered member of a professional body affiliated with the Council for Healthcare Regulatory Excellence. If the Personal Support Agreement specifies that a task or tasks require a registered professional to undertake it, only a professional who is registered may be employed to perform that task or tasks.

In the first instance it will be the responsibility of the person buying the service to check whether the provider they are purchasing from is appropriately registered. However, the person buying the service can ask Bury Council to undertake these checks on their behalf.

3.13 Direct Payment Support

The Direct Payments staff are there to support parents with managing the processes of employing staff. A Direct Payments Guide is available to families.

If a Personal Assistant (PA) is required, support, information and guidance will be provided making it easier for individuals to recruit, select and employ. Individuals will be supported with recruitment tasks including: advice and support to draw up a job description, and a person specification, evaluating references, formulating interview questions and sit on interview panels/ provide and organise venues where appropriate.

The Direct Payments staff will offer information, advice and guidance in relation to

- DBS (Disclosure and Barring Service) checks;
- sourcing public liability and employers liability insurance, risk assessments, health and safety and reporting of incidents;
- the benefits and pitfalls of employing PAs;
- payment issues, rates, sick pay and holiday pay, and other employer related expenses;
- training, staff appraisals and health and safety issues for PAs;
- probationary periods, inductions and termination of employment;
- managing staff and assertive skills;
- dismissal and grievance procedures in conjunction with the insurance provider;
- and

- record keeping.

3.14 Hospital Admissions

If the child or young person is admitted to hospital or other full time respite care the Council will pay the direct payment in full for the first 7 days of any such admittance (subject to a maximum of 7 days in any 12 month period). Thereafter, the direct payment shall be suspended until the individual is released from hospital or other respite care and recommences to receive the services. During the period of hospital admission payments will be made to cover any statutory entitlement due to the employees of the recipient, if applicable. In any other circumstances, the Council may make temporary suspension of the direct payments if the recipient is temporarily unable to receive the services for any other reason.

Safeguarding and Managing Risk

There is a delicate balance between empowerment and safeguarding, and providing choice whilst managing risk. During the planning process, Bury Council and/or Bury CCG will have a detailed discussion with the personal budget holder about potential risks, and how to manage them. This will form part of an on-going dialogue.

The Support Plan will contain details of any proportionate means of eliminating, reducing or managing the risks, and this should be informed by a discussion about the significant potential risks and their consequences.

When deciding whether or not to employ someone, Bury Council will follow best practice in relation to safeguarding, vetting and barring including satisfying themselves of a person's identity, their qualifications and professional registration if appropriate and taking up references. Whilst individuals cannot request DBS checks on other individuals, Bury Council will undertake these checks on potential employees.

Complaints and Appeals

In line with the Code of Practice and Children's and Families Act 2014, Bury Council will consider each request for a personal budget on its individual merits. If it is not possible to provide a personal budget the child's parent or young person will be informed of the decision and the reason for this. For example, Bury Council and CCG 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, or where it would not be an efficient use of the local authority's resources.

In these circumstances, Bury Council will inform the child's parent or the young person of the reasons it is unable to identify a sum of money and work with them to ensure that services are personalised through other means.

Which Appeals process applies?

If Bury Council refuses a request for a personal budget for special educational provision we will set out the reasons in writing and inform the child's parent or the young person of their right to request a formal review of the decision. Any subsequent representation made by the child's parent or the young person will be considered and the child's parent or young person will be notified of the outcome, in writing, setting out the reasons for the decision.

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 (SEN and Disability), as with any other disagreement about provision to be specified in an EHC plan. Independent dispute resolution and mediation services will be available to support families through this process.

Decisions in relation to the health element (Personal Health Budget) remain the responsibility of Bury CCG or other health commissioning bodies and where they decline a request for a direct payment; they will set out the reasons in writing and provide the opportunity for a formal review. The local authority and CCG will consider sending a single letter setting out the reasons for the decisions.

If the appeal is in relation to decisions around Social Care assessment or funding then the Access to Support Policy will apply, and a staged review offered by the Social Worker and Team Managers. The decision will be confirmed in writing and consideration be given to any issues which may otherwise constitute a complaint in relation to the social care performance.

Glossary

To help you read this plan, an explanation of the special words and phrases that you will find used in the plan is set out below:

Key word	What does it mean?
Direct Payment	Where a family is given the money directly and uses the money to purchase some or all of the support that is agreed in the plan. The LA will make payments into a separate bank account which will need to be opened and controlled by the family, who must retain receipts and maintain records which will be subject to periodic audit by the LA. Any unspent monies will need to be returned to the LA at each year end and families must sign a written arrangement at the outset which clarifies how the direct payment is to be spent and which agency/ providers can be used. This type of arrangement can mean more flexibility about how services are provided but entails more responsibility for the family.
Education, Health and Care (EHC) Plan	The single plan which will set out how the health, care and learning outcomes of the child or young person with SEND are going to be supported. This may include the use of a personal budget (or budgets) if it is agreed that the child or young person has support needs which cannot be met through mainstream services or targeted support.
Indicative personal SEN budget	An allocation of funding made prior to the drawing up of the EHC plan. It is called an indicative allocation or personal budget as it is an estimate of the funding available set against the level of support the child or young person needs, it will only become a full personal SEN budget when the EHC plan is finalised and agreed.
Mainstream services	With the focus being on education settings here we mean: Early Years services, schools, academies, colleges and other education/training providers which co-ordinate and/or deliver learning opportunities/activities with identified learning outcomes. This can include work experience, work-based learning and participating in learning activities in a variety of environments and settings.
Organised Arrangement	Where money remains with the LA, Provider or Health Service but the family is told how much is available and identifies how the money is spent.
Outcome	Something that will happen as a result of an activity, process, input or intervention
Personal Budget	An amount of funding allocated to meet the additional and individual support needs of the child or young person. The personal budget is allocated in recognition that the child or young person's support needs cannot be met in full by mainstream/universal or targeted services without an additional individual investment being made. Personal budgets may be provided from one, two or all three different funding streams: education, health and social care or from a single pooled fund. Whichever is the case; the personal budget will be holistic and used to support the achievement of the identified outcomes in the Education, Health and Care

	Plan.
Personalised funding, activities, support and/or resources	This may include a personal budget; however there are other resources, activities and funding which can be used in a personalised way within a school or other education or training setting to support a child or young person to achieve their learning outcomes. These are personalised to the needs of the child and young person and their views have been central to all decisions.
Resource Allocation System (RAS)	A simple set of rules which explain what budget is available, which children or young people will be supported by this budget and what outcomes are set against the use of the budget. An RAS may include a simple set of questions which will be completed by the family and linked professional; this set of questions will result in an indicative allocation of a personal budget.
Targeted support	Services and support targeted at a group of children and young people due to a particular common learning support need. At a school level, targeted support will mean support focused on one or more children and young people in a class or in a group, where there is a shared offer of support. This may include funding of support staff. This support will be funded through the Early Years settings', schools' and colleges' budgets.
Third Party Managed Arrangement	Where a third party, such as a charity or school, is given the money and helps the family spend it. Under this type of arrangement the organisation is responsible for controlling the financial arrangements.

Appendices

Annex A- Persons excluded from direct payments

A person is unable to receive a direct payment if they are:

- a) Subject to a drug rehabilitation requirement, as defined by section 209 of the Criminal Justice Act 2003 (drug rehabilitation requirement), imposed by a community order within the meaning of section 177 (community orders) of that Act, or by a suspended sentence of imprisonment within the meaning of section 189 of that Act (suspended sentences of imprisonment);
- b) Subject to an alcohol treatment requirement as defined by section 212 of the Criminal Justice Act 2003 (alcohol treatment requirement), imposed by a community order, within the meaning of section 177 of that Act, or by a suspended sentence of imprisonment, within the meaning of section 189 of that Act;
- c) Released on licence under Part 2 of the Criminal Justice Act 1991 (early release of prisoners), Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release on licence) or Chapter 2 of the Crime (Sentences) Act 1997 (life sentences) subject to a non-standard licence condition requiring the offender to undertake offending behaviour work to address drug or alcohol related behaviour;
- d) Required to submit to treatment for their drug or alcohol dependency by virtue of a community rehabilitation order within the meaning of section 41 of the Powers of Criminal Courts (Sentencing) Act 2000 (community rehabilitation orders) or a community punishment and rehabilitation order within the meaning of section 51 of that Act (community punishment and rehabilitation orders);
- e) Subject to a drug treatment and testing order imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000 (drug treatment and testing orders);
- f) Subject to a youth rehabilitation order imposed in accordance with paragraph 22 (drug treatment requirement) of Schedule 1 to the Criminal Justice and Immigration Act 200865 ("the 2008 Act") which requires the person to submit to treatment pursuant to a drug treatment requirement;
- g) Subject to a youth rehabilitation order imposed in accordance with paragraph 23 of Schedule 1 to the 2008 Act (drug testing requirement) which includes a drug testing requirement;
- h) Subject to a youth rehabilitation order imposed in accordance with paragraph 24 of Schedule 1 to the 2008 Act (intoxicating substance treatment requirement) which

requires the person to submit to treatment pursuant to an intoxicating substance treatment requirement

- i) Required to submit to treatment for their drug or alcohol dependency by virtue of a requirement of a probation order within the meaning of sections 228 to 230 of the Criminal Procedure (Scotland) Act 1995 (probation orders) or subject to a drug treatment and testing order within the meaning of section 234B of that Act (drug treatment and testing order); or
- j) Released on licence under section 22 (release on licence of persons serving determinate sentences) or section 26 of the Prisons (Scotland) Act 1989 (release on licence of persons sentenced to imprisonment for life, etc.) or under section 1 (release of short-term, long term and life prisoners) or section 1AA of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (release of certain sexual offenders) and subject to a condition that they submit to treatment for their drug or alcohol dependency.

Annex B - References

National Health Service (Direct Payments) Regulations 2013(1) as amended by the National Health Service (Direct Payments) (Amendment) Regulations 2013(2).


The Special Educational Needs (Personal Budgets) Regulations 2014

Contact us

For further information about the Personal Budgets Policy Special Educational Needs and Disability (SEND) please contact:

 Log on to the [Bury Local Offer](https://www.theburydirectory.co.uk/kb5/bury/directory/localoffer.page) - <https://www.theburydirectory.co.uk/kb5/bury/directory/localoffer.page>

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