

*Parent power:
learning from complaints about
personal budgets*



November 2023

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Ombudsman's foreword



We have reported many times about the severe problems our investigations highlight in the Special Educational Needs and Disability (SEND) support system.

The sad truth is that in almost every detailed investigation about SEND services, we will find the local authority at fault in some way. We uphold more than nine out of 10 cases. [The situation has the markings of a system in crisis.](#)

Given these existing challenges, it is ever more important councils focus clearly on ensuring they meet their statutory duties, allowing people to receive the SEND services they have a right to.

This report looks at the rights of SEND families to have choice in how their support is provided. The case studies we highlight suggest that local authorities in England are not giving every family the choice and control over their SEND support to which they are entitled. We are sharing the learning from our findings to help councils improve and to increase parental awareness of their rights.

Local authorities must consult with and pay due regard to the wishes of children and families with an Education, Health and Care (EHC) plan. The personal budget process is an important part of how this happens.

Families have a right to request a personal budget – the calculated cost of delivering the provision in their plan. This allows them to have a say in how their services are provided and to arrange their own support, if they wish. Councils then fund the support in various ways, but often through a 'direct payment' to the young person or family.

Our cases reveal inconsistencies in how councils comply with their personal budget duties. Common themes include more typical administrative failings, such as delays in making payments or considering requests.

More concerning are issues with councils being unaware of their duties, like not recognising general parental requests for funding as a request for a personal budget. Or a lack of coherent processes on making decisions.

But even more worrying is an occasional dearth of information about personal budgets on council websites. Many of the SEND families who complain to us are knowledgeable about their rights, from years of battling to get the support to which they are entitled. Yet it is simply unacceptable for any council to pass the buck onto families to unearth their rights.

The impact when something goes wrong is often additional stress and delay in getting support arranged. Ultimately it can lead to support being missed. In many of the cases, families have had to dip into their own pockets to continue funding support when the council has not delivered its duties – compounding financial strain upon an emotional one.

Councils not properly complying with personal budget responsibilities could also be missing a trick. With known shortages of specialist support services in parts of the country, swift

and accurate application of the personal budget process, in some cases, could harness the knowledge of families willing to arrange SEND provision themselves, putting it in place faster and more efficiently than it would have

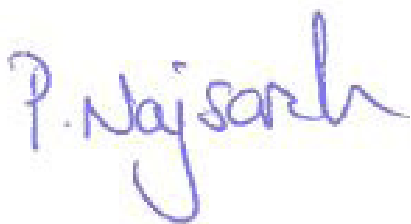
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otherwise been.

Councils should reflect on the practical learning from the cases in this report. This will help ensure they are giving SEND families the right autonomy over how their EHC plan support is provided. And to help councillors scrutinise what happens in their authority, we provide some questions which they can pose.



Paul Najsarek
Local Government and Social
Care Ombudsman
November 2023

Background and legal context

Law

The Children and Families Act 2014 section 49 introduced personal budgets for children and young people for whom councils maintain or prepare Education, Health and Care (EHC) plans.

There are separate regulations for direct payments for special educational provision, health care and social care provision. These are:

- > The Special Educational Needs (Personal Budget) Regulations 2014
- > The National Health Service (Direct Payments) Regulations 2013
- > The Community Care, services for Carers and Children's Services (Direct Payments) Regulations 2009 and The Care and Support (Direct Payments) Regulations 2014

Statutory Guidance "**Special educational needs and disability code of practice: 0 to 25 years**" January 2015 in paragraphs 9.95 to 9.124 distinguishes between councils' duties and best practice when dealing with personal budget requests.

Definition and mechanisms for delivery

A personal budget is an amount of money identified by the council to deliver provision set out in an EHC plan so the parent can get involved in arranging the provision. The child's parent or the young person has a right to ask for a personal budget when the council decides it will prepare an EHC plan or during a statutory review of an EHC plan.

There are four ways councils can deliver a personal budget:

- > Direct payments – individuals receive the cash to contract, purchase and manage services
- > An arrangement – the council, school or college holds funds and arranges the support specified in the plan (notional budgets)
- > Third party arrangements – funds (direct payments) are paid and managed by an individual or organisation on behalf of the child's parents or young person
- > A combination of the above

Councils cannot fund a school place or post-16 institution by direct payments.

Details of the personal budget should be included in Section J of the EHC plan.

Personal budget process

Councils must display information on personal budgets on their websites. This should be part of their Local Offer and include information about organisations which can advise and help parents and young people to make decisions. Councils must also have a policy on personal budgets with the details of the eligibility criteria and with a decision-making process, including the parents' right to ask for a review of the council's decision refusing a request for a direct payment.

Councils must take into account the individual circumstances of each request for a personal budget. They should prepare a personal budget unless doing so would have a negative impact on other EHC plan holders, or would not be an efficient use of the council's resources.

Councils should have a robust process for funding special educational provision through direct payments. This process must include:

- > Written notice of the conditions for direct payments
- > Agreement of an early years setting, school or college if any provision is to be delivered in the educational placement
- > Setting out in writing the council's reasons for a refusal of direct payments and telling parents/young people of their right to ask for a review
- > Monitoring arrangements

More details of the councils' duties relating to personal budgets and direct payments are provided in the [Appendix](#).

Our role and experience

We look at the way councils consider parental/young persons' requests for personal budgets. We check councils understand that when asking for personal budgets, parents/young people do not have to use this technical term. Sometimes they can simply ask for funding for a provision included in the EHC plan.

Councils should include information on personal budgets in their Local Offer, on their website and hold a personal budget policy. Our investigation will check how councils comply with these duties.

Certain parts of the personal budget process are compulsory, and we will criticise councils for failing to follow the correct process.

Where we find a council at fault, and this has caused injustice, we will make recommendations. Our recommendations aim to put the complainant in the position they would have been in if the council's failings had not happened. They might include:

- > Apologising
- > Making a decision it should have made before
- > Reconsidering a decision that it did not make properly in the first place
- > Making a symbolic payment to recognise the impact of fault where this is not possible

Most importantly, we can make recommendations for the council to improve its services. We do this when our investigation identifies a practice or policy fault. 'Service improvement' recommendations aim to avoid similar problems reoccurring for the benefit of everyone in the area.

Our 'service improvement' recommendations often include amending information on the council's website, introducing or amending a personal budget policy, reviewing the personal budget process including advice provided to the parents or carers, and training staff. Service improvements are published for every council on our [Council Performance map](#).

Common issues and learning points

Not recognising parental requests for ‘funding’ as requests for direct payments



Hannah's story

Case reference: [22 003 230](#)

Hannah is autistic and since the beginning of her primary education struggled with attending school full-time. After a few exclusions, Hannah's mother had a meeting with her school and council. All agreed she could not cope with more than two hours per week of learning at school.

Hannah's parents suggested using Applied Behaviour Therapy (ABA) which would make it possible for Hannah to access education. The council amended Hannah's EHC plan, including in it the details of how ABA would be delivered for a year. Hannah's mother found tutors trained in ABA and they started teaching Hannah at home.

In the following months Hannah's mother contacted the council on many occasions asking it to pay for Hannah's tutors. The council did not agree. At the Annual Review six months later Hannah's mother told the council some of the tutors left and others reduced their working hours. This affected Hannah's education.

Nine months after Hannah's tutoring started, her mother formally asked for direct payments to pay the tutors and the council agreed. The council's failure to recognise that Hannah's mother's requests for funding were requests for direct payments meant it failed to apply its direct payments policy. This caused delays and complications to the process.

How we put things right

By the time we completed our investigation, the council had reimbursed Hannah's mother the cost of the tuition. It agreed to apologise to Hannah's mother and provide its special educational needs case officers and managers with training on personal budgets in EHC plans.

Learning point

When parents ask councils to fund special educational provision in their child's EHC plan, councils should consider whether this is a request for a direct payment. This is necessary to ensure councils comply with their statutory duties.

Common issues and learning points

Failing to consider parental requests



Taigan's story

Case reference: [22 007 593](#)

Taigan is autistic and has Attention Deficit Hyperactivity Disorder. After he moved to a junior school Taigan struggled with a full-time attendance. For many months he was on a part-time timetable at school and at risk of permanent exclusion because of behavioural issues.

A year after the council issued an EHC plan, Taigan stopped attending school. The council intended to arrange specialist tutoring for him but after a few months of no education Taigan's mother asked the council for a personal budget to fund some tutoring for him.

Despite asking three times for a personal budget, the council did not consider Taigan's mother's request. It told us that she did not provide any specific details with her request.

Our investigation found the council at fault for not considering the request for a personal budget. It is unreasonable to expect parents to provide all the information required without any guidance from the council. If the council had considered and refused the request, it should then have told Taigan's mother that she could ask for a review of the decision.

The council's faults deprived Taigan's mother of the opportunity to arrange specialist tutoring for her son earlier – particularly because the council could not find a suitable tutoring agency.

How we put things right

The council agreed to consider Taigan's mother's request for a personal budget and to make a symbolic payment to recognise her distress for the prolonged period it failed to respond to her. The council also agreed to ensure all SEND case officers and their managers review the council's personal budget policy and direct payments guidance.

Learning point

Councils should have a clear procedure in place for considering all parental requests for a personal budget or direct payments and ensure it is adhered to.

Common issues and learning points

Not giving clear reasons for a decision and failing to give advice on the right to review



Adam's story

Case reference: [22 000 324](#)

Following an annual review of Adam's EHC plan, the council agreed a personal budget to provide him with support. After two months his mother started receiving money for Adam's numeracy and literacy tutoring.

Six months later the council decided to stop paying Adam's personal budget. The council sent its decision to Adam's mother with an amended draft EHC plan, without giving reasons for this change and with no advice on her right to ask for a review. It stopped the payments for tutoring before discussing it with Adam's mother.

Adam's mother tried to challenge the council's decision but did not know why the council changed its position, or how to ask for a review. Adam continued to struggle to engage properly in his schoolwork. To avoid him missing out on education, Adam's mother took over funding his numeracy and literacy tutoring. She made new personal budget requests in the months to come, but all of them were refused by the council. This situation caused Adam's mother severe distress and stretched her finances.

How we put things right

The council agreed to apologise, provide a full back payment of Adam's personal budget and to continue to pay Adam's personal budget each month until it made a decision using the correct procedure. The council also agreed to establish a clear policy on personal budgets/direct payments, train its staff and review its systems and practices relating to personal budget reviews. The council agreed to produce a template document informing parents of the outcome of personal budget decisions which includes information on how to ask for a review.

Learning point

When making and communicating decisions on personal budgets/direct payments, councils should follow good administrative practice by providing reasons for their decisions and information on the right to ask for a review.

Common issues and learning points

Delays in considering parental requests



Paul's story

Case reference: [22 001 375](#)

Paul has complex special educational needs and he has an EHC plan. Paul struggled to attend mainstream school and the council agreed to home-based schooling for him. This was funded by direct payments.

The council reviewed Paul's EHC plan and issued an amended draft plan without any details of Paul's personal budget. A few months after issuing this, Paul's mother contacted the council to get a decision on his personal budget. She was concerned they did not know how Paul's education would be paid for before the start of the new school year.

With no final EHC plan and no decision on his personal budget, for the first three weeks of September Paul's mother had to fund his provision from her own savings. At the same time, she had no certainty the council would reimburse her. It reimbursed her in the fourth week of September, arranged a direct payment and apologised for the delays.

How we put things right

The council agreed to apologise to Paul and his mother for its failings. It made a symbolic payment to recognise the distress and uncertainty it had caused. The council also agreed to carry out training for staff involved with personal budgets, as well as to introduce a personal budget section in the templates for annual reviews.

Learning point

It is essential to consider personal budget and direct payments requests in a timely way, to ensure consistent support for children and to avoid financial strain on their parents or carers.

Common issues and learning points

Not giving clear reasons for a decision and failing to give advice on the right to review



Hamish's story

Case reference: [21 005 214](#)

At the annual review of Hamish's EHC plan, the council agreed to make direct payments to his mother to fund his private tutoring. The council started direct payments a month before the summer holidays.

Two months into the new term, the council told his mother it was ending his personal budget immediately as it was no longer needed. The mother questioned the council's decision and asked it to continue the payments until the matter was resolved. Four months later the mother met with the council to discuss the issue, but it did not treat her complaint as a formal request for a review of a personal budget decision.

At the very end of the school year the council reconsidered its decision not to pay.

During our investigation we found the council's Local Offer information on personal budgets/direct payments was incomplete. It also did not have a clear personal budget and direct payments policy. It must have these. This left Hamish's mother unclear about what should have happened and what rights she had.

How we put things right

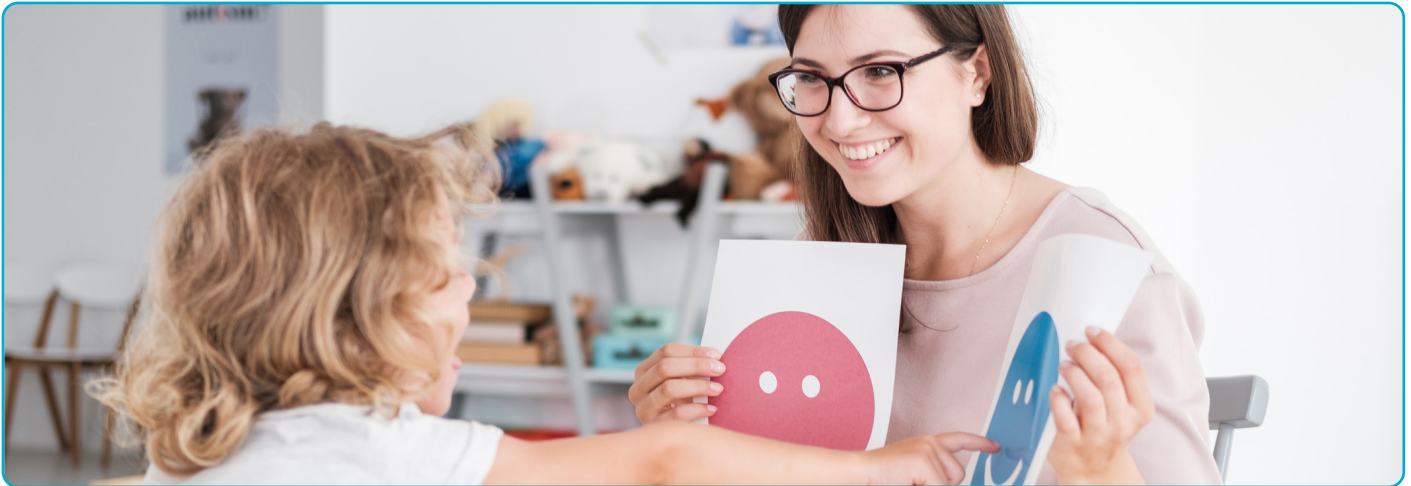
The council agreed to apologise for its failings and backdate direct payments. It also agreed to continue funding Hamish's tuition until it made a personal budget decision using the right procedure. The council carried out several service improvements including establishing a clear policy for personal budgets and direct payments as well as amending its Local Offer.

Learning point

Councils should ensure they have sufficient information on personal budgets/direct payments on their websites as well as legally compliant policies on personal budgets and direct payments.

Common issues and learning points

Delays in making payments



Mia's story

Case reference: [22 009 007](#)

Mia's EHC plan said she needed weekly music sessions to help with her education. Her mother found music tutors and asked the council for direct payments so she could arrange the tuition. After receiving details of the tutor, the council agreed a personal budget for Mia and to fund the sessions through direct payments.

For the first few months the council paid the fees for Mia's music sessions based on the invoices her mother sent. Then it stopped making payments and asked for evidence of the payments she made to the music tutors, their contact details and progress reports from each tutor. Mia's mother sent the council videos from the music sessions, but the council said it could not use this evidence.

The communication between the council and Mia's mother about what evidence she needed to provide, resulted in almost 10 months of delays with the payment for the tutors. In the meantime, the mother continued paying for music sessions which caused her financial difficulties.

How we put things right

The council agreed to pay Mia's mother for the music sessions she received. The council also said it would produce a personal budget agreement for her mother, outlining the terms of reimbursement for music sessions.

Learning point

When agreeing personal budgets/direct payments, councils should draw up agreements specifying terms and conditions for invoicing and payments to avoid misunderstandings and delays.

Promoting good practice

While remedying individual injustice is an essential part of what we do, we also help councils, care providers and other public bodies tackle systemic failures and improve the way they deal with complaints.

In many cases we ask organisations whether other people are currently, or could be, affected by the same issues raised in a complaint.

Drawing on our casework, we have identified some positive steps councils can take to improve services:

- > Ensure the council has information on its website about personal budgets and direct payments and this information is compliant with the law and guidance
- > Review and, if necessary, amend, the council's personal budget and direct payment policies
- > Review the council's procedures to ensure it provides parents, carers and young people with information to help them through the process
- > Introduce templates for personal budget/direct payment agreements and personal budget/direct payment refusals
- > Ensure direct payment agreements specify terms and conditions for invoicing and making payments, so parents know what information they will be expected to provide to receive the payments
- > Ensure parents, carers and young people know about their right to ask for a review of the council's decision to refuse a direct payment
- > Have a clear and transparent procedure for reviewing decisions about direct payments
- > Train front-line staff to recognise direct payments requests and to provide advice to parents and carers

Local scrutiny: Questions for councillors

We want to share learning from our complaints with locally elected councillors, who have the democratic right to scrutinise the way councils carry out their functions and hold them to account.

We have suggested some key questions elected members could ask officers when scrutinising services in their authority:

- > Does the council have a personal budget and direct payment policy?
- > What is the process for parents, carers and young people to ask for a review of the council's direct payment decision?
- > What are the council's timescales for making direct payments decisions and reviewing them?
- > What information is available from the council to parents, carers and young people about personal budgets and direct payments?
- > Does the council have an agreement specifying terms and conditions for invoicing and paying for personal budgets?
- > How does the council monitor direct payments?

Appendix

Councils' duties

General personal budget duties

Councils must:

- > Provide information on personal budgets as part of the Local Offer
- > Hold a policy on personal budgets which should include:
 - Description of services across education, health and social care that lend themselves to the use of personal budgets
 - The ways of making the funding available
 - Eligibility criteria
 - Decision-making process
- > Provide information about organisations that can advise and assist parents and young people to make informed decisions about personal budgets
- > Consider each request for personal budget on its individual merits
- > Prepare personal budget when requested, unless the sum is part of a larger amount and disaggregation of the funds would:
 - Have negative impact on services for other EHC plan holders, or
 - Not be an efficient use of council's resources
 - Allocate enough funding budget to secure the agreed provision in the EHC plan

Direct payments for special educational provision

Councils must:

- > Provide written notice of the conditions for receipt of direct payment
- > Secure agreement of the early years setting, school or college if any of the provision is to be delivered on that institution's premises
- > Satisfy itself the direct payments:
 - Will be used in an appropriate way
 - The recipient will act in the best interest of the child or young person
 - Will not have an adverse impact on other services provided or arranged by the council for children and young people with EHC plans
 - Are an efficient use of the council's resources
- > When refusing direct payments:
 - Set out its reasons in writing
 - Inform the child's parent or the young person of their right to ask for a formal review
 - Consider parental or young person's representations and respond to them in writing giving the reasons for the council's decision
- > Monitor the use of direct payments
- > When reducing the amount or stopping direct payments:
 - provide reasonable notice to the recipient
 - Set out its reasons
 - Reconsider its decision if requested
 - Consider the representations made by the recipient

Direct payments for social care provision

Councils must:

- > offer direct payments for services provided to children with disabilities or their families under section 17 of the Children Act 1989 - for children and young people under 18
- > consider request for a direct payment - for young people over 18 with eligible care and support needs or where the council decides to meet needs
- > Satisfy itself the direct payments will be used in an appropriate way and act in the best interest of the child or young person

There are specific processes councils must follow depending on the age of a person asking for direct payments to meet their social care needs. They are specified in the Regulations quoted above.

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