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What the Short Breaks Partnership is providing

The Short Breaks Partnership is a consortium of four organisations; Contact a Family, Council for Disabled Children, Action for Children and Kids. The partnership offers a range of information, resources and support to parent carer forums, children and young people, commissioners and short breaks providers.



The Legal Landscape in Short Breaks Services and Personal Budgets

by Steve Broach, Barrister, Monckton Chambers

Where local authorities or NHS bodies are responsible for meeting a disabled child or young person's needs for short breaks, this responsibility is now often discharged through a 'Personal Budget'. In short, although different legislation defines the terms in slightly different ways, a 'Personal Budget' is an amount of money identified by the public body to deliver agreed provision.

One mechanism to deliver a 'Personal Budget' will be a 'direct payment'. This is where the money to purchase the service is transferred to the disabled person or family, who then commission or arrange the required services themselves. Other personal budgets will be 'notional', i.e. held by the public body who commission the service in partnership with the disabled person or family. Finally, a personal budget may be wholly transferred to a third party, for example a local voluntary organisation. In whatever format they are delivered, the purpose of Personal Budgets is to achieve greater choice and control over provision for disabled children, young people and families.

Personal Budgets are particularly relevant to children and young people who have Education, Health and Care Plans, see Children and Families Act 2014 section 49. The SEND Code of Practice states as follows at para 3.38:

Young people and parents of children who have EHC plans have the right to request a Personal Budget, which may contain elements of education, social care and health funding. Partners must set out in their joint commissioning arrangements their arrangements for agreeing Personal Budgets. They should develop and agree a formal approach to making fair and equitable allocations of funding and should set out a local policy for Personal Budgets that includes:

- a description of the services across education, health and social care that currently lend themselves to the use of Personal Budgets
- the mechanisms of control for funding available to parents and young people...
- clear and simple statements of eligibility criteria and the decision-making processes that underpin them.

In order to make this happen, the Code of Practice (para 3.39) imposes a number of process requirements on local authorities and partners, including that there is a Personal Budget pathway developed within the EHC needs assessment and plan development process locally, and that partners 'identify how the new joint commissioning strategies¹ will support greater choice and control year on year, as the market is developed and funding streams are freed from existing contractual arrangements'.

Personal Budgets are also achieving greater prominence for children and young people with complex health needs. Since October 2014, disabled children and young people who are eligible for continuing care have had a right to have a 'personal health budget'. There is

¹ Required by Children and Families Act 2014 section 26.



detailed guidance from NHS England on how this right should be realised². There may be 'exceptional circumstances' (guidance p15) where a personal health budget can be refused; the guidance suggests this could be 'due to the specialised clinical care required or because a personal health budget would not represent value for money as any additional benefits to the individual would not outweigh the extra cost to the NHS'.

From the perspective of disabled people and families, two important questions often arise in relation to Personal Budgets:

1. Can the funding be accessed as a Direct Payment?
2. At what level should the Personal Budget be set?

The answer to the first question depends on which statutory agency is responsible for funding the service. In relation to short breaks which are provided by the local authority under its social care duties, it is likely that there will be a right to have the Personal Budget amount paid as a direct payment.

The statutory scheme governing local authority direct payments for disabled children derives from CA 1989 s17A³ and has been fleshed out by regulations⁴ and detailed guidance⁵. Under regulation 7(1)(c) of the 2009 regulations, local authorities are under a duty to make a direct payment where:

- the parent⁶ appears to the authority to be capable of managing a direct payment by themselves or with such assistance as may be available to them;
- the parent consents to the making of a direct payment (local authorities cannot insist that a person has a direct payment);
- the authority is satisfied that the person's need for the relevant service can be met by securing the provision of it by means of a direct payment; and
- the authority is satisfied that the welfare of the child will be safeguarded and promoted by securing provision by means of a direct payment.

Importantly, direct payments cannot be used to purchase prolonged periods of residential respite care (being capped at a maximum of four consecutive weeks in any period of 12 months).⁷ Otherwise there should be no restriction on the type of services and support that can be purchased using a direct payment, so long as it is meeting the eligible assessed needs of the child or young person.

² NHS England, *Guidance on the "right to have" a Personal Health Budget in Adult NHS Continuing Healthcare and Children and Young People's Continuing Care*, September 2014.

³ In relation to social care services; there is now a separate scheme under the Children and Families Act 2014 and the Special Educational Needs (Personal Budget) Regulations 2014 governing SEN direct payments which is outside the scope of this article.

⁴ Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009

⁵ Department of Health, *Guidance on direct payments for community care, services for carers and children's services England*, 2009 (amended 29 October 2010). In relation to adults, the guidance has been replaced by the Statutory Guidance to the Care Act 2014 (Department of Health) Chapter 12 – but the 2009 guidance remains relevant to disabled children.

⁶ Or young person aged 16-17. A different test is applied in relation to social care direct payments for disabled adults under the Care Act 2014.

⁷ Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009 regulation 13.



The guidance states at para 139 that ‘councils may wish to include a payroll service, which will take responsibility for administering wages, tax and National Insurance for the direct payment recipient’. Guidance is also given on the need for criminal records checks for anyone employed to deliver care via a direct payment. A further important consideration is now the potential requirement for direct payment workers to be enrolled onto a workplace pension scheme.¹¹ Local authorities will need to advise parents and young people in relation to this complex issue via their direct payments support services.

The guidance also deals with the question of local authority responsibilities to fund additional costs associated with direct payments:

114. In estimating the reasonable cost of securing the support required, councils should include associated costs that are necessarily incurred in securing provision, without which the service could not be provided or could not lawfully be provided. The particular costs involved will vary depending on the way in which the service is secured, but such costs might include recruitment costs, National Insurance, statutory holiday pay, sick pay, maternity pay, employers’ liability insurance, public liability insurance and VAT. Some councils have found it helpful to include a one-off start-up fund within the direct payments to meet these costs as well as other forms of support that might be required, such as brokerage, payroll services and Criminal Records Bureau checks on employees.

A major area of concern for some direct payments recipients is the level of scrutiny afforded by the public body as to how the direct payments are used. The guidance on local authority direct payments states that:

- Monitoring arrangements should be consistent both with the requirement for the council to be satisfied that the person’s needs can and will be met, and with the aim of promoting and increasing choice and independence (para 220).
- Councils should focus on achieving agreed outcomes, rather than on the service being delivered in a certain way (para 221).
- Councils should aim to ensure that the information that the direct payment recipient is asked to provide is straightforward and the least onerous possible, consistent with monitoring requirements (para 222).
- The fact that the council is making direct payments rather than arranging services itself does not affect its responsibility to review an individual’s care package at regular intervals (para 225).
- The frequency of monitoring will be dictated by the length of time the person has managed direct payments...and their particular circumstances. For children...reviews may be necessary more often so that the council remains satisfied that the direct payments promote and safeguard the welfare of the child (para 226).

¹¹ See the guidance on this complex issue from Disability Rights UK, Factsheet F61 at <http://www.disabilityrightsuk.org/individual-employers-and-workplace-pension-schemes-personal-assistants>



In the light of the Children and Families Act, there is an obvious need for education, social care and health to join up funding in a co-ordinated Personal Budget, with some or all of the funds paid by a direct payment. In this regard the SEND Code of Practice states at para 9.111 that:

Local authority commissioners and their partners should seek to align funding streams for inclusion in Personal Budgets and are encouraged to establish arrangements that will allow the development of a single integrated fund from which a single Personal Budget, covering all three areas of additional and individual support, can be made available. EHC plans can then set out how this budget is to be used including the provision to be secured, the outcomes it will deliver and how health, education and social care needs will be met.

Steve Broach is a barrister at Monckton Chambers who specialises in the law affecting disabled children and their families. Steve can be contacted at sbroach@monckton.com. This article is intended for general information and should not be relied on as legal advice. Case-specific advice should be sought in any particular case.



Good practice case studies

Made to Measure: Pooling Personal Budgets

Made to Measure was a two-year pilot run in Trafford and Plymouth established to address the challenges of individual parents seeking to purchase services using their personal budgets. It sought to ease the difficulties of identifying suitable activities and the logistics of purchasing the services. The aim was to increase choice and control for families of disabled children by increasing their influence on market development and the provision of services that meet the needs of their children.

At the end of the pilot independent research, conducted by The Centre for Child and Family Research (CCFR), at Loughborough University found that the experience of the parents involved in the project was overwhelmingly positive. The evaluation reported that participants found that through pooling their personal budgets they could access services and activities that were otherwise not available to them and a number of evaluation participants made reference to the potential to increase stability.

To read the full story go to <http://www.councilfordisabledchildren.org.uk/sbncasestudy9>

Increased Choice and Control through Personal Budgets

Middlesborough parent carer forum, Parents4Change, have developed positive working relationships with council officers, local politicians and Members of Parliament. They have proactively engaged with council work-streams and focus groups, and arranged regular conferences to increase awareness around disability and represent the views of families.



Their feedback helped shape Middlesborough 'Multi-agency Strategy for Children with Disabilities' which included the appointment of a short breaks facilitator and tendering of a new short breaks service.

Following a successful pilot programme with families the council was able to increase the offer of personal budgets for short breaks. This case study gives examples of how these changes have given families greater choice and control.

To read the full story go to <http://www.councilfordisabledchildren.org.uk/sbncasestudy10>

Putting the Views of Children and Young People into Action



KIDS project Make it Personal (MIP3) has been working with groups of young people across 3 regions to form Young Peoples Engagement Groups (YPEGs). These groups have looked at the personal budgets and in particular how education budgets can help them reach their aspirations and goals.

Young people are often not consulted about how the services they use and are designed for them are disseminated. At KIDS we are eager to hear their views and use these to design guidance in a format of their choice and share it in a way they will find accessible and useful. We have been working with them to inform our MIP3 guidance for young people including those with complex communication needs.

To read the full story go to <http://www.councilfordisabledchildren.org.uk/sbncasestudy11>

Commissioning to Support Personal Budgets

In the run up to, and since implementation of the Children & Families Act, the Council for Disabled Children has worked with commissioners to understand how they have put into practice the legal requirements of the new legislation as well as developing supporting resources. This case study will look at practice examples from areas across England where personal budgets are being used by families to access short breaks and how commissioners are working together across services and with families to design and deliver effective personalised support. Hear more from a family who have been able to use personal budgets to enable their young person with very complex medical needs to take part in camping trips, as well as find useful resources to support commissioning to support personal budgets.

To read the full story go to <http://www.councilfordisabledchildren.org.uk/sbncasestudy12>

Tell us About Your Good Practice Examples

The Short Breaks Partnership is interested in hearing from you if you have been involved in developing short breaks services, particularly if this has involved unique and innovative features, has demonstrated inclusive practice or has had a focus on personalised approaches. If you feel that you are able share examples of good practice in these, or other areas please contact us using the details below.

Parent Carer Forums:	ben.palmer@cafamily.org.uk
Children and young people:	lynn.horsfield@KIDS.org.uk
Commissioners:	shortbreaks@ncb.org.uk
Short Breaks providers:	erica.whitfield@actionforchildren.org.uk



Personal budgets for life-limiting conditions

By Together for Short Lives



Seriously ill children and young people - and their families - rely on frequent short breaks that can meet their often complex health needs. You can find out which organisations provide them in your local area on [Together for Short Lives' website](#). CCGs and local authorities should [jointly commission short breaks](#) for this group of children; however, only some families can access short breaks because not all health and social care commissioners work together to commission them appropriately.

By offering more choice and control for children, young people and families, personal budgets could help them to buy the specialist short breaks which meet their assessed needs. Many children and young people with life-limiting conditions will be eligible for an education, health and care (EHC) plan and a personal budget. Some will have an [NHS continuing care package](#) which could include short breaks; if a child has a continuing care package, they have the right to a personal health budget. If a child does have an EHC plan and personal budget, any personal health budget they receive forms part of their overall EHC personal budget. However, it is possible that a seriously ill child may have a personal health budget even if they are not eligible for an EHC personal budget (if they are deemed not to have a special educational need).

NHS England and clinical commissioning groups (CCGs) also, however, have the power to offer personal health budgets to anyone if they think the person will benefit. This means that a child or young person could potentially fund a short break using a personal health budget even if they do not have a continuing care package or an EHC plan.

Together for Short Lives published our new [Young Person's Guide to Personal Budgets](#) in England in November. Our easy to use guide aims to help young people decide if a personal budget is right for them. Leah, Heidi and Chris - three young people who understand the complexity of having a personal budget - help navigate the guide - sharing their personal experience of taking control of their lives and making the most of personal budgets.

Together for Short Lives also provides three briefings on personal budgets for families and services at www.togetherforshortlives.org.uk/sendresources. This page hosts reports



from two personal budget workshops we have run to help children's palliative care providers adapt to greater use of personal budgets.

Together for Short Lives is the leading UK charity for all children with life-threatening and life-limiting conditions and all those who support, love and care for them. We support families, professionals and services, including children's hospices. Our work helps to ensure that children can get the best possible care, wherever and whenever they need it.

Follow us on Twitter: www.twitter.com/Tog4ShortLives or on Facebook at www.facebook.com/togetherforshortlives

Personal Budgets - why is take up so low?

By SENDirect



SENDirect has been keeping a close eye on personal budgets. Thousands of families commissioning services on their child's behalf could have a dramatic effect on the supply chain of services for disabled children. So why are so few parents taking up personal budgets?

The research that we will be releasing in March will describe barriers for parents, providers of support and local authority professionals to using personal budgets, providing the variety of services families need when they need them, as well as highlighting excellent practice. To contribute to the research from your perspective just click on the role title above that applies to you.

We are running 4 round tables across the country, bringing together professionals, parents and researchers to examine the evidence of need locally and regionally, and consider solutions for better meeting that need. The events are free to attend and all attendees will receive copies of our in-depth reports around short breaks, childcare sufficiency and access to personal budgets nationally.

For venue details and to book your ticket please use the following links:

[York – 23rd February 2016](#)

[Exeter – 25th February 2016](#)

[Leicester – 1st March 2016](#)

[London – 3rd March 2016](#)

There's still a lot to learn about personal budgets, and the impact they could have. So let's develop our practice together. Read more on our [**blog**](#).

About the consortium

The Short Breaks Partnership is a consortium made up of Contact a Family, the Council for Disabled Children, Action for Children and KIDS. As part of the National Prospectus Grants programme, we have received funding from the Department for Education to develop guidance on the importance of Short Breaks services for Parent Carer Forums, Children and Young People, Local Authorities and Commissioners and Short Breaks Providers.

About the Short Breaks Partnership bulletin

The Short Breaks Partnership Bulletin is a quarterly round-up of all the essential policy, practice and news on short breaks. The bulletin is a special feature in the CDC Digest which is published in July, September, December and March.

You can download recent issues of CDC Digest from their website.

If you would like to be added to the list to receive this bulletin please email shortbreaks@ncb.org.uk with 'Subscribe to Short Breaks Bulletin' in the subject line.

Get in contact

If you have any questions or would like more information about the Short Break Partnership please contact us at shortbreaks@ncb.org.uk.

If you are a parent or carer and would like information or advice about your own child's access to short breaks please call Contact a Family on the **Freephone helpline 0808 808 3555** (available 09:30-17:00, Monday to Friday), by email: helpline@cafamily.org.uk, or by visiting www.cafamily.org.uk.

Alternatively you can follow us on Twitter [@SBPartnerships](https://twitter.com/SBPartnerships) and receive up to date news and announcements.

