

Policy and guidance for Special Educational Needs Personal Budgets (relating to EHC Plans)

CHILDREN & FAMILIES


Eastern Cheshire
Clinical Commissioning Group


South Cheshire
Clinical Commissioning Group


Cheshire East
Council

POLICY INFORMATION SHEET	
Service Area	Children and Families
Date effective from	TBC
Responsible Officer	Ian Donegani, Head of Service: Special Educational Needs and Disabilities (SEND)
Date of Reviews	
Status <ul style="list-style-type: none"> • Mandatory (all staff name must adhere to guidance) • Optional (Procedures and practice can vary between teams) 	MANDATORY
Target Audience	All staff working with children or young people (and their parent carer(s)) either with a current Education, Health and Care (EHC) Plan, or undergoing an EHC needs assessment.
Date of CSMT/SLT Decision	
Related Document (s)	See list in Annex D
Superseded Documents	n/a
Equality Impact Assessment	

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1. Introduction

1.1 Purpose of this policy

- 1.1.1 The purpose of this document is to outline the policy of Cheshire East Council, together with NHS Eastern Cheshire Clinical Commissioning Group (CCG) and NHS South Cheshire CCG, in relation to Personal Budgets as described in:
- *The Children and Families Act 2014 (section 49)*
 - *The Special Educational Needs (Personal Budgets) Regulations 2014*
 - *Special educational needs and disability code of practice: 0 to 25 years - January 2015 (9.95 – 9.124).*
- 1.1.2 This policy applies to any child or young person with special educational needs and/or a disability (SEND) who has an Education, Health and Care Plan (EHC plan) or is undergoing an Education, Health and Care needs assessment, and their parent/carer(s), where a Personal Budget has been requested.

1.2 Background

- 1.2.1 Part 3 of *The Children and Families Act 2014*, along with associated legislation and guidance, introduced a number of changes to the support framework for children and young people with Special Educational Needs and/or a disability (SEND). The majority of Part 3 of the *Children and Families Act 2014*, its associated regulations and the new *SEND Code of Practice* came into force on 1st September 2014, subject to specified transitional arrangements.
- 1.2.2 Key changes introduced by *The Children and Families Act 2014* include:
- A new requirement for education, health and care services to commission services jointly for SEN and disability
 - The introduction of a more streamlined assessment process, co-ordinated across education, health and care and involving families throughout
 - New 0-25 Education, Health and Care (EHC) Plans for those with more complex needs, replacing Statements of SEN and Learning Difficulty Assessments (also known as an LDA/section 139a)
 - The option of a Personal Budget for families and young people with an EHC plan
 - The requirement for local authorities to publish a clear, transparent 'local offer' of services
 - New guidance for education and training settings on taking a graduated approach to identifying and supporting students with SEN, and the introduction of a single category of SEN Support to replace Early Years/School Action and Early Years/School Action Plus.
 - New statutory protections for young people aged 16-25 in Further Education
 - New guidance on supporting children and young people with SEN who are in youth custody, which came into force on 1st April 2015.

1.3 Definition of a young person

- 1.3.1 *The SEND Code of Practice (January 2015)* defines a 'young person' as a person over compulsory school age and under 25. Compulsory school age ends on the last Friday of June in the academic year in which they become 16. The *SEND Code of*

Practice confers new responsibilities on young people, including the ability to manage their own Personal Budget.

2. Personal Budget Definitions and Processes

2.1 Personalisation

- 2.1.1 Personalisation is one of the key elements of the special educational needs and disability (SEND) reforms that came into force on 1st September 2014. Personalisation means recognising a child or young person with SEND as an individual with their own preferences, needs, strengths and aspirations, and putting them at the centre of their own care and support.
- 2.1.2 The option of a Personal Budget is not the only means of personalisation for individuals with EHC plans. Personalisation is also achieved through the use of person-centred planning approaches and the active inclusion of children, young people and families in decision-making.
- 2.1.3 During the EHC process, personalised outcomes, which recognise the child or young person's needs and aspirations, will be agreed. Support can be tailored to reflect the child or young person's personalised outcomes.

2.2 What is a Personal Budget?

- 2.2.1 A Personal Budget is an amount of money identified by the local authority and/or the CCGs to deliver provision set out in an Education, Health and Care (EHC) plan where the parent or young person is involved in securing that provision (*SEND Code of Practice, January 2015*).
- 2.2.2 As outlined in the *SEND Code of Practice*, Personal Budgets for EHC Plans will be focused upon, and designed to secure, the specified outcomes and provision agreed in the EHC plan.
- 2.2.3 A Personal Budget is not the sum total of all the resources that are available to support a young person, and the EHC plan (specifically, section J) does not need to list all of the costs associated with supporting a child or young person. Rather, it 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 explain how the money will be used, spent and managed, including arrangements in relation to any direct payments.

2.3 Requesting a Personal Budget

- 2.3.1 Personal Budgets are **optional** for a young person with an EHC plan or the parent of a child with an EHC plan; support can still be given (as required) through an EHC plan without the use of a Personal Budget. A parent or young person has a right to request a Personal Budget when the local authority has completed an EHC needs assessment and confirmed that it will prepare an EHC plan. They may also request a Personal Budget during a statutory review of an existing EHC plan.
- 2.3.2 Once the decision has been made to carry out a statutory EHC needs assessment (within a maximum of 6 weeks from when the request was received), the option of a Personal Budget will be discussed with the young person and/or their family as part

- of the planning process to see if they would be interested in pursuing a Personal Budget, if eligible.
- 2.3.3 Some families may already be accessing a Personal Budget in terms of care and/or health, and these will continue throughout the statutory process and be incorporated, as relevant, in the final EHC Plan if one is issued.
- 2.3.4 Where a decision has been made to carry out an EHC needs assessment, professionals involved with the young person will provide relevant information as part of the assessment process to help determine whether an EHC plan would be helpful and appropriate. All professional reports will outline the provision required, from their perspective.
- 2.3.5 A multi-agency planning meeting occurs with the family as part of the EHC assessment and planning process. Discussions at this meeting will outline the needs of the child/young person, the potential outcomes for inclusion on an EHC Plan, and provision to meet these. Contributions from the young person and their parent(s) will be a vital part of the co-production of the plan. The person centred planning will outline which services may contribute to delivering the outcomes specified in the plan, including the community, child/young person and their family. The multi-agency meeting should include an exploration of the use of a Personal Budget to deliver the proposed provision and a decision as to whether the family/young person wishes to pursue this.
- 2.3.6 Any Personal Budget figure discussed during the assessment and planning process will be an **indicative** figure only and may be subject to change. The final allocation, if a Personal Budget is requested and agreed, will be specified in the final EHC plan and will be dependent upon assessments carried out by education, health and/or care (as applicable and in line with local processes). Please see section 2.5. *Determining Personal Budgets* for additional information.
- 2.3.7 **All provision for inclusion in an EHC plan, including any provision to be delivered via a Personal Budget, must be agreed by the EHC Moderation Panel.** Each case will be considered on its individual merits. The Moderation Panel will decide, in principal, if a proposed Personal Budget is an efficient use of resources (i.e. whether it represents value of money and does not cost more than delivered services) and whether or not it would have an adverse impact on other services which Cheshire East Council, NHS Eastern Cheshire CCG or NHS South Cheshire CCG provides or arranges for children and young people with an EHC plan (i.e. where contracts are already in place for a particular service). Where a Personal Budget is proposed for the provision of care and/or health support, agreement and approval will also be required through the relevant decision making process for that support before the Personal Budget can be finally agreed. The relevant decision making process will be dependent upon the individual's age (i.e. children's or adult's services) and the nature and level of the proposed support. Please see section 2.5. *Determining Personal Budgets* for additional information relating to the different potential components of a Personal Budget associated with an EHC plan.
- 2.3.8 Where it is found that funds cannot be separated for a Personal Budget based on the grounds explained above, the local authority and/or clinical commissioning group(s) 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.

- 2.3.9 If a parent/young person wishes to request and use a Personal Budget to pay for provision to be delivered on the premises of an early years setting, school or post-16 institution (such as the use of support staff in that setting), this discussion should occur as early as possible as part of the person centred planning, since this can only occur with the written consent of the provider of the relevant early years education, or for schools/post-16 education, with the written consent of the head teacher, principal or the person occupying an equivalent position. Any person working in an education setting would have to follow that institution's code of conduct, for instance in speaking to others and dress code.

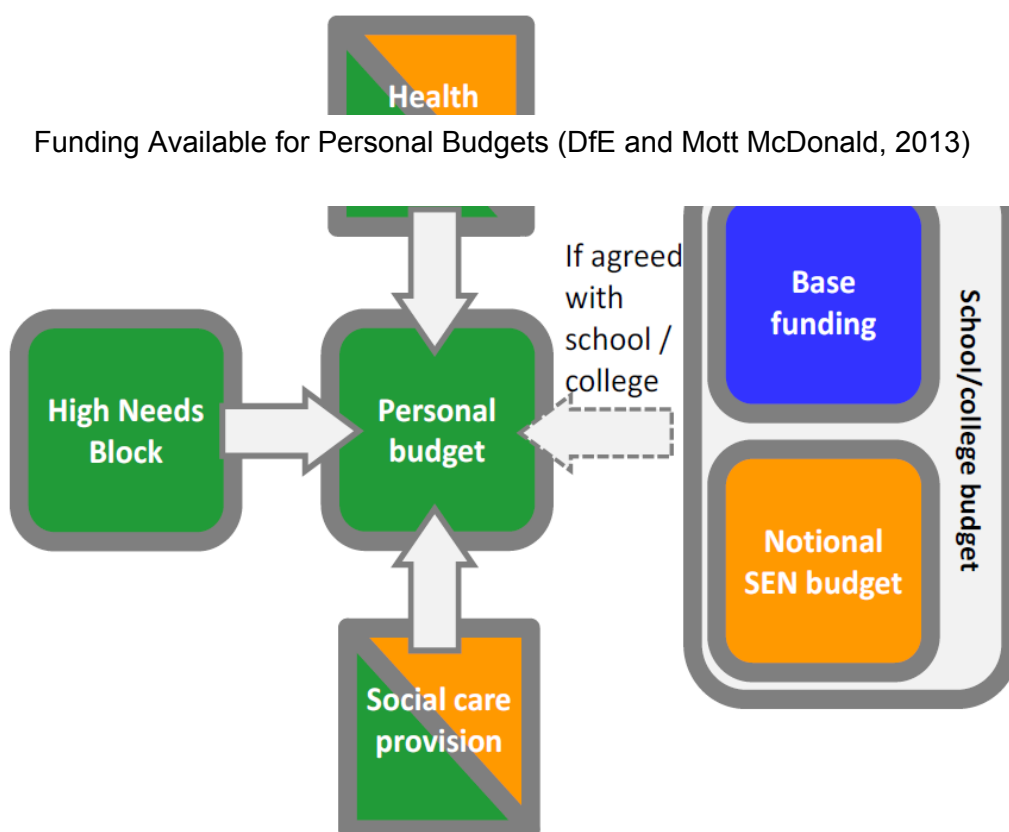
2.4 The Local Offer

- 2.4.1 The Cheshire East Local Offer includes information about the support and provision that families can expect from a wide range of agencies for children and young people with Special Educational Needs and/or disabilities (SEND) from birth to 25 years old.
- 2.4.2 Provision listed within the Local Offer could potentially be used with a Personal Budget, depending upon local commissioning arrangements, considerations around best use of resources, and whether they meet the agreed outcomes specified in the child or young person's EHC Plan. The Cheshire East Local Offer can be accessed online at www.cheshireeast.gov.uk/localoffer. Our Local Offer has been developed as part of an online 0-25 children's directory called information Cheshire East (iCE). This directory is available at <http://ice.cheshireeast.gov.uk/>. If an individual or their family have difficulty accessing the internet, help with navigating the local offer can also be provided over the telephone by the following teams:
- Cheshire East Family Information Service 0300 123 5033
 - Cheshire East Information, Advice and Support 0300 123 5166


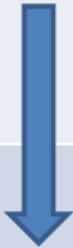

Please note that the above teams cannot advise families regarding the use of Personal Budgets – this will be discussed as part of the EHC assessment and review process, as required.

2.5 Determining Personal Budgets

- 2.5.1 Personal Budgets should reflect the holistic nature of an EHC plan and can include funding for special educational, health and social care provision (depending on eligibility).



- 2.5.2 In addition, Cheshire East Council, NHS Eastern Cheshire CCG and NHS South Cheshire CCG will increasingly seek to make the best use of resources and increase choice and control for service users through joint commissioning. Personalisation and Personal Budgets are highlighted as areas of focus in the Cheshire East Children and Young People's Joint Commissioning Strategy, and our Personal Budget offer will be kept under review. Areas for action include the development of joined up methods for determining Personal Budgets across education, health and care and exploring the possibility of a joined up Resource Allocation System.
- 2.5.3 In the interim period, existing mechanisms to determine funding will be used, as outlined in the below sections. Note that the different potential elements of an EHC Personal Budget (education, health and care) are each subject to individual criteria. The below image demonstrates that as the level of support required for an individual increases, so does the potential availability of funding for a Personal Budget (image from InControl):

	Education	Social care	Health (Continuing Health Care)
Different levels of support/need/ outcomes to be achieved	Description of support needed/grouping	Description of support needed	Description of support needed
			
	Support needed increases/ Provision allocated increases	Support needed increases/ Provision allocated increases	Support needed increases/ Provision allocated increases

Where individuals are eligible for more than one of the funding streams described below, funding from the different elements will be combined and managed as a single Personal Budget wherever possible.

- 2.5.4 As described in previous sections, any Personal Budget figure discussed during the assessment and planning process will be an **indicative** figure only and may be subject to change. The final allocation, if a Personal Budget is requested and agreed, will be specified in the final EHC plan and will be dependent upon assessments carried out by education, health and/or care (as applicable and in line with local processes). The final allocation must be sufficient to secure agreed provision as specified in the EHC plan.

Education

- 2.5.5 **Mainstream providers:** Schools and other education providers in Cheshire East receive per pupil funding (Element 1) and funding to support pupils with special educational needs (Element 2) through their delegated budget. This enables them to provide the SEN Support stage of the graduated response and to fund the first £6,000 of additional costs per pupil/student with SEN. This amount is not available for a Personal Budget (apart from in exceptional cases where the education provider (i.e. Head Teacher or Principal) agrees to its use). There is an additional allocation of funding for children and young people with the most complex needs who have an Education, Health and Care (EHC) Plan (Element 3 funding). Funding for the special educational element of an EHC Plan Personal

Budget would consist of some or all of the Element 3 (top-up) funding from the local authority's High needs block, if it would represent an efficient use of resources.

- 2.5.6 Indicative figures for the education element of an EHC Personal Budget will be calculated by estimating the amount of activity or service required and the relevant unit costs involved. This would only be available for a Personal Budget where such provision could be flexibly delivered, subject to commissioning and contract arrangements, and:
- will not have an adverse impact on other services which Cheshire East Council provides or arranges for children and young people with an EHC plan
 - would represent an efficient use of resources and is not already provided for by the education provider.
- 2.5.7 **Special schools or specialist resource provision:** special schools and specialist resource provision receive Element 3 (top-up) funding for every child or young person on roll and hence top-up funding is used to provide additional specialist facilities which form the institution's targeted offer. Therefore, if the child or young person is attending a special school or provision, a Personal Budget for the education element of the EHC Plan will not routinely be available. In exceptional circumstances, some funding may be available if the child or young person requires additional specialist support above the setting's targeted offer, if the education setting agrees and if this is an efficient use of resources.
- 2.5.8 Cheshire East Council may only provide a Personal Budget in respect of the special educational provision specified in an EHC plan, and not for the purpose of funding a place at a school or post-16 institution.
- 2.5.9 Please note that Cheshire East Council may not make direct payments in respect of any goods or services which are to be used or provided in a school or post-16 institution without the written consent of the head teacher, principal or the person occupying an equivalent position.
- 2.5.10 In addition, Cheshire East Council may not make direct payments in respect of any goods or services which are to be used or provided on premises where relevant early years education is provided without the written consent of the provider of the relevant early years education.
- 2.5.11 **Travel Assistance:** Separate policies and criteria are in place to determine whether an individual with an EHC plan is eligible for support or assistance with transport to/from their education setting. The fact that a child or young person has an EHC Plan does not in itself entitle them to support with transport to and from their education setting. All home to school transport, including specialised transport for individuals with SEND, is currently provided by a company owned and controlled by Cheshire East Borough Council known as Transport Services Solutions (TSS). As a result of these contract arrangements, it is currently highly unlikely that funding will be available for a Personal Budget relating to transport provision. The local authority will look to develop the use of Personal Budgets for transport going forward; for example, we are currently exploring options for assisted travel training, and may trial this in the future via a Personal Budget.

Care (Children)

- 2.5.12 The provision of social care support to disabled children living in Cheshire East is defined within the Children with Disabilities Policy.

- 2.5.13 Accessing support from children's social care starts with an assessment of need, either via:
- a CAF (common assessment framework) completed by a Family Service Worker from the Family and Children's Centres, or
 - a Children and Families (combined) assessment completed by a Social Worker from either the specialist social work team for children with disabilities or one of the Child in Need / Child Protection Teams.

Based upon the outcome of the assessment, direct payments may be offered as an alternative to a service delivered by the local authority in order to support the child or young person. This funding could then form the care component of an EHC Personal Budget for an individual aged under 18 years old.

- 2.5.14 Where an individual with an EHC plan is under 18 years old and is eligible for support from children's social care, the care component of the EHC Personal Budget will be calculated based upon the conducted assessment (CAF or Children and Families Assessment, as outlined above) plus the use of a Resource Allocation System to develop the indicative budget.
- 2.5.15 The indicative budget is not a 'maximum' rigid Personal Budget; rather it is an identified allocation of resource that assists the assessing worker and the family to develop the support package in a more flexible way. The actual cost of the support package may cost less or more than the indicative budget. For further information please see the Children with Disabilities Policy.
- 2.5.16 Direct Payments are currently offered by Children's Social Care to ensure that the needs identified via the completed assessment can be met. Direct Payments are not the only way that a child or young person's identified needs are met; however they are the only offer that could be included within a Personal Budget.
- 2.5.17 Direct Payments can be used to commission resources that are designed to meet a child or young person's unmet need, for example: a daytime or overnight short break (respite), activity based support, transport to access support or a personal assistant. Because of the personalised nature of direct payments it is difficult to list everything that they can be used for, the caveat is that they can only be used to ensure that assessed unmet needs are being met.
- 2.5.18 Early Help Individual Payments (EHIPS) are delivered to parents and carers of disabled children as part of our shorts breaks 'local offer'. As these are offered to provide a parent or carer with a break from their caring responsibility under the *Breaks for Carers of Disabled Children Regulations 2011* they should not be considered within the context of a Personal Budget.

Care (Adults)

- 2.5.19 Where a young person is over 18 and is receiving care and support, the care element of the EHC plan will usually be provided by adult services. For these individuals, any Personal Budget allocation from adult social care could then form the care component of an EHC Personal Budget.
- 2.5.20 Adult social care support is available to individuals aged 18 and over (for EHC plan purposes, up to the age of 25), who meet the following criteria:
- The individual has care and support needs as a result of a physical or mental condition or illness

- As a result of these needs, the individual is unable to achieve two or more outcomes as specified in the *Care and Support (Eligibility Criteria) Regulations 2015*. For instance, being able to wash or use their home safely
 - There is a significant impact on the individual's wellbeing.
- 2.5.21 In order to determine whether an individual is eligible for adult social care support, a Needs Assessment will be carried out under the *Care Act 2014*. If the assessment identifies that there is an unmet social care need requiring care and support (i.e. a need that cannot be met by universal services or the carer), a Care and Support Plan will be developed detailing the support required to meet the individual's needs. Care and support is the help some adults need to live as well as possible with any illness or disability they may have. It can include help with things like: washing; dressing; eating; getting out and about and keeping in touch with friends or family. Individuals will play a central role in planning their support and care, and Personal Budget allocations will be discussed as part of this support planning process.
- 2.5.22 Following the assessment, an indicative allocation will be calculated for the individual, which is the cost of meeting all their eligible unmet support needs. This is currently calculated through a time-based rate for the amount of care required to meet the individual's eligible needs (i.e. based upon unit costs of care required). The final Personal Budget amount is determined during the support planning process, and may differ from the indicative allocation. When finalising the support plan the worker will need to inform the person that the Personal Budget can only be spent on the outcomes that are identified and agreed in the care and support plan. After the support planning process the final agreed budget will include information about the total budget amount, including amounts paid by the Council, and if any, the amounts to be paid by the individual themselves.
- 2.5.23 If the individual wishes for the council to meet their assessed unmet eligible needs, a financial assessment will be undertaken with a financial coordinator in order to determine if the individual has to contribute towards their Personal Budget, and if so, at what level. The amount of Personal Budget will normally be paid net of any client contribution.
- 2.5.24 Local authorities must set out in section H2 of the EHC plan any adult care and support that is reasonably required by the young person's learning difficulties or disabilities. For those over 18, this will be those elements of their statutory care and support plan that are directly related to their learning difficulties or disabilities. EHC plans may also specify other adult care and support in the young person's care and support plan where appropriate. While the care part of the EHC plan must meet the requirements of the *Care Act 2014* and a copy should be kept by adult services, it is the EHC plan that should be the overarching plan that is used with these young people to ensure they receive the support they need to enable them to achieve agreed outcomes. Every effort should be made to align reviews of EHC plans and Care and Support Plans, to ensure that young people with both do not have to attend multiple reviews held by different services, provide duplicate information, or receive support that is not joined up and co-ordinated.

Care (Transition)

- 2.5.25 If an individual has an EHCP and is aged 14 years or over, consideration needs to be given as to whether the young person is likely to have needs for care and support into adulthood. If the young person is likely to require care and support, colleagues

from adult social care should be involved in planning and reviewing support within EHCPs, including Personal Budget allocations, to ensure a smooth transition for the young person. Adult social care colleagues should make families aware of the differences in criteria for support between children's and adults' services, including the use of financial assessments in adults' services.

Health (Children)

- 2.5.26 From October 2014, children in receipt of Continuing Care have had a right to have a Personal Health Budget. Children's Continuing Care applies when a child under the age of 18 has health needs that cannot be met by universal or specialist services alone.
- 2.5.27 To obtain Children's Continuing Care funding, a referral for a Continuing Care Assessment (CCA) must be made to the children's specialist complex care commissioning team (complexcare.admin@nhs.net); any professional working with the child can make this referral. The CCA determines whether a child is eligible for Children's Continuing Care funding or not, in line with the criteria set out in the *National Framework for Children and Young People's Continuing Care (2016)*.
- 2.5.28 If a child meets the criteria for Continuing Care funding and a need is identified, a package of support may be recommended. If Continuing Care funding is taken as a Personal Health Budget, this funding could then form the health component of an EHC Personal Budget if appropriate.
- 2.5.29 Where an individual with an EHC plan is under 18 years old and is eligible for children's Continuing Care, the health component of the EHC Personal Budget will therefore be calculated based upon the CCA, clinical knowledge and the use of an approved Resource Allocation System (RAS).

Health (Adults)

- 2.5.30 From October 2014, adults in receipt of Continuing Healthcare have had a right to have a Personal Health Budget. Adults' Continuing Healthcare is for adults aged 18 or over with complex health needs that cannot be met by universal or specialist services alone.
- 2.5.31 To obtain Adult's Continuing Healthcare funding, a referral for a Continuing Healthcare Assessment must be made to the Continuing Healthcare team (01625 663808); anybody can make this referral, including professionals working with the adult or the adult themselves. Consent from the adult is required before an assessment can be undertaken. The assessment determines whether the adult is eligible for Continuing Healthcare funding or not, in line with the criteria set out in the *National framework for NHS continuing healthcare and NHS funded nursing care*, plus the *Decision Support Tool for NHS continuing healthcare*.
- 2.5.32 If an adult meets the criteria for Continuing Healthcare funding and a need is identified, a package of support may be recommended. If Continuing Healthcare funding is taken as a Personal Health Budget, this funding could then form the health component of an EHC Personal Budget if appropriate.
- 2.5.33 Where an individual with an EHC plan is aged 18 years old or over and is eligible for adult's Continuing Healthcare, the health component of the EHC Personal Budget will therefore be calculated based upon the Continuing Healthcare assessment, clinical knowledge and the use of an approved Resource Allocation System (RAS).

Health (Transition)

2.5.34 To facilitate a smooth transition between children's and adults' services, the adult Continuing Healthcare team are notified once a child in receipt of Continuing Care funding turns 16. If the young person is likely to meet the criteria for Continuing Healthcare funding as an adult, an assessment in principal is undertaken for Continuing Healthcare for the young person at 17 years old. If this assessment determines that the young person will be eligible for Continuing Healthcare, there is transition period up to their 18th birthday, at which point the decision in principal is reviewed. Note that there are different frameworks for Continuing Care and Continuing Healthcare, and young people and their families should be made aware of this.

2.6 Using a Personal Budget

- 2.6.1 During the EHC assessment and planning process, personalised outcomes, which recognise the child or young person's needs and aspirations, will be agreed. The agreed outcomes will be described in section E of the EHC plan. Sections F, G, H1 and H2 of the EHC Plan will describe the provision that has been agreed to meet these outcomes.
- 2.6.2 Regardless of the funding source, **a Personal Budget associated with an EHC Plan is only to be used to secure the agreed outcomes and provision specified in the EHC plan.**
- 2.6.3 Where a Personal Budget is agreed, Section J of the EHC Plan should be used to provide a detailed explanation of how the Personal Budget will be used to deliver agreed provision, the needs and outcomes it will meet, and explain how the money will be used, spent and managed, including arrangements in relation to any direct payments.
- 2.6.4 As outcomes and provision included in an EHC Plan will be personalised to the individual, it would be impossible to draw up an exhaustive list detailing how a Personal Budget could be used. However, a proposed Personal Budget must be an efficient use of resources (i.e. represents value of money and does not cost more than delivered services) and must not have an adverse impact on other services which Cheshire East Council, NHS Eastern Cheshire CCG or NHS South Cheshire CCG provides or arranges for children and young people with an EHC plan. A list of definite exclusions relating to the use of Personal Budgets for EHC Plans and direct payments can be found in Annex A.

3. Managing a Personal Budget

3.1 Methods of managing an agreed Personal Budget

- 3.1.1 There are four ways in which a child's parent and/or a young person can be involved in securing provision through a Personal Budget:
- **Direct payments** – where individuals receive the cash to contract, purchase and manage services themselves. This will be an amount of money managed by the family and which is spent as agreed and set out in the EHC Plan.

- **Notional budgets** - an arrangement whereby the local authority, NHS, school or college holds the funds and commissions the support specified in the EHC plan
- **Third party arrangements** – where funds are paid to and managed by an individual or organisation on behalf of the individual (i.e. a third party) and the third party commissions the support specified in the plan
- **A combination of the above**

4. Managing a Personal Budget via direct payments

4.1 Eligibility for Direct Payments

4.1.1 In line with *The Special Educational Needs (Personal Budgets) Regulations 2014*, Cheshire East Borough Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG may make direct payments, as appropriate, to:

- a) the child's parent;
- b) the young person; or
- c) a person nominated in writing by the child's parent or the young person to receive direct payments on their behalf.

4.1.2 Direct payments may only be made to an intended recipient if the person:

- a) appears to the local authority, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG to be capable of managing direct payments without assistance or with such assistance as may be available to them;
- b) where the recipient is an individual, is over compulsory school age;
- c) does not lack capacity within the meaning of Mental Capacity Act to consent to the making of direct payments to them or to secure the agreed provision with any direct payment; and
- d) is not a person described in Annex B.

4.1.3 Where an individual with an EHC plan is aged 18 years and over, is in receipt of care and support from adult social care and wishes to receive their Personal Budget as a direct payment, Cheshire East Council must be satisfied that the conditions within section 31 of the *Care Act 2014* are met. This also applies to any individuals nominated by the individual to receive the direct payment on their behalf.

4.2 Decision to make a direct payment

4.2.1 Cheshire East Council, NHS Eastern Cheshire CCG and NHS South Cheshire CCG will only make direct payments following a request when they are satisfied that:

- a) the recipient will use them to secure the agreed provision in an appropriate way
- b) where the recipient is the child's parent or a nominee, that they will act in the best interests of the child or the young person when securing the proposed agreed provision
- c) the direct payments will not have an adverse impact on other services which Cheshire East Council, NHS Eastern Cheshire CCG or NHS South Cheshire CCG provides or arranges for children and young people with an EHC plan
- d) securing the proposed agreed provision by direct payments is an efficient use of Cheshire East Council's, NHS Eastern Cheshire CCG's or NHS South Cheshire CCG's resources.

4.2.2 Where the EHC Moderation Panel refuses a request for a direct payment on the grounds above, the local authority (and/or CCG in relation to the health element of a Personal Budget) will set out their reasons in writing and inform the child's parent(s) or the young person of their right to request a formal review of the decision. Formal reviews will be conducted by the following representatives:

- **For education:** Head of Service: Special Educational Needs and Disabilities (SEND)
- **For care:** Children's - Head of Service: Preventative Services; Head of Service: Cared For Children and/or Head of Service: Children in Need and Child Protection. Adults' - Principal Manager Adult Social Care Individual Commissioning.
- **For health:** Children's Continuing Care - Individual Commissioning Manager for Children's Complex Care. Adults' Continuing Healthcare - To be confirmed by health colleagues. Commissioning managers from NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG will be involved as required.

In the event that the request was for direct payments across more than one element of a Personal Budget (i.e. education, health and care), reviews will be conducted jointly and the local authority and CCG(s) can set out their reasons in a single, joint letter.

4.2.3 Direct payments for special educational provision, health care and social care provision are subject to separate regulations. These are:

1. *The Community Care, services for Carers and Children's Services (Direct Payments) Regulations 2009* (the 2009 regulations will be replaced by those made under the *Care Act 2014*)
2. *The National Health Service (Direct Payments) Regulations 2013*
3. *The Special Educational Needs (Personal Budgets) Regulations 2014*

Where a Personal Budget associated with an EHC plan is managed via direct payments, the conditions within each of the regulations above must be met, as appropriate for the elements (education, health and/or care) included within the individual's Personal Budget.

Health

4.2.4 Direct payments for health require the agreement of a Care Plan between the appropriate CCG and the recipient. This requirement can be fulfilled by sections G and J of the EHC plan as long as it includes the following information:

- the health needs to be met and the outcomes to be achieved through the provision in the plan
- the things that the direct payment will be used to purchase, the size of the direct payment, and how often it will be paid
- the name of the care co-ordinator responsible for managing the Care Plan
- who will be responsible for monitoring the health condition of the person receiving care
- the anticipated date of the first review, and how it is to be carried out
- the period of notice that will apply if the CCG decides to reduce the amount of the direct payment
- where necessary, an agreed procedure for discussing and managing any significant risk, and
- where people lack capacity or are more vulnerable, the plan should consider safeguarding, promoting liberty and where appropriate set out any restraint procedures.

4.3 Consent and Capacity

Consent

- 4.3.1 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;
 - the representative of a person aged 16 or over who lacks the relevant capacity to consent;
 - the representative of a child under 16
 - a person nominated in writing by the child's parent or the young person (aged 16 or over) to receive direct payments on their behalf
- 4.3.2 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.
- 4.3.3 People who receive direct payments are responsible for arranging and managing their own or another person's support, in line with the EHC plan. The person, representative or nominee in receipt of direct payments must be able to give informed consent and understand what is involved. This may involve legal responsibilities, for example, employing staff or entering into contracts for services. When employing staff, the direct payment recipient must meet and comply with employment legislation and requirements, including in relation to pensions. Before people consent to receive direct payments, they should be fully advised about their rights and responsibilities in relation to direct payments. Consent must be given voluntarily and no one should feel forced or obliged to accept a direct payment if they do not wish to do so. Where there is any doubt about a person's ability to consent to direct payments, the Local Authority must assess whether or not the person has capacity to consent before making Direct Payments available.
- 4.3.4 Where a person lacks the capacity to consent, direct payments can be given to their authorised representative, provided the representative consents 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.
- 4.3.5 Parents can manage a Personal Budget up to the end of year 11 of school; after this the young person has responsibility, as long as they have the mental capacity as defined by the *Mental Capacity Act 2005*. Where there is any doubt that a young person lacks this capacity, an assessment must be carried out under the *Mental Capacity Act 2005*. Should it be determined that a young person lacks capacity, a best interest decision must be made on their behalf in line with the Act. The outcome of this might include the parent/carer or a third party managing funding on the young person's behalf.
- 4.3.6 The person receiving direct payments (the individual themselves, or their nominee or representative) will be responsible for ensuring that the money is spent in line with the EHC Plan and direct payment agreement. They will need to maintain appropriate records and account to the Council for how direct payment monies are spent.

Capacity to Consent

- 4.3.7 Broadly speaking, 'mental capacity' means the ability to make a decision in question at the time it needs to be made. Under the *Mental Capacity Act 2005*, it must be assumed that a person aged 16 or over has the capacity to make a decision unless they have been assessed as lacking capacity to make that decision. According to this

Act, 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. All practicable steps should be taken to support a person to make a decision where required. Where there is reasonable belief that a person is unable to make a decision about the making of direct payments to them, Cheshire East Council, NHS Eastern Cheshire CCG or NHS South Cheshire CCG will assess the person's capacity to consent, using a two stage test of capacity.

- 4.3.8 The first stage is a diagnostic test to establish whether the person has an impairment of or disturbance in the functioning of the mind or brain. The second stage is a functional test to consider whether the impairment or disturbance prevents the person from being able to make the decision. The person will be considered able to make a decision if they can understand and retain information relevant to the decision, weigh up this information to reach a decision and communicate the decision.

Episodic/Fluctuating Conditions and Capacity

- 4.3.9 People with an episodic or fluctuating condition may still be able to manage their Direct Payment. However, some people with these conditions may prefer to nominate an individual (e.g. a relative, friend or professional advisor) to assist them with managing their Direct Payments when their condition becomes acute.
- 4.3.10 Where a person who has consented to the making of direct payments to them subsequently loses their capacity to consent, Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire 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. Cheshire East Council, NHS Eastern Cheshire CCG and NHS South Cheshire CCG will prioritise continuity of care, ensuring that any disruption is as minimal as possible.

Ability to Manage Direct Payments

- 4.3.11 When deciding whether or not someone has the ability to manage direct payments (including a representative or nominee), Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire 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 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
- 4.3.12 In deciding whether or not someone has the ability to manage direct payments, (including a representative or nominee) and whether they are otherwise suitable Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG may consult with a range of people if they believe those people have information relevant to the decision regarding whether or not to make direct payments. This could include any of the following: -
- Anyone identified by the person as someone to be consulted

- If the person is aged between 16 and 18, the person with personal responsibility unless this would not be consistent with their welfare
- An individual primarily involved in the person's care or provision of service
- Anyone else who provides care or services
- An independent mental capacity advocate or independent mental health advocate who may have been appointed for the person
- Any health professional or other professional individual who provides healthcare for the person e.g. a GP
- Where relevant, anyone named by the person for whom direct payments are to be made when they had capacity as a person to be consulted

4.3.13 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.

4.4 Nominees and Representatives

- 4.4.1 If a person aged 16 or over 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. Where the child's parent, young person or representative wishes to nominate a person to receive direct payments on their behalf, they must notify Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG in writing.
- 4.4.2 Where a nominee has been agreed and appointed, if the child's parent or the young person wish to withdraw or change their nomination, they must do so by notifying Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG in writing. If this request occurs, Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG will stop making the direct payments to the nominee as soon as reasonably practicable, and agree a suitable alternative with the child's parent/young person (or representative, as applicable). The principles of the *Mental Capacity Act* will be applied as and when appropriate in relation to all nominee decisions.

Nominees for People with Capacity

- 4.4.3 The role of nominee for direct payments for health and education 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 and education however, the nominee is responsible for fulfilling all the responsibilities of someone receiving direct payments and must be responsible as a principal for all contractual arrangements entered into for the benefit of the child and young person and secured by means of direct payments (SEN reg 8(4)(b)).
- 4.4.4 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' and children's barred list. If a proposed nominee 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 money or paying the person's bills. An enhanced DBS check is also required for nominees under *The National Health Service (Direct Payments) Regulations 2013*.

- 4.4.5 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.
- 4.4.6 An organisation (including one such as a Trust established for the purpose of receiving direct payments on behalf of a person) may agree to receive direct payments on behalf of an individual. 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. In the case of an Independent User Trust, a trust deed must be drawn up which sets out the purpose of the trust and the roles of the individual trustees. This will relate to use of the direct payments to ensure the person's identified needs are met.
- 4.4.7 In some cases an organisation will provide financial management or support services to the recipient of the direct payment, including a representative or a nominee, but will not have the status of a nominee and the recipient will remain responsible.

Representatives for People without Capacity

- 4.4.8 Inability to consent to receiving a direct payment does not mean a person with eligible needs cannot receive a direct payment provided that a representative (also known as a 'suitable person') is appointed to manage the direct payments on their behalf.
- 4.4.9 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.
- 4.4.10 Representatives are responsible for consenting to a direct payment and fulfilling all the responsibilities of someone receiving direct payments.
- 4.4.11 A representative must give their consent to receive the direct payment and confirm that they understand the responsibilities of this role. 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 Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG.
- 4.4.12 An appointed representative could be anyone deemed suitable by Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG, taking into account previously expressed wishes of the recipient, and as far as possible their current wishes and feelings. Where possible, Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG will consider appointing someone with a close relationship to the person, for example a close family member or a friend. If a representative is not a close family member who resides in the same household as the service user or a friend involved in their care, the representative will require the same DBS checks as for a nominee.
- 4.4.13 A representative can be any of the following:
 - 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 recipient is a child;
- the person with parental responsibility, if the recipient is over 16 and lacks capacity; or
- someone appointed by Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG to receive and manage direct payments on behalf of a person, other than a child, who lacks capacity.

4.4.14 Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG will make the decision about whether or not someone is considered a suitable person to manage the Direct Payment on behalf of the person who cannot consent or is not able to manage their Direct Payment. Someone may be considered suitable if any of the following applies:

- there are no substantiated allegations of financial abuse or neglect.
- there is no reason to believe they pose a risk to the person in receipt of services.
- they are capable of managing the Direct Payment.
- they will work in accordance with the *Children's Acts (1989 and 2004)* and *Mental Capacity Act (2005)*.
- they have parental responsibility and there are no substantiated allegations of financial abuse or neglect.
- there is a suitable Trust in place whereby the representative or suitable person acts as trustee holding property for the benefit of the Direct Payment recipient.
- there is a valid registered lasting (or enduring) power of attorney and there are no substantiated allegations of financial abuse or neglect.
- there is a Court Appointed Deputy and there are no substantiated allegations of financial abuse or neglect.

4.4.15 It would not be considered suitable for someone who is being paid from the Direct Payment account (e.g. as a Personal Assistant or Care Provider) to also act as the representative or Suitable Person.

4.4.16 If a Personal Assistant is being employed, then the representative must be able to comprehend relevant legislation and the responsibilities of being an employer. In these circumstances, the representative is the employer and is responsible for all elements of the Direct Payments and employment law relating to this.

Transition: When a Child becomes an Adult

4.4.17 Where a child in respect of whom direct payments are being made becomes a young person (i.e. over compulsory school age; see section 1.3.), the local authority must take reasonable steps to ascertain whether the young person consents to receive direct payments, if they are eligible.

4.4.18 Where the young person has notified the local authority in writing that he or she wishes to receive direct payments, the local authority will make direct payments to the young person provided the conditions outlined in sections 4.1 and 4.2 of this policy are met. Direct payment arrangements, including the consent of the young person to receive direct payments, will be reviewed annually in line with the principles of the *Mental Capacity Act*, as part of the standard audit and annual review processes.

- 4.4.19 Where the young person consents in writing that the local authority should continue to make direct payments to their parent or nominee, the local authority will continue to do so, where appropriate (in line with sections 4.1 and 4.2 of the policy).
- 4.4.20 Where the young person notifies the local authority in writing that they do not consent to the making of direct payments, the local authority will stop making direct payments as soon as reasonably practicable.

4.5 Receiving a Direct Payment

- 4.5.1 Where direct payments are agreed, detailed arrangements will be set out in section J of the EHC plan.
- 4.5.2 Direct Payments will only be paid into a separate and appropriately named bank account, which will be used solely for the purpose of managing Direct Payments. This is to ensure that the individual does not confuse their personal funds with their Direct Payment funds and will allow efficient record keeping, monitoring and auditing, both for the individual themselves and the Council/CCGs for audit purposes.
- 4.5.3 Direct Payments will be paid into the individual's Direct Payments bank account in line with our billing periods every 4 weeks, in advance. Payments will be made via the BACS system (an electronic transfer of funds between the Council's and the individual's Direct Payments bank account).
- 4.5.4 Once it has been agreed that a person can have a direct payment, Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS Southern Cheshire CCG will issue a Direct Payments Agreement specifying the following:-
- the name of the child or young person in respect of whom direct payments are to be made
 - the goods or services which are to be secured by direct payments (this may refer to section J of the EHC Plan, and the outcomes/provision described within the EHC Plan);
 - 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 Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS Southern Cheshire CCG
- 4.5.5 All recipients (including any representative and/or nominee) must sign the Direct Payment Agreement before a Direct Payment can be made. By signing the Direct Payments Agreement, the person is agreeing to:
- receive the direct payments
 - use the direct payments only to secure the agreed provision
 - comply with any specified conditions regarding how the direct payments may be spent
 - notify Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS Southern Cheshire CCG of any changes in circumstances which might affect the need for the agreed provision
 - use the bank account approved by Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS Southern Cheshire CCG 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 Cheshire East Council with information or evidence relating to the account and the agreed provision when requested
- 4.5.6 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 Direct Payment 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
- 4.5.7 Cheshire East Council, NHS Eastern Cheshire CCG and NHS South Cheshire CCG will ensure that the amount of direct payments is sufficient to secure the agreed provision.
- 4.5.8 One-off payments: Although there will normally be a set amount of money paid on an agreed cycle, in exceptional circumstances there may be a one off payment that could be paid via the direct payment mechanism, where this is documented as appropriate in the child or young person's EHC Plan.
- 4.5.9 Equipment: Where a direct payment is used to buy equipment (in line with the outcomes and provision specified in their EHC Plan), the property becomes the property of the direct payment recipient. The direct payment recipient therefore becomes responsible for paying for and arranging ongoing maintenance, repair and safety of the equipment (this will need to be considered at the point of request). Any purchase of equipment will need to be supported and informed by relevant professional advice, in order to ensure appropriateness and consider any training needs.
- 4.5.10 For young people accessing support from Adult Social Care: If a young person has been assessed as eligible for Adult Social Care support they will be allocated a Personal Budget for their Social Care needs. A financial assessment is completed that determines whether the individual will pay a contribution to the cost of their support. Direct Payments will be paid net of the customer's assessed financial contribution. A Direct Payment will not be paid if the assessed contribution is greater than the Direct Payment amount. Please refer to *Cheshire East Council Adult Services Personal Budgets Policy*, *Cheshire East Council Adults Services Direct Payment Policy* and *Cheshire East Council Adult Services Practice Guidance & Procedures – Personal Budget* for full details relating to direct payments for adult social care support.
- 4.5.11 Contingency payments: a contingency payment of up to 8 weeks worth of the weekly direct payment can be paid by the Council in advance into the Direct Payment account, where this is required to meet the outcomes and deliver the provision specified in the EHC plan.
- 4.5.12 Reserves: The Council will allow the Direct Payment recipient to retain an agreed reserve of 10 weeks Direct Payment monies in their Direct Payment account at any one time. The Direct Payment bank account will be audited regularly and any obvious surplus in excess of the agreed reserve will need to be repaid to the Council.
- 4.5.13 Use of own resources: To purchase enhanced services to those agreed in the EHC plan, the Direct Payment recipient can add to their Direct Payment from their own income or capital. Top up amounts to providers must not be paid for out of Direct payment monies (or from the individual's personal contribution for recipients aged 18 years or over in recipient of care and support from adult social care). Top up

payments should be funded by the customer (or a nominated third party) from disregarded income or capital only.

4.6 Stopping or Reducing a Direct Payment

- 4.6.1 The size of the direct payment may be increased or decreased at any time, if Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG are satisfied that the new amount is sufficient to secure the agreed provision in the EHC Plan. This includes where the agreed provision has been changed following a review of the individual's EHC Plan. Before making a decision to stop or reduce a direct payment, wherever possible and appropriate, Cheshire East Council, NHS Eastern Cheshire CCG and NHS South Cheshire 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.
- 4.6.2 Whenever a direct payment is reduced or stopped, Cheshire East Council will ensure that the person receiving the direct payment is given reasonable notice (usually four weeks), and an explanation regarding the reasons for the decision, in writing. Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG will then work with the individual to plan how their needs will be met in an alternative way, in line with their EHC Plan.
- 4.6.3 Direct payments may be reduced:
- where Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG are satisfied that a reduced amount is sufficient to cover the full cost of the agreed provision, as set out in the EHC Plan.
 - if a surplus payment has accumulated that has remained unused. A surplus may indicate that the individual is not receiving the support they need or too much money has been allocated. As part of the review process, Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG will establish why the surplus has built up.
- 4.6.4 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.
- 4.6.5 Direct payments will be stopped if Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG are satisfied that one (or more) of the following has occurred:
- a person with capacity to consent withdraws their consent to receiving direct payments (including where a child in receipt of support becomes a young person, and notifies the Council or CCG that they do not consent to the making of direct payments).
 - where a child in receipt of support becomes a young person, and following reasonable steps by the Council and/or CCG to ascertain whether the young person consents, the young person has not notified the Council and/or CCG that they consent to the making of direct payments
 - a person who has recovered the capacity to consent does not consent to direct payments continuing
 - a representative withdraws their consent to receive direct payments, and no other representative 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 person no longer requires support;
 - direct payments are no longer a suitable way of providing the person with support and/or the agreed provision can no longer be secured by means of direct payments;
 - the direct payment has been used for purposes other than the outcomes and/or provision agreed in the EHC Plan and Direct payment agreement,
 - the terms of the Direct Payment agreement are breached and/or the recipient fails to comply with all of the requirements of the direct payment agreement
 - fraud, theft or an abuse in connection with the direct payment has taken place
 - the use of direct payments is having an adverse impact on other services provided by the local authority or CCG and/or is having an impact on the provision for other children and young people with an EHCP and no longer represents an efficient use of resources
 - there is reason to believe that the recipient, representative or nominee is no longer suitable to receive direct payments (i.e. if they no longer meet the requirements outlined in Sections 4.1. and 4.2 of this policy or are a person in the categories outlined in Annex B), and no other person has been appointed
 - the recipient has moved away from Cheshire East
 - the person in need of support has died.
- 4.6.6 In addition, direct payments may be stopped if Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG are satisfied that the recipient has failed to comply with any of the conditions described in 4.5.5. of this policy.
- 4.6.7 If a Direct Payment recipient expresses a desire to terminate the Direct Payment, this must be communicated in writing and the reasons for the termination need to be provided to the Council and/or CCG (as appropriate).
- 4.6.8 Where direct payments have been reduced or stopped, the individual, or their representative or nominee, may request Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG to reconsider the decision, and may provide evidence or relevant information to be considered as part of that deliberation. Where this happens, Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG will inform the person in receipt of support, and any representative or nominee, in writing of the decision after reconsideration, and state the reasons for the decision. Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG is not required to undertake more than one reconsideration of any such decision.
- 4.6.9 If, for whatever reason, the individual in receipt of support is no longer able or willing to manage the direct payment, Cheshire East Council, NHS Eastern Cheshire CCG and NHS South Cheshire 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 Cheshire East Council, NHS Eastern Cheshire CCG and NHS South Cheshire CCG.

4.7 Repayment of a Direct Payment

- 4.7.1 In some circumstances, Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire 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 Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG. Direct payments may be reclaimed if:
- the circumstances of the child or young person have changed in a manner which has an impact on the appropriateness of the agreed provision in the EHC plan and/or Direct Payment Agreement (this could include admission to hospital resulting in the individual not using the direct payment to purchase their care/support)
 - all or part of the direct payments have not been used to secure the agreed provision
 - theft, fraud or another offence may have occurred in connection with the direct payments
 - the recipient of the EHC plan (the child or young person) has died, leaving part of the direct payment unspent
 - the Direct Payment recipient fails to meet any terms or conditions in the Direct Payment Agreement
 - a Direct Payment has been overpaid or paid in error
 - the recipient has failed to pay their client contribution (where the direct payment recipient is a young person with an EHC plan aged 18 years and over, they receive direct payments for care and support from adult social care and are required to pay a financial contribution).
 - the Direct Payment recipient has failed to disclose other relevant funding that should be taken into account when calculating the Direct Payment or client financial contribution amounts (particularly where the direct payment recipient is a young person with an EHC plan aged 18 years and over and is in receipt of direct payments for care and support from adult social care).
- 4.7.2 In addition, if a substantial amount of money accumulates in the individual's account (above the agreed amount) due to an underspend for any reason, Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG will consider whether it is appropriate to reclaim that money. In some circumstances, it may be more appropriate to simply reduce subsequent direct payments, factoring in the existing surplus. Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG will assess the reasons for the build up of the surplus as part of the review process.
- 4.7.3 If Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire 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.
- 4.7.4 On receipt of notice from Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire 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. Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG must reconsider their decision in light of any new evidence, and then notify and explain the outcome of their deliberation in writing. Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG is not required to undertake more than one reconsideration of any such decision.

- 4.7.5 Where Cheshire East Council requires all or part of the direct payments to be repaid, that sum may be recovered as a debt due to the local authority.

4.8 Advice and Support

- 4.8.1 Independent information, advice and support on SEND matters, including Personal Budgets associated with EHC plans, can be provided by Cheshire East Information, Advice and Support (CEIAS).
- 4.8.2 Independent Supporters can also give some support during the EHC assessment process, or during the transfer process from an existing statement of SEN to an EHC plan. Independent Supporters are available from CEIAS or EDGE Inclusion Partners.
- **CEIAS**
Email: ceias@cheshireeast.gov.uk
Telephone: 0300 123 5166
 - **EDGE Inclusion Partners**
Email: is@edgeinc.co.uk
Telephone: 07947100727
- 4.8.3 If help is required in managing a Direct Payment this can be sought from the locally available Direct Payments Support and Personal Health Budget Support Services. Cheshire East Council, NHS Eastern Cheshire CCG and NHS South Cheshire CCG currently commission Cheshire Centre for Independent Living (CCIL) to provide advice and practical assistance, including information relating to employment of staff. **Cheshire Centre for Independent Living (CCIL):** <http://www.cheshirecil.org/>
- 4.8.4 The recipient (young person or parent or, for individuals lacking capacity, their representative) may choose a Managed Account offered by Cheshire Centre for Independent Living (CCIL) or any other provider of such services. This would constitute a third party arrangement. In these cases, the agreement would be between the recipient and the third party, and Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG would not be a party to any such agreement. The individual recipient will retain responsibility for responding to audit requests and instructing the managed account provider on day to day transactional activity.

5. Monitoring and Review

5.1 Personal Budgets

- 5.1.1 The Personal Budget will be monitored on an on-going basis and reviewed annually in line with the EHC Plan review. The EHC Plan review will focus on the child or young person's progress towards achieving the outcomes specified in the EHC Plan and whether the arrangements made in the form of a Personal Budget continue to meet those outcomes. Where a Personal Budget is in place for an EHC plan, all

organisations involved in funding the Personal Budget should be involved in the annual EHC Plan review.

5.2 Direct Payments

- 5.2.1 A Direct Payment recipient will be subject to regular audits in relation to the use and management of their Direct Payment. As a minimum, the Direct Payment will be audited formally within 8 weeks of the person receiving a direct payment, and when conducting a review or a re-assessment of an EHC Plan. Audits are used to check how the direct payments are being spent (i.e. to check that they are being used to meet the outcomes and provision detailed in the EHC plan and in line with the direct payment agreement), to ensure that the correct amounts are being used for provision and to ensure that accurate receipts and records are being kept. Any discrepancies will be investigated and resolved. Where the direct payment recipient is a young person with an EHC plan aged 18 years and over and they receive direct payments for care and support from adult social care, an additional brief audit will also be required annually in April, in order to reassess their required financial contribution.
- 5.2.2 If Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire 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 EHC Plan and/or direct payment agreement to ensure that 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 EHC Plan and/or direct payment agreement, a review will be carried out as soon as possible.
- 5.2.3 The Council has the right to suspend or terminate the Direct Payment as a result of the findings of the audit of the Direct Payment account. An audit of the individual's circumstances may take place at anytime.

5.3 Purpose of a Review

- 5.3.1 The review will be a mechanism to consider whether:
- the agreed provision should continue to be secured by means of a direct payment
 - the direct payments have been used effectively and appropriately
 - the provision within the EHC plan and direct payment agreement adequately addresses the needs of the person and the agreed outcomes are being met
 - the amount continues to be sufficient to secure the agreed provision
 - Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG are still satisfied as to the matters set out in section 4.2.1
 - the recipient has complied with the conditions set out in section 4.5.4
 - to review the required financial contribution from the individual recipient (where the direct payment recipient is a young person with an EHC plan aged 18 years and over and they receive direct payments for care and support from adult social care. Reviews for this purpose are usually carried out annually in April).
- 5.3.2 A recipient may make a request for the local authority and/or CCGs to review the making and use of direct payments and the local authority/CCGs must then consider whether to carry out a review. If the LA/CCG decides to carry out a review, it must consider the matters set out above in 5.3.1.

5.4 Outcomes of a Review

5.4.1 Following a review, Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG may:

- amend the EHC plan and/or Direct Payment Agreement (as appropriate)
- decide to pay the direct payment to the person receiving support, rather than the representative or nominee;
- decide to pay the direct payment to a representative or nominee rather than the person;
- increase, maintain or reduce the size of the direct payment;
- stop making the direct payment, where appropriate
- 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 Direct Payment Agreement, or to protect public money if there is a significant risk of abuse.

6. Children and Young People in specific circumstances

6.1 Children and young people with SEN who are in youth custody

6.1.1 Cheshire East Council has a duty to maintain EHC Plans for children and young people in youth custody, and arrange for appropriate special educational provision to be provided for them whilst in custody. However, Personal Budgets associated with EHC Plans will not be available to those children and young people in custody, or their parent carers, during this time.

6.2 Children of Service personnel

6.2.1 Personal Budgets agreed in the UK cannot be transferred to Service Children's Education (SCE) locations overseas.

7. Complaints and Appeals

7.1.1 Should a young person or parent experience an issue during the EHC assessment or review process, including an issue in relation to Personal Budgets, they should in the first instance contact the Cheshire East Council Review and Monitoring Officer involved in their assessment or alternatively, another member of the SEN Statutory Assessment service via email (senteam@cheshireeast.gov.uk) or telephone (01625 378042). It is expected that in many cases, an immediate informal response by a front-line member of staff or practitioner will resolve issues as they arise. If the complainant is not satisfied with the response, and/or informal discussions or repeated service requests do not resolve the issues, then they may feel it necessary to take the complaint to the next stage.

- 7.1.2 Cheshire East Council, NHS Eastern Cheshire CCG and NHS South Cheshire CCG operate statutory formal complaints procedures, which an individual may access should they experience dissatisfaction with their Direct Payment provision and have been unable to resolve this through informal discussions. All arrangements in relation to existing Cheshire East Council, NHS Eastern Cheshire CCG and/or NHS South Cheshire CCG complaints procedures apply to direct payments just as they apply to a direct service.
- 7.1.3 The relevant teams for formal complaints within Cheshire East Council, NHS Eastern Cheshire CCG and NHS South Cheshire CCG are shown below:

Cheshire East Council Compliance and Customer Relations Team

By telephone: 0300 123 5038
By email: letusknow@cheshireeast.gov.uk
In writing: Compliance & Customer Relations Team - Cheshire East Council
Westfields - 1st Floor
c/o Municipal Building
Earle Street
Crewe
CW1 2BJ

NHS Eastern Cheshire CCG Complaints Concerns and Compliments Team

By telephone: 01625 663 828
By email: complaints.nhseasterncheshireccg@nhs.net
In writing: Complaints, Concerns & Compliments Team
NHS Eastern Cheshire Clinical Commissioning Group
1st Floor, West Wing
New Alderley House
Victoria Road
Macclesfield
Cheshire
SK10 3BL

NHS South Cheshire CCG Governance and Compliance Team

By telephone: 01270 275590
By email: complaints.nhssouthcheshireccg@nhs.net
In writing: Governance and Compliance Team
NHS South Cheshire Clinical Commissioning Group
1st Floor
Bevan House
Barony Court
Nantwich
Cheshire
CW5 5RD

- 7.1.4 If the direct payment recipient is not satisfied with the services they have independently purchased, they should address any complaint to the service provider/employee concerned.

Annex A: Using a Personal Budget – exclusions

Personal Budgets and direct payments cannot be used for the following:

Education	Health	Care
<ul style="list-style-type: none"> • Funding a place at a school or post-16 institution • Staff or services to work/ be delivered on the premises of an early years setting, school or college if there is no agreement to do so from the provider (Early Years), Principal or Headteacher. • Provision within a special school that is part of their core service delivery 	<ul style="list-style-type: none"> • To purchase primary medical services provided by GPs • For the following public health services: <ul style="list-style-type: none"> ○ vaccination or immunisation, including population-wide immunisation programmes. ○ screening ○ the national child measurement programme ○ NHS Health Checks • For urgent or emergency treatment services, such as unplanned in-patient admissions to hospital or accident and emergency. • For surgical procedures. • To pay for any NHS charges, such as prescription or dental charges. 	<ul style="list-style-type: none"> • To purchase a service already provided by the local authority, including internal C4E and foster care services • Permanent residential care, including Cared For Children placements • Long term care home placements exceeding a period of four consecutive weeks in any 12 month period • A substitute for Disabled Facilities Grants • Redundancy pay for a Personal Assistant, unless in exceptional circumstances
<ul style="list-style-type: none"> • To purchase anything illegal or unlawful, or for any type of illegal activity • An activity or item that exposes the individual to serious risk from someone else/themselves • For gambling, alcohol or tobacco • For paying off personal loans or to repay a debt (with the exception of debts relating to services specified in a plan) • Housing services, such as rent payments • Household bills, such as food and utility bills • Non-statutory liabilities, such as tips, bonuses or ex gratia payments • Funding support provided by anyone living in the same house/to employ close relatives who live in the same household (except for exceptional circumstances). 		

As specified in section 2.6., a Personal Budget associated with an EHC Plan is only to be used to secure the agreed outcomes and provision specified in the EHC plan. Where an individual receives a Personal Budget containing funding from more than one element (education, health or care), the level of funding from each element will be defined in section J of the EHC plan. Individuals must be mindful of the level of funding for each element and the provision which has been agreed in the plan – funding from one element, e.g. care, should not be used to fund provision of a different type, e.g. education or health provision.

Annex B: Persons excluded from direct payments

In line with *The Special Educational Needs (Personal Budgets) Regulations 2014* (along with *The National Health Service (Direct Payments) Regulations 2013*; *The Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009* and *The Care and Support (Direct Payments) Regulations 2014*), the following persons may not receive direct payments:

- a) a person who is subject to a drug rehabilitation requirement, as defined by section 209 of the Criminal Justice Act 2003, imposed by a community order within the meaning of section 177 of that Act or by a suspended sentence order within the meaning of section 189 of that Act;
- b) a person who is subject to an alcohol treatment requirement, as defined by section 212 of the Criminal Justice Act 2003, imposed by a community order within the meaning of section 177 of that Act or by a suspended sentence order within the meaning of section 189 of that Act;
- c) a person who is released on licence under Part 2 of the Criminal Justice Act 1991, Chapter 6 of Part 12 of the Criminal Justice Act 2003 or Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 subject to a licence condition requiring the offender to undertake offending behaviour work to address drug-related or alcohol related behaviour;
- d) a person who is 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 or a community punishment and rehabilitation order within the meaning of section 51 of that Act;
- e) a person who is subject to a drug treatment and testing order imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000;
- f) a person who is 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 2008 which requires the person to submit to treatment pursuant to a drug treatment requirement;
- g) a person who is subject to a youth rehabilitation order imposed in accordance with paragraph 23 (drug testing requirement) of Schedule 1 to the Criminal Justice and Immigration Act 2008 which includes a drug testing requirement;
- h) a person who is subject to a youth rehabilitation order imposed in accordance with paragraph 24 (intoxicating substance treatment requirement) of Schedule 1 to the Criminal Justice and Immigration Act 2008 which requires the person to submit to treatment pursuant to an intoxicating substance treatment requirement.
- i) released from prison on licence subject to a drug testing requirement under section 64 (as amended by the Offender Rehabilitation Act 2014) (release on licence etc.: drug testing) or a drug appointment requirement under section 64A (release on licence etc.: drug appointment) of the Criminal Justice and Courts Services Act 2000

- j) required to comply with a drug testing or a drug appointment requirement specified in a notice given under section 256AA (supervision after end of sentence of prisoners serving less than 2 years) of the 2003 Act
- k) required to submit to treatment for their drug or alcohol dependency by virtue of a requirement of a community payback or probation order within the meaning of sections 227 to 230 of the Criminal Procedure (Scotland) Act 1995 or subject to a drug treatment and testing order within the meaning of section 234B of that Act; or released on licence under section 22 or section 26 of the Prisons (Scotland) Act 1989 (release on licence etc.) or under section 1 (release of short-term, long-term and life prisoners) or 1AA (release of certain sexual offenders) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 and subject to a condition that they submit to treatment for their drug or alcohol dependency.

Annex C: References and Relevant Legislation

- *The Children and Families Act 2014*
Available from: <http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted>
- *The Special Educational Needs (Personal Budgets) Regulations 2014*
Available from: <http://www.legislation.gov.uk/uksi/2014/1652/contents/made>
- *Special educational needs and disability code of practice: 0 to 25 years (January 2015)*
Available from: <https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>
- *The Carers and Disabled Children Act 2000*
Available from: <http://www.legislation.gov.uk/ukpga/2000/16/contents>
- *The Community Care, services for Carers and Children's Services (Direct Payments) Regulations 2009 (the 2009 regulations will be replaced by those made under the Care Act 2014)*
Available from: <http://www.legislation.gov.uk/uksi/2009/1887/contents/made>
- *The National Health Service (Direct Payments) Regulations 2013*
Available from: <http://www.legislation.gov.uk/uksi/2013/1617/made>
- *National framework for NHS continuing healthcare and NHS funded nursing care, plus the Decision Support Tool for NHS continuing healthcare*
Available from: <https://www.gov.uk/government/publications/national-framework-for-nhs-continuing-healthcare-and-nhs-funded-nursing-care>
- *National Framework for Children and Young People's Continuing Care 2016*
Available from: <https://www.gov.uk/government/publications/children-and-young-peoples-continuing-care-national-framework>
- *The Care Act 2014*
Available from: <http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>
- *Care and Support (Eligibility Criteria) Regulations 2015*
Available from: <http://www.legislation.gov.uk/uksi/2015/313/made>
- *Care and Support (Direct Payments) Regulations 2014*
Available from: <http://www.legislation.gov.uk/uksi/2014/2871/contents/made>
- *The Mental Capacity Act 2005*
Available from: <http://www.legislation.gov.uk/ukpga/2005/9/contents>

Annex D: Related Documents

This document should not be read in isolation and there are a number of other documents covering specific arrangements for personalisation options in education, health and care. These related documents are listed below:

- *Cheshire East Council Adult Services Personal Budgets Policy*
- *Cheshire East Council Adults Services Direct Payment Policy*
- *Cheshire East Council Adult Services Practice Guidance & Procedures – Personal Budget*
- *Cheshire East Council Transition Policy*
- *Cheshire East Council Children with Disabilities Policy*
- *Personal Health Budgets Policy for Cheshire CCGs [currently under development]*