



St. Helens
Council



St Helens Clinical Commissioning Group

Personalisation & Personal Budgets Policy

Children and Young People's Services

August 2014

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1. About this Document

The aim of this document is to explain the approach taken by St Helens Council and St Helens Clinical Commissioning Group (St Helens CCG) to personalisation and personal budgets for children and young people across education, health and social care services.

Key workers, casework managers, social workers and other front line professionals are central to this work as they are, in the majority of cases, the first point of contact for a family and will have a role in explaining the opportunities for personalisation and/or personal budgets.

2. Personalisation

Personalisation is about putting children, young people and their families at the centre of the support they receive. It means starting with the person as an individual with strengths, preferences and aspirations, identifying their needs and enabling them to make choices about how they are supported to live their lives.

Personalisation 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 community setting to support a child or young person to achieve their desired outcomes. These are personalised to the needs of the child and young person and their views have been central to all decisions.

There are a number of ways in which personalisation is being developed. These include:-

- Person-centred approaches where children and their families are put at the centre of processes, enabling them to express their views, wishes and feelings and be included in decision making.
- The development of a comprehensive 'Local Offer' of services for Children and Young People to enable individuals to make choices and have control over the services that they access.
- Personalising the support that children and families receive by working in partnership with services across education, health and social care to respond to individual needs.
- Funding mechanisms through the use of personal budgets and direct payments.

3. Personal Budgets

A **personal budget** is the money that St.Helens Council and/or St.Helens CCG allocates to meet the 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.

There are different types of personal budgets, these include:

- A **personal social care budget**: This refers to the budget that will be made available if it is clear that a young person or child is assessed as needing additional and individual support at home or in the local and wider community.
- A **personal health budget**: This refers to the budget that will be made available should a young person or child have complex, long-term and/or a life-limiting condition/s. A personal health budget may also be made available to help with equipment costs or other health services. Children, who are supported through 'Continuing Care' funding, will have the right to have a personal health budget from October 2014.
- A **personal education budget**: This is a sum of money made available by a local authority because it is clear that without this additional (top-up) funding it will not be possible to meet the child's learning support needs. The school/college involved will already have funding for learning support across the school; only pupils or students with more complex learning support needs are likely to need a personal SEN budget.

In all cases the availability of a personal budget will be based on the services a child or young person needs in order for them to achieve a set of agreed outcomes and to have their identified support needs met.

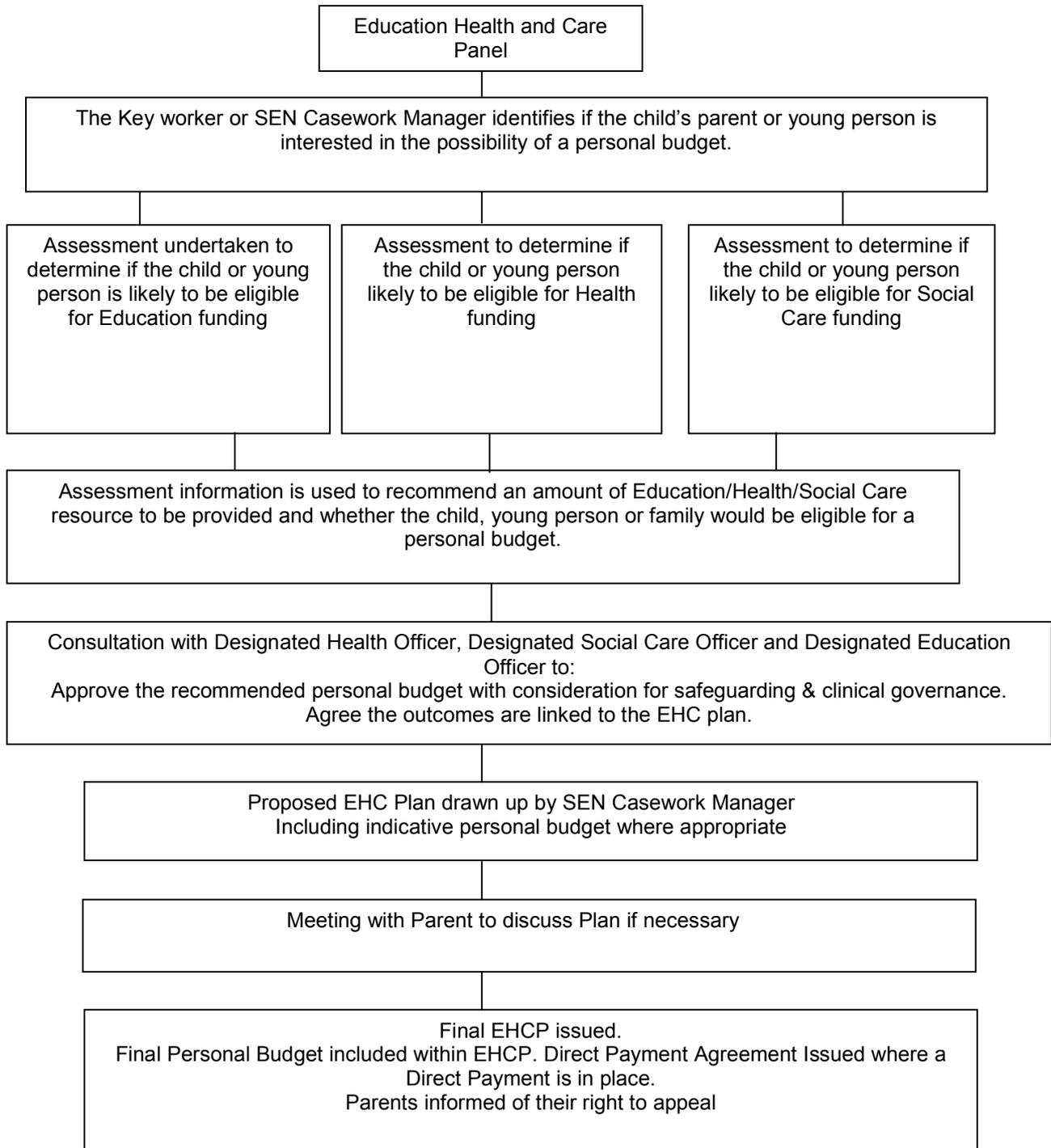
Personal budgets have been in place in St.Helens for some time for a number of children and young people who have social care and/or complex health needs. The Children and Families Act 2014 broadens the scope of personal budgets for children with special educational needs. This means that the child's parent or the young person has a right to request a personal budget when the Authority has completed an Education, Health and Care (EHC) assessment and confirmed that it will prepare an Education Health and Care (EHC) plan, or when an existing EHC plan is being reviewed or reassessed.

Requesting a Personal Budget for a child or young person with Special Educational Needs

An Education, Health and Care Plan (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. Young people and parents of children can request a personal budget once the Authority has confirmed that it will prepare an EHC Plan. Parents and young people may also request a personal budget if they already have an EHC Plan and during a statutory review of an existing EHC Plan. The EHC Plan will clearly state which outcomes can be best met by a Personal Budget. This process will not affect the personal budgets in place for children and young people who are already in receipt of one.

Depending on the needs of the individual and local eligibility criteria, the scope of the budget will vary. A personal budget may consist of elements of funding from education, health and social care. Where a child or young person is eligible for support from the services described above they might like to explore opportunities for receiving a personal budget. The EHC Plan will clearly describe how the resources within the personal budget will be used to meet the agreed outcomes within the plan.

Pathway for Personal Budgets for Children and Young People with SEN



Transition into Adult Services

Transition is a widely used term that can be applied to all young people as they move into adulthood. It covers that stage in their lives when most young people develop to become more independent. This will typically include leaving school, perhaps going on into further education, or going into employment or training, and maybe leaving home.

For some young people in contact with education, health and social care services having access to timely and comprehensive information and support prior to 18 may be enough to help them reach their goals. For other young people more support may be needed during and beyond the transition period from a range of services to enable them to reach their potential. Inevitably there are differences between the services offered for children and for adults across education, health and social care.

The period of transition in St. Helens applies to young people aged 14 -25 years who have special educational needs (SEN) and those who are also identified as being disabled or with complex health needs. This will include young people with:

- Severe learning disabilities
- Complex physical, sensory and/or social communication impairments
- Complex health needs
- Severe and enduring mental health problems

The transitions process for young people normally begins at year 9 (age 14), however, information about young people in Children's Services will be shared from year 7 (age 12) to enhance future planning and projection of commissioning needs. At year 9, if it is identified that the young person is likely to need support from Adult Social Care and Health (ASCH) in the future, then a transitions worker will undertake a combined assessment. The young person and their parent or carer will be advised of the transition process at this point, and given a key point of contact from within the appropriate service. The Connexions Service also works closely with schools and provides advice and guidance during this period.

ASCH will take lead case management responsibility for those children transitioning into adult social care services on their 16th birthday. However, all statutory responsibility for the young person will remain with Children's Social Care until that young person reaches 18 years.

A Funding Panel will be established to provide clear governance in relation to the rationale for the transfer of funding from Children and Young People's Services (CYPS) to Adult Social Care and Health (ASCH). Where appropriate, the funding panel may agree that funding will be transferred from CYPS to ASCH, on the young person's 16th birthday, when ASCH take lead responsibility. Young people and their families may be able to commission services directly with the use of a

Direct Payment, where appropriate to do so in accordance with the Adult Social Care Direct Payment Policy.

Where the young person receives Continuing Health Care (CHC) funding, CHC must be informed of the need for future funding at age 14, and a formal referral for screening will be made at age 16.

At age 17, eligibility for adult NHS Continuing Healthcare should be determined in principle, by the CCG, so that effective packages of care can be commissioned in time, for the individual's 18th birthday (As outlined in the National Framework for Continuing Healthcare and NHS funded Nursing Care 2012).

Mechanisms for delivery of a Personal Budget

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

- Direct payments - where individuals receive the budget directly to contract, purchase and manage services themselves.
- An organised arrangement where St Helens Council or St Helens CCG makes the arrangements for the support.
- 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.

Direct payments

Direct payments are payments made directly to the child's parent, the young person or their nominee, allowing them to arrange provision themselves. Resources for Direct Payments will be set at a level that will secure the provision specified in the EHC plan. Direct payments cannot be made for the purpose of funding a school place or post-16 institution.

Direct Payment Exclusions

Direct payments are not be appropriate for all aspects of education, health or social care, for example 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 following table identifies those areas which are currently exempt from consideration for Direct Payments.

Education	Health	Care
School Placements or Post -16 institutions Specialist support services including: Education Psychology; Service for Visually Impaired; Service for Hearing Impaired; and Language and Social Communication Service. Top-up funding (Element 3) to primary, secondary, special schools, PRUs and Post 16 institutions.* Home to school transport**	Primary medical services provided by GPs Vaccination or immunisation, including population-wide immunisation programmes Screening National child measurement programme NHS Health Checks Urgent or emergency treatment services, such as unplanned in-patient admissions to hospital or accident and emergency Surgical procedures Specialist nursing care Domiciliary care Specialist Paediatrics Some Specialist Medical Equipment Prescription or dental charges	All social worker support, including contact support workers etc. All residential care placement costs, including leaving care. All foster care allowances, SGOs , Residence Orders, and independent foster care agency costs. Commissioned services for which contracts are already in place (over time this funding may be released for personal budgets): <ul style="list-style-type: none"> •homecare; •outreach support; •challenging behaviour; •holiday and weekend play schemes. Abbeyford.
Alcohol or tobacco, Gambling, to repay debt, anything illegal or unlawful, to employ close relatives who live in the same household (except for exceptional circumstances).		

*Top-up funding (Element 3) to primary, secondary, special schools, PRUs and Post 16 institutions is excluded unless agreement has been obtained from the Head Teacher/ Principal that the top-up funding can be part of the personal budget. Agreement is needed because the funding relates to provision that will take place in the setting.

**Home to school transport is excluded unless it can be demonstrated that this can be provided more cost effectively through a personal budget.

Council or CCG managed Personal Budget

A personal budget can be managed and organised by the Council or CCG on behalf of the child or young person. This gives the child, young person and parents the opportunity to choose an individual package of support without the responsibility of managing a direct payment.

Third party arrangements/nominees

Sometimes an agreement can be made for a service provider or voluntary sector organisation to manage a personal budget on behalf of a child or young person, as long as the budget spend it in a flexible way to meet the needs of the child. The child's parent or young person remains in control of how the money is spent. This type of arrangement is often called an individual service fund (ISF)

4. Information, Advice and Support

The SEN Casework Manager, Key Worker or Social Worker will normally have a discussion with the family to discuss if they are interested in a personal budget. A family friendly 'Personalisation and Personal Budget Leaflet' which gives detailed information about requesting and accessing a personal budget will be produced and information about personal budgets will be included within the Local Offer.

St Helens Independent Advice Service (St Helens Parent Partnership)

St Helens Independent Advice Service (SHIAS) is a service established to provide impartial information, advice and support to parents in relation to special educational needs and disability. The support offered is free and remains confidential. The staff providing information, advice and support services will work in partnership with children, young people, parents, local authorities, CCGs and other partners

- The provision of information,

SHIAS will also provide Independent Supporters who will be formally trained and will be available to meet parents and young people. This support will be for parents who may drop in to the centre, to meet parents/carers and young people by appointment, offer advice and guidance by phone, attend school and other meetings, and manage case files. IS's will provide basic advice and information about other matters related to disability/SEN and signpost to relevant services such as, housing, benefits, adaptations, health care, short breaks and social care.

5. Safeguarding and Managing Risk

For young people under the age of 18, the St Helens Local Safeguarding Children's Board Multi Agency Policy and Procedures will apply. For young people over the age of 18, the St Helens Multi Agency Safeguarding Adults Policy and Procedures will apply. There is a delicate balance between empowerment and safeguarding, and providing choice whilst managing risk. During the planning process, St Helens Council and/or St Helens 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.

Where a Personal Budget includes a Direct Payment a Direct Payment Agreement will be issued setting out terms and conditions associated with the payment. The Direct Payment Agreement 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.

6. Monitoring and Reviewing Personal Budgets

Personal Budgets will be considered as part of the annual EHC plan review to determine whether the resources identified are appropriate and whether 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 St Helens Council and/or St Helens 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.

Purpose of a Review

The review will be a mechanism to consider whether:

- the agreed provision should continue to be secured by means of a personal budget
- where a Direct Payment is in place that the Direct Payment Agreement adequately addresses the needs of the person and the agreed outcomes are being met
- the personal budget has been used effectively and appropriately
- the amount continues to be sufficient to secure the agreed provision

The review is also an opportunity to check the condition and circumstances of the person and to consider whether their needs or risks have changed, and if so, whether the personal budget is still appropriate. If the person lacks capacity or is vulnerable, St Helens Council and/or St Helens CCG will consider safeguarding and also whether their liberty is being promoted by the personal budget or Direct Payment Agreement.

Outcomes of a Review

Following a review, St Helens Council and/ or St Helens CCG may:

- amend the personal budget or Direct Payment Agreement;
- decide to pay the direct payment to the person receiving support, rather than the representative or nominee;
- decide to pay any direct payment to a representative or nominee rather than the person;
- increase, maintain or reduce the size of the personal budget or direct payment;
- require that a direct payment is not used to purchase a service from a particular individual;
- require that the person, representative or nominee provide additional information; and

- take any other action considered appropriate. This will usually be to ensure the safe and effective running of the personal budget or Direct Payment Agreement, or to protect public money if there is a significant risk of abuse.

7. Complaints and Appeals

St.Helens Council will consider each request for a personal budget on its own 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, St.Helens Council 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.

If St.Helens 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 St.Helens 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.

It is expected that in many cases, an immediate response by a front-line member of staff or practitioner, will resolve the issue/s as they arise. If the complainant is not satisfied with the response, they may seek to take the complaint to the next stage by following the Children's Services Complaints procedure. Advice and guidance on making a complaint can be obtained by contacting the Children and Young Peoples Complaints Officer directly by telephone (01744 671861), by email to childrencomplaints@sthelens.gov.uk or write to:

Complaints Officer
St.Helens Council
Atlas House
Corporation Street
St. Helens
WA9 1LD

If the complaint is still not resolved by the end of the Complaints Procedure then the complainant may take their complaint to The Local Government Ombudsman Advice Team by telephoning: 0300 0610614 or 0845 602 1983. The complainant has the right to approach the Ombudsman at any time, but the Ombudsman will usually expect the complainant to have used the Council's procedure before they will investigate.

ANNEX A – Procedures for Direct Payments

Decision to make a Direct Payment

St Helens Council and St Helens CCG will only make a direct payment when they are satisfied that: -

- The person receiving the direct payment will use them to secure the agreed provision in an appropriate way and where the recipient is a representative or nominee, act in the best interests of the child or young person
- The direct payments will not have an adverse impact on other services which St Helens Council or St Helens CCG provides or arranges for children and young people with an EHC Plan
- Securing the proposed agreed provision by direct payments is an efficient use of St Helens Council's or St Helens CCG's resources

Consent and Capacity to Consent

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 the 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 Direct Payment Agreement.

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, St Helens Council and/or St Helens CCG will assess the person's capacity to consent.

Fluctuating Capacity

Where a person who has consented to the making of direct payments to them subsequently loses their capacity to consent, St Helens Council and/or St Helens 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 to lack capacity on an ongoing basis. St Helens Council and St Helens CCG will prioritise continuity of care, ensuring that any disruption is as minimal as possible.

Ability to Manage Direct Payments

When deciding whether or not someone has the ability to manage direct payments (including a representative or nominee), St Helens Council and/or St Helens 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 or identify a safeguarding risk and if they understand what to do and how to report it if necessary

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

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.

Nominees for People with Capacity

The role of nominee for direct payments for healthcare is different from the role of nominee for direct payments for social care. For social care direct payments, a nominee does not have to take on all the responsibilities of someone receiving direct payments, but can simply carry out certain functions such as receiving or managing direct payments on behalf of the person receiving them. In direct payments for healthcare, however, the nominee is responsible for fulfilling all the responsibilities of someone receiving direct payments.

If the proposed nominee is not a close family member of the person, living in the same household as the person, or a friend involved in the person's care, then the nominee will be required to apply for an enhanced Disclosure and Barring Service (DBS) certificate (formerly a CRB check) with a check of the adults' barred list. If a proposed nominee in respect of a person aged 18 or over is barred, consent will not be given. This is because the Safeguarding Vulnerable Groups Act 2006 prohibits a barred person from engaging in the activities of managing the person's cash or paying the person's bills.

If the proposed nominee is a close family member of the person, living in the same household as the person or a friend involved in the person's care, there is no legal power to request these checks.

An organisation (including one such as a Trust established for the purpose) may agree to act as nominee. Where this is the case, that organisation must identify the individual who will, on their behalf, have overall responsibility for the day-to-day management of the direct payments.

Representatives for People without Capacity

A representative is someone who agrees to act on behalf of someone who is otherwise eligible to receive direct payments but cannot do so because they do not have the capacity to consent to receiving one, or because they are a child. Representatives are responsible for consenting to a direct payment and fulfilling all the responsibilities of someone receiving direct payments (also known as a 'suitable person').

A representative may identify a nominee to receive and manage direct payments on their behalf, subject to the nominee's agreement and the approval of St Helens Council and/or St Helens CCG.

An appointed representative could be anyone deemed suitable by the St Helens Council and/or St Helens CCG, taking into account previously expressed wishes of the patient, and as far as possible their current wishes and feelings. Where possible, St Helens Council and/or St Helens CCG will consider appointing someone with a close relationship to the person, for example a close family member or a friend.

A representative can be:

- a deputy appointed by the Court of Protection to make decisions relevant to healthcare and direct payments ("the relevant decisions");
- a donee of a lasting power of attorney with the power to make the relevant decisions;
- a person vested with an enduring power of attorney with the power to make the relevant decisions;
- the person with parental responsibility, if the patient is a child;

- the person with parental responsibility, if the patient is over 16 and lacks capacity; or
- someone appointed by St Helens Council and/or St Helens CCG to receive and manage direct payments on behalf of a person, other than a child, who lacks capacity.

Transition: When a Child becomes an Adult

Where a child in respect of whom direct payments are being made reaches 16yrs of age, the local authority must take reasonable steps to ascertain whether the young person consents to receive direct payments.

Receiving a Direct Payment

Once it has been agreed that a person can have a direct payment, St Helens Council will issue an Agreement specifying the following:-

- the name of the child or young person in respect of whom direct payments are to be made
- the proposed amount of direct payments
- any conditions on how direct payments may be spent
- the dates for payments into the bank account approved by St Helens Council

By signing the Agreement, the person is agreeing to:

- receive the direct payments
- use the direct payments only to secure the agreed provision
- comply with any condition specified
- notify St Helens Council of any changes in circumstances which might affect the need for the agreed provision
- use the bank account approved by St Helens 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
- provide St Helens Council with information or evidence relating to the account and the agreed provision when requested

Where the recipient is a nominee –

- the child's parent or 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 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

Amount of Direct Payments

St Helens Council and St Helens CCG will ensure that the amount of direct payments is sufficient to secure the agreed provision. The amount may increase,

or reduce, if St Helens Council and St Helens CCG are satisfied that the new amount is sufficient to secure the agreed provision. This will be agreed via the appropriate Panel.

Stopping or Reducing a Direct Payment

The size of the direct payment maybe increased or decreased at any time, if St Helens Council and/or St Helens CCG are satisfied that the new amount is sufficient to cover the full cost of the Direct Payment Agreement. Before making a decision to stop or reduce a direct payment, wherever possible and appropriate, St Helens Council and/or St Helens 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, St Helens Council will ensure that the person receiving the direct payment is given four weeks notice, and an explanation regarding the reasons for the decision, in writing.

Direct payments may be reduced if, after review:

- St Helens Council and/or St Helens CCG are satisfied that a reduced amount is sufficient to cover the full cost of the current Direct Payment Agreement;
- 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. As part of the review process,
- St Helens Council and/or St Helens CCG will establish why the surplus has built up. Under these circumstances, a reduction in direct payment in any given period cannot be more than the amount that would have been paid to them in the same period;
- direct payments have been reduced, the person receiving services, a representative or nominee may request St Helens Council and/or St Helens CCG to reconsider the decision, and may provide evidence or relevant information to be considered as part of that deliberation. Where this happens, St Helens Council and/or St Helens CCG will inform the person receiving services and any representative or nominee in writing of the decision after reconsideration, and state the reasons for the decision. St Helens Council and/ or St Helens CCG are not required to undertake more than one reconsideration of any such decision.

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 St Helens Council and /or St Helens CCG are satisfied:

- the person no longer needs services;
- direct payments are no longer a suitable way of providing the person with the services required;
- 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 services 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 Direct Payment 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 services is no longer able or willing to manage the direct payment, St Helens Council and/or St Helens CCG will manage the direct payment on behalf of the young person as a separate matter.

Repayment of a Direct Payment

In some circumstances, St Helens Council and /or St Helens 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 St Helens Council and /or St Helens 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 services 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 services; 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 St Helens Council and/or St Helens 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 St Helens Council and/or St Helens 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. St Helens Council and/or St Helens CCG must reconsider their decision in light of any new evidence, and then notify and explain the outcome of their deliberation in writing. St Helens Council and/or St Helens CCG can only be required to reconsider their decision once.

Using a Direct Payment to Employ Staff

People may wish to use their direct payment to employ staff to provide them with care and support. A range of support is available for persons seeking to employ staff.

A direct payment can only be used to pay an individual living in the same household, a close family member or a friend if St Helens Council and/or St Helens CCG is satisfied that to secure a service from that person is necessary in order to satisfactorily meet the person receiving services's need for that service; or to promote the welfare of a child for whom direct payments are being made. These judgements on a case by case basis. The restriction applies 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.

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 Direct Payment 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 to prospective legislation which will implement the Finlay Scott Recommendations (June 2010) on indemnity cover and Article 4(2) (d) of Directive 2011/24/EC53. 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. St Helens 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 Direct Payment 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 St Helens Council to undertake these checks on their behalf.

Registration and Regulated Activities

If someone wishes to buy a service which is a regulated activity under the Health and Social Care Act 2008, 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 Direct Payment Agreement specifies that a task or tasks require a registered professional to undertake it, only a professional who is thus 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 St Helens Council to undertake these checks on their behalf.

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 Frequently asked Questions

Q1: I have decided that I want to request a Personal Budget and a Direct Payment. Must the local authority agree to this?

A: The Local Authority can only agree to this if they are sure that:

- You plan to use the Direct Payment in an appropriate way
- You will act in the best interests of the child
- Making the Direct Payment will not adversely impact upon other services provided to other children who have an EHC Plan
- It is an efficient use of the Local Authorities resources.

Where the support or service is to be used in a school the Head Teacher / Principal of the setting must agree. If they do not the Local Authority cannot make the payment.

If the Local Authority refuses a Direct Payment they must explain their decision in writing and also explain to you how you can challenge this decision.

If the refusal concerns the personal health part of the plan, then the explanation concerning the refusal must be sent out by the Clinical Commissioning Group who are the health organisation responsible for the decision.

Q2: I have decided that I want to request a Personal Budget and a Direct Payment - but my Child's Statement was completed recently and may not be updated to an Education Health and Care Plan for two years. Must the local authority agree to my request now?

A: Your request will usually be considered when your child receives an Education Health and Care Plan. However, it may be possible to consider some parts of your request, or to bring forward the date for the Education Health and Care Plan. Talk to the professionals working with you and they will try to help find to find a way forward.

Q3: How much money will I get?

A: This will depend on the plan, and will vary from young person to young person. The Local Authority must make sure that the amount they pay you is enough to meet the need identified and to purchase the support and services agreed in the plan.

The budget is "personal" to the young person and based on an assessment of their needs, so each young person will have different plan and a different budget.

Q4: We both work - does this mean we will not be able to have a Personal Budget?

A: No. Personal Budgets are not means tested.

Q5: I do not really understand the difference between a Personal Budget and a Direct Payment. Can you explain?

A: A Personal Budget is the agreed amount you can use to meet the needs of your child. The budget can be used to purchase a range of services including council services. You do not have to handle the money, the budget can be held for you and you can control how it is spent.

Some families do not want to manage the money themselves and are happy for the budget to be held for them.

However some families do want all or some of the money to be given to them so they can purchase services themselves. This is a Direct Payment. The money is paid to you and you open a separate bank account for it to be paid into. Any money not used is returned to the Council.

Q6: Once the budget plan is written can it be changed during the year?

A: As long as there is money left in the budget to make the changes and the changes meet the needs of your child and the outcomes identified in the assessment. Any small changes will be looked at by the worker who completed the plan with you to make sure that the change is in the best interests of your child.

Q7: My child has a statement of Educational Need, does this mean I will have an EHC Plan and a Personal Budget by September 2014?

A: Implementation of the new guidance starts in September 2014; however it is not possible for all children to have a new EHC plan by that date. EHC Plans need to meet the individual needs of the child and take time to put in place. They will be introduced from September 2014 but it may be up to three years before everyone has one in place.

Q8: My child does not have a Statement of Educational Need and is unlikely to have an EHC Plan. Does this mean that I cannot have a Personal Budget?

A: No, you might still be entitled to a budget from social care or from health.

Q9: My child is to have one of the new EHC Plans but I do not want the stress of a Personal Budget, do I have to have one?

A: No, you can continue to have support and services provided in the same way as previously.

Q10: Is a Personal Budget just a way of the Council getting out of providing services and making a parent sort it out for themselves?

A: No, it is put in place so that families who want to organise their own support can do so. You can continue to use traditional support if this is what you want.

Q11: When can I request a Personal Budget?

A: You can talk to those working with you about this at any time, but usually a budget is put in place when the EHC Plan is being drawn up or at the review.

Q12: My child needs speech and language therapy and physiotherapy. He also has support from Mental Health Services. I have never been happy with the service provided; can I have a budget and employ my own support?

A: Nothing is impossible and you should talk to the people helping you with your EHC plan. However currently these services are provided through a contract which is in place and it may not be possible to provide these through a budget at this time.