

## Governing Body meeting (held in public)

**DATE: 30 July 2015**

<b>Title</b>	<b>Personal Health Budgets Policy for Children &amp; Young People (0-25 years) who live in Bexley with Education, Health &amp; Care Plans</b>
This paper is for <b>Decision</b>	
<b>Recommended action for the Governing Body</b>	<p>That the Governing Body:</p> <p><b>Approve.</b></p> <ol style="list-style-type: none"> <li>1. The Personal Health Budgets Policy as set out in the attached paper.</li> <li>2. The Assistant Director for Integrated Commissioning to make minor amendments to the policy as required following review by relevant committees of the London Borough of Bexley.</li> </ol>
<b>Potential areas for Conflicts of interest</b>	None.
<b>Executive summary</b>	<p>Each CCG is now required to provide Personal Health Budgets (PHBs) to a range of individuals.</p> <p>In this paper the proposed policy for PHBs for Children &amp; Young People is described and the Governing Body is asked to consider and approve the policy for this offer to Children &amp; Young People in Bexley.</p> <p>A Personal Health Budget enables the individual to have choice and control over who provides help. The help will be as described in the Education, Health &amp; Care (EHC) Plan. This can be social care, education or health provision. Not all children and young people with an EHC Plan will meet the criteria for social care services from Children’s Social Care or Adult Social Care (for over 18s) in Bexley. Because Education, Health &amp; Care Plans are a joint responsibility of health and local authorities, this policy is intended to be jointly agreed with the London Borough of Bexley.</p> <p>The Children and Families Act 2014 replaces Statements of Special Educational Needs and introduces Education Health and Care (EHC) Plans</p>

## Clinical Commissioning Group

	<p>which include the right to request a Personal Budget.</p> <p>It is expected that children with continuing health care needs will have an EHC Plan. Therefore this Personal Health Budget Policy applies to children and young people for whom an EHC Plan is maintained. In the unlikely event that a child with continuing health care needs does not have an EHC plan, this policy will also apply.</p>	
How does this paper support the CCGs objectives	<b>Patients:</b>	Improve the health and wellbeing of people in Bexley in partnership with our key stakeholders.
	<b>People:</b>	Empower our staff to make NHS Bexley CCG the most successful CCG in (south) London.
	<b>Pounds:</b>	Delivering on all of our statutory duties and become an effective, efficient and economical organisation.
	<b>Process:</b>	Commission safe, sustainable and equitable services in line with the operating framework and which improves outcomes and patient experience.
What are the Organisational implications	Key risks	<ul style="list-style-type: none"> <li>• Risk of fraud</li> <li>• Safeguarding risks – including risk of exploitation</li> </ul>
	Equality	Children eligible for EHC Plans are potentially amongst the most vulnerable of our patients. It will be essential to ensure that this complicated process is accessible and comprehensible to all parents and carers.
	Financial	<ul style="list-style-type: none"> <li>• Increased financial infrastructure costs to calculate and administer personal health budgets;</li> <li>• Cost of providing budget management advice and support;</li> <li>• Cost of audit and review of personal budgets;</li> <li>• increased care planning and costs due to requirement to negotiate a budget offer;</li> <li>• commissioning capacity to administer joint PHBs with the local authority.</li> </ul>
	Data	None.
	Legal issues	As with the current Continuing Healthcare process the assessment and calculation of PHBs may be subject to legal challenge from time to time.
	NHS constitution	Personal Health Budgets support Principle 4. The NHS aspires to put patients at the heart of everything it does.
Engagement	None.	
Audit trail	This policy has not been considered by any other committee.	

**Clinical Commissioning Group**

Comms plan	When approved the policy will be accessible via the SEND (Special Educational Needs and Disabilities) Local Offer Website and the BCCG website.	
Author: Alison Rogers Assistant Director for Integrated Commissioning	Clinical lead: Dr Graham Rehling	Executive sponsor: Sarah Valentine Director of Commissioning
Date	20 July 2015	

**Policy Document:  
Personal Budgets for Children & Young People (0-25 years) who live in Bexley  
with Education, Health & Care Plans  
12<sup>th</sup> July 2015**

## **1. Executive Summary & Approval Required**

Each CCG is now required to provide Personal Health Budgets (PHBs) to a range of individuals.

In this paper the proposed policy for PHBs for Children & Young People is described and the Governing Body are asked to consider and approve the policy for this offer to Children & Young People in Bexley.

## **2. Introduction**

A Personal Budget enables the individual to have choice and control over who provides help. The help will be as described in the Education, Health & Care (EHC) Plan. This can be social care, education or health provision. Not all children and young people with an EHC Plan will meet the criteria for social care services from Children's Social Care or Adult Social Care (for over 18's) in Bexley.

The Children and Families Act 2014 replaces Statements of Special Educational Needs and introduces Education Health and Care (EHC) Plans which include the right to request a Personal Budget.

It is expected that children with continuing health care needs will have an EHC Plan. Therefore this Personal Budget Policy applies to children and young people for whom an EHC Plan is maintained. In the unlikely event that a child with continuing health care needs does not have an EHC plan, this policy will also apply.

## **3. Policy Statement**

The London Borough of Bexley and NHS Bexley CCG:

- Are jointly committed to implementing the Children & Families Act 2014 and specifically:
- Publishing a local offer of services for children and young people with special educational needs and/or disabilities
- Working together to assess, agree and review Education, Health and Care Plans
- Developing joint commissioning arrangements to deliver services for children and young people with special educational needs and/or disabilities
- Offering a personal budget option where an EHC Plan has been agreed

- Extending the services where a personal budget can be applicable over the next two years (2015-17)

#### 4. Legal Background

This policy is framed within:

- The statutory duties on the London Borough of Bexley (LBB) and Bexley Clinical Commissioning Group (BCCG) arising from Section 49 of the Children & Families Act (2014)  
<http://www.legislation.gov.uk/ukpga/2014/6/section/49>
- SEN Code of Practice 2014  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/398815/SEND\\_Code\\_of\\_Practice\\_January\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf)
- The Personal Budget Regulations  
<http://www.legislation.gov.uk/ukdsi/2014/9780111114056>

It builds on the arrangements currently in place for the provision of Personal Budgets for children and young people with Special Educational Needs and disabilities. Where there is eligibility, personal budgets may be allocated as a direct payment, a real budget held by a third party or a notional budget. This relates also to adults services under the Care Act 2014 and the NHS Guidance on the 'right to have' a personal health budget in NHS Continuing Healthcare.

Where the Personal Budget is offered as a direct payment, this policy acknowledges the different Direct Payment regulations which apply to:

Children's Social Care	The Community Care, Services for Carers and Children's Services (direct Payments) (England) Regulations 2009
Adults Social Care	The Care Act 2014
Special Educational Provision of Education Health & Care Plans	The Special Educational Needs (Personal Budgets) Regulations 2014

There are common requirements, particularly around procedures regarding proper use of direct payments, monitoring, review and accountability for their use.

Detailed arrangements for Personal Budget will be set out in the Section J of the child's Bexley Education, Health & Care Plan  
[http://www.bexleylocaloffer.uk/Docs/BexleyLocalOffer/Education,-Health-and-Care-Plans-General-In/General/Public/Bexley%20EHCP%20Plan%20Sept%201st%202014%20blank%20%20\(20-02-2015\\_1108\).pdf](http://www.bexleylocaloffer.uk/Docs/BexleyLocalOffer/Education,-Health-and-Care-Plans-General-In/General/Public/Bexley%20EHCP%20Plan%20Sept%201st%202014%20blank%20%20(20-02-2015_1108).pdf)

## 5. The Policy

The SEN Code of Practice states that Local Authorities must:

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

This policy includes information on:

Section A	The provision across, health, education and social care for which a personal budget may be available for children for whom an Education, Health & Care Plan is maintained
Section B	Details of organisations that provide help and advice to parents and young people in relation to personal budgets
Section C	The rules, procedures and conditions that must be met before direct payments can be made

### 5.1 SECTION A

#### **The provision for which a personal budget may be available for children with an Education, Health & Care Plan**

##### **5.1.1 Personal Budgets and Education, Health and Care Plans Introduction**

1. Any parent or young person with an EHC Plan can ask for services to be provided through a Personal Budget during an EHC annual review or at the point at which a draft EHC Plan is issued
2. Personal Budgets can be used to pay for aspects of provision on an EHC Plan. The budget is provided by LBB and/or BCCG to the parent or young person's nominated third party. The Personal budget may be taken as:
  - a. A notional budget – no money changes hands. The Personal Budget Holder is informed of how much money is available and discusses with their key worker (this could be the social worker, EHC Plan Case Officer) how to use the money to meet the agreed outcomes for the child. The key worker then arranges the agreed care.
  - b. Third party managed budget – a different organisation or trust holds the money for the Personal Budget holder, helps to decide how to use the money to meet the outcomes and then buys the services chosen.

- c. Direct payments – the Personal Budget Holder receives the cash to buy the services they and the key worker agree are needed. The Personal Budget holder then has to show what it has been spent on, but they buy and manage the services themselves
  - d. A combination of the above
3. Section C of this policy explains direct payments in more detail.
  4. LBB and BCCG must be satisfied that the Personal Budget holder will use it in an appropriate way and that they will act in the best interests of the child or young person. Section C of this policy explains the additional requirements that apply before a Personal Budget, in the form of a direct payment, can be made.
  5. The personal budget must be set on the provision specified in the EHC Plan and be clearly linked to the required outcomes. They can be both short and longer term arrangements and provide the opportunity for one-off payments.
  6. Where there is a Personal Budget, Section J of the EHC Plan will refer to it. It will provide detailed information on any Personal Budget that will be used to secure the provision set out in the plan. If applicable the arrangements in relation to Direct Payments by education, health and social care will be set out.
  7. Any special educational needs and outcomes that are intended to be met through provision of Direct Payments must be specified. Not all direct payments referred to in an EHC Plan will lead to education outcomes.
  8. There is no right of appeal to the Special Educational Needs and Disability Tribunal, against a decision not to make a provision available through direct payments. Parents/children and young people have the right to use the complaints processes of BCCG and LBB if they are unhappy with the decision not to offer a personal budget.
  9. If the complaint relates to more than one agency the most relevant agency will take the lead in the response.

<http://www.bexley.gov.uk/index.aspx?articleid=13965>  
<http://www.bexleyccg.nhs.uk/Have%20your%20say/Patient-Advice-and-Liaison-Service.htm>

### **5.1.2 Personal Budgets and Children and Adults Continuing Healthcare**

10. Since April 2014, everyone receiving NHS Continuing Healthcare, including children, has had the 'right to ask' for a Personal Health Budget.
11. Personal budgets for health services require the agreement of a care plan between the recipient and the CCG. Where the child or young person has an EHC Plan this care plan forms part of the EHC plan.

### **5.1.3 Personal Budgets and Children's Social Care Services**

12. Some Social Care provisions, accessed via the Disabled Children Social Work Team, are available through Personal Budgets and include services which LBB may provide to children with disabilities, or their families under Section 17 of the Children Act 1989 following an assessment of need. These include Personal Budgets to help care for disabled children at home and provide short breaks.
13. Information on the Disabled Children Social Work service can be found on the LBB Local Offer website.

#### **5.1.4 Personal Budgets and Adult Social Care Services**

14. When a child with an EHC Plan reaches 18, their social care needs become the responsibility of Adult Social Care. In adult social care the estimated Personal Budget is generated following a needs assessment and any subsequent determination of eligibility under the national minimum eligibility criteria.
15. The Care Act 2014 requires that 'everyone whose needs are met by the local authority, whether those needs are eligible, or if the local authority has chosen to meet other needs, must receive a Personal Budget as part of the care and support plan, or support plan'.
16. The Personal Budget relates directly to the level of identified need. In adult services, the services that are typically funded are:
  - a. Help with personal care
  - b. Help to enable access to the community
  - c. Help to reduce risk
  - d. Support to enable independence
17. There will be an on line self assessment available via the LBB website to enable people to understand whether they meet the national eligibility criteria.

#### **5.1.5 Personal Budgets and Special Educational Provision recorded in the EHC Plan**

18. The special educational provision specified in an EHC Plan includes provision funded directly by the school, setting or college, as well as provision that will be funded through LBB's High Needs budget. The High Needs budget is part of the overall funding for education. It includes the funding for:
  - a. Top up costs for pupils with EHC Plans in schools, colleges and early education settings – this enables schools and settings to ensure higher levels of adult support and for specialist support to be put in place.
  - b. Specialist teachers and other specialist staff who work with families, education settings and children and young people.
  - c. Teachers and specialist staff who train and develop skills with parents in supporting the development of their disabled children.
  - d. Specialist high cost equipment needed by individual children and young people for their education, for example chairs and mobility aids.



19. It is this High Needs funding that is the source of any Direct Payment that is agreed to fund a Personal Budget.
20. Special educational provision also includes therapy services much of which is jointly funded by LBB and BCCG. This provision would also be the source of resource for the Personal Budget.
21. The home to school/college transport budget is sometimes used to provide personal transport budgets. This is not special educational provision but may be referred to in the EHC Plan.

### **5.1.6 Person Centred Planning**

Young people and parents must be consulted and actively involved throughout the assessment and production of an EHC Plan. This includes a focus on a young person as an individual, allowing parents and young people's views to be expressed and involving the family in the decision making process. This approach is often referred to as person centred planning<sup>3</sup>. This approach should also be applied to personal budgets.

## **5.2 SECTION B**

### **5.2.1 Details of organisations that provide advice and help to parents and young people in relation to Personal Budgets**

22. LBB is currently commissioning a new independent parent partnership service which will support parents and provide information and advice for parents and children seeking to ask for a Personal Budget. Insert contact details.  
Bexley Voice is a voluntary organisation which supports parents of children with disabilities and helps them to get involved in planning and developing services in Bexley. [bexleyvoice@hotmail.co.uk](mailto:bexleyvoice@hotmail.co.uk), tel 07512 409936, [www.bexleyvoice.org.uk](http://www.bexleyvoice.org.uk).
23. BCCG Patient Experience Team (0208 298 6000) are able to offer advice and signposting to health services in Bexley CCG.
24. The Bexley Local Offer is accessible via the London Borough of Bexley website and will be regularly updated.

<http://www.bexleylocaloffer.uk/>

## **5.3 SECTION C**

### **5.3.1 Request for Personal Budget including Direct Payments**

25. A parent or a young person can ask for a Personal Budget to deliver a provision that is specified on the EHC Plan when:
  - a. They are consulted on the draft plan
  - b. When the EHC Plan is being reviewed or reassessed.

26. When a request for a direct payment is made LBB and BCCG will consider the request.

### **5.3.2 Decision making on whether a Personal Budget or direct payment will be made**

27. In making a decision LBB and BCCG will apply the following criteria:

- The young person or parents will use the direct payments to secure the specified provision in an appropriate way
- The person who receives the direct payment will act in the best interests of the child in securing the provision
- The allocation of direct payments will not have any adverse effect on other services LBB or BCCG provide or commission for children and young people with an EHC Plan
- Securing the proposed provision by direct payments is an efficient use of LBB/BCCG's resources
- That direct payments cannot be used for the purpose of funding a place at a school or post 16 education

28. Decisions about whether or not direct payments will be made to secure provision on the EHC Plan are delegated to officers in BCCG and LBB social care and education services.

29. If a decision is made not to make direct payments, following a request, the reasons will be explained to the young person or parent and they will be advised of their right to ask for a review of the decision. The review will enable the young person and/or parent to set out their views and explain their reasons. In the event that they are still dissatisfied with the outcome the appropriate complaints procedure should be used. There is no right of appeal to an Education Tribunal.

30. The same decision making framework as above will apply.

### **5.3.3 What can be funded through direct payments?**

31. LBB and BCCG will consider the following areas for potential funding via a direct payment:

- a. Equipment
- b. Extra help in school (subject to the agreement of the head teacher)
- c. Respite care
- d. Short breaks
- e. Continuing health care
- f. Home to school transport
- g. Therapy services

### **5.3.4 Are there some things that Direct Payments for EHC Plans cannot fund?**

32. Direct payments cannot be used to pay the costs of a school place, including school fees.
33. If making a direct payment led to an inefficient use of LBB or BCCG's resources it may not be possible to make a direct payment for that aspect of the provision.
34. The NHS direct payment regulations state that direct payments cannot be used to pay for the following:
- a. Alcohol
  - b. Tobacco
  - c. Gambling
  - d. Debt repayment (other than for a service specified in the support plan)
  - e. Core GP services
  - f. Planned surgical interventions
  - g. Prescriptions
  - h. To top-up existing care provision, that has been assessed to meet patient need
  - i. Services provided through vaccination or immunisation programmes
  - j. Any service provided under the NHS health check or National Child Measurement Programme
  - k. NHS dentist or opticians
  - l. Payment of family members, residing in the same household. (This may not be applied in exceptional circumstances, i.e. when there is no other reasonable way of meeting someone's care needs or "to promote the welfare of a patient who is a child").

### **5.3.5 People to whom direct payments are made**

35. Direct payments can be made to the young person, the parent, or a person (third party) nominated in writing by the parent or young person. The person to whom direct payments may be made must be capable of managing them, over compulsory school age and have capacity.
36. The Schedule to the regulations describes as unsuitable people who are subject to drug and alcohol treatment or who are subject to orders through the criminal justice system.

### **5.3.6 The conditions under which direct payments are made**

37. When a decision has been made to provide direct payments LBB/BCCG will write to the recipient and specify the following:

- The name of the child/young person
- The provision on the EHC Plan to be secured and funded through direct payments
- Any conditions about how the direct payments can be spent
- The dates for payment
- When, how and who will monitor the use of the DP

- Who to contact with questions
- When the amount of the direct payment will be reviewed
- Help/support available with purchasing a service or support

38. The recipient must notify the BCCG/LBB, in writing, of their agreement to comply with the following expectations. A written agreement including the following information will be sent to the recipient to sign:

That the recipient agrees to:

- Use the direct payments only to secure the agreed provision
- Use a payment card provided by LBB or BCCG as required
- Comply with any conditions specified about how the direct payments may be spent
- Notify LBB/BCCG about any changes in circumstances which might affect the need for provision
- Or if a payment card is not provided:
  - Use the bank account approved by LBB/BCCG solely for the purpose of direct payments as approved
  - Ensure the bank account is only accessible by the recipient or other person approved by LBB/BCCG
  - Keep a record of the money paid into and out of the approved bank account
  - Provide evidence relating to the account and the provision funded through direct payments as specified in the contract.
  - If appropriate comply with their responsibilities as an employer

39. Where the recipient is a nominee (third party), there must be separate correspondence and agreement with LBB/BCCG (see section 8 (4) (a) (b) of the SEN Personal Budget regulations).

### **5.3.7 Direct Payments for goods or services which are to be provided in a school, college or early education setting**

40. If a parent seeks a direct payment to secure provision to be used or provided in an educational setting, the written consent of the Head Teacher, proprietor or principle must be obtained.

41. Head Teachers are not required to release funds normally sent to the school to enable the school to secure the outcomes for the child. With the agreement of the Head Teacher schools can agree to contribute their own funding to a personal budget.

### **5.3.8 Calculating the amount of direct payments**

42. Where direct payments are agreed they must be sufficient to secure the agreed provision. The amount of direct payments can increase or decrease as long as LBB/BCCG are satisfied that the amount is sufficient to secure the required

provision. Where payments remain unused LBB/BCCG will reduce the amount of direct payments, where it considers that it is reasonable, to offset unused direct payments against the amount outstanding to be paid or future payments to be made.

43. The amount of direct payments will be determined by each partner using an appropriate resource allocation tool.

44. The resource allocation tools used to set budgets will be accessible via the LBB and BCCG websites

### **5.3.9 Monitoring and reviewing direct payments**

45. LBB/BCCG are responsible for monitoring the use of direct payments by the recipient. They must review both the making of direct payments and their use at least once in the first three months and then during a review or re-assessment of the EHC Plan. The review should consider whether:

- The specified provision should continue to be secured through direct payments
- The direct payments have been used effectively
- The amount of direct payments is sufficient to secure the agreed provision
- The decision making criteria in section 27 above continue to be satisfied
- The recipient has complied with section 38 above

46. The recipient can ask for a review of the making and use of direct payments. If this happens LBB/BCCG will consider if it is necessary to do so, and if it is the matters listed in section 43 above will apply.

### **5.3.10 After a review of direct payments**

47. After a review LBB/BCCG can:

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

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

48. When a decision to reduce the amount of a direct payment is made, LBB/BCCG must provide a reasonable notice period and explain its reasons in writing. If asked to do so by the parent or young person it must reconsider its decision, looking at representations made by the parent or young person. The parent or

young person should be informed of the decision with a further explanation of the reasons. There is no requirement to reconsider the decision more than once.

### **5.3.12 Repayment and recovery of direct payments**

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

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

50. Only money not spent on the agreed provision can be reclaimed. When a decision is made that payments must be re-paid, written notice must be given to the recipient setting out the reasons, the amount to be repaid, and the timescale for repayment.

### **5.3.13 Stopping making direct payments**

51. Direct payments will be stopped if:

- The recipient has written to LBB or BCCG to say the payments are no longer required
- The recipient is no longer a person to whom direct payments can be made (see section 35/36)
- The recipient has not been using the direct payments for the required provision
- The agreed provision can no longer be secured through direct payments
- Making of direct payments is having an adverse impact on services provided by LBB or BCCG for other children with an EHC Plan
- Providing a direct payment is no longer compatible with efficient use of resources

52. LBB/BCCG may stop making direct payments if the recipient has not complied with any of the conditions explained in Section 38.

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

54. Any right or liability of the recipient to a third party acquired or incurred, in relation to the provided service being funded by direct payments, transfers to LBB or

BCCG as appropriate when the payments are stopped. The transfer of liability is binding on the third party.

#### **5.3.14 Transition of Children & Young People to Adult services**

55. When a child becomes a young person on reaching statutory school leaving age, LBB/BCCG must take all reasonable steps to see if the young person wants to receive or continue to receive direct payments.

56. At age 18 direct payments will be made to the young person. The young person can request that the direct payments are made to his/her parents or carers or third party, or that he/she no longer wishes direct payments to be made.

57. Guidance on combining EHC Plans and care and support plans after the age of 18 is set out in section 16.64 of the Care and Support Statutory Guidance.

58. Guidance on transition from children's to adult's NHS Continuing Health Care is set out in section 16.79 of the Care and Support Statutory Guidance.

#### **5.3.15 Capacity**

59. The right of a young person to make decisions is subject to his or her capacity to do so. This is explained in the Mental Capacity Act and in paragraph 8.21 of the SEN Code of Practice (July 2014) and Annex 1 to the SEN Code. As many young people as possible should be empowered to make decisions on their own behalf, and where they cannot, decisions taken on their behalf should be in their best interests. The type of decision is important. A young person may not have capacity in relation to some decisions, but may in relation to others.

#### **5.3.16 Brokerage and legal advice**

60. LBB/BCCG will ensure that practical support is available to Personal Budget holders, who require it, to enable them to comply with their legal obligations as employers. The brokerage service will help with safe recruitment (carry out DBS checks etc), provide advice on employers liability for tax and national insurance, the requirement to offer a workplace pension etc. All personal budget holders will be strongly advised to seek their own legal advice.

**Alison Rogers**  
**Assistant Director for Integrated Commissioning**  
**13 July 2015**