



CABINET

Subject Heading:

Personal Budget Policy & Guidance for Parents, and Direct Payments Policy.

Cabinet Member:

Robert Benham, Deputy Leader, and Cabinet Member for Education, Children and Families.

Tim Aldridge, Director of Children's Services.

SLT Lead:

Report Author and contact details:

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Policy context:

The Guidance and Policy relate to our Council Objectives on Communities.

Financial summary:

There are no financial implications of the decision.

Is this a Key Decision?

Yes. It is a key decision because it has a significant impact on two or more wards.

When should this matter be reviewed?

September 2019 (12 Months after potential decision)

Reviewing OSC:

Children's OSC

The subject matter of this report deals with the following Council Objectives

Communities making Havering
Places making Havering
Opportunities making Havering
Connections making Havering

SUMMARY

Section 49 of the Children and Families Act 2014 provides that the Local Authority (LA) have a duty to prepare a personal budget for children, young people and young adults with Special Educational Needs and Disabilities (SEND) where the young person or the parent requests this, subject to being satisfied of a number of matters. LA's have a statutory duty to consult on the content of its local offer and publish their local arrangements in relation to, amongst other matters, Personal Budgets.

The draft 'Personal Budget Parents Policy & Guidance for Parents' and the 'Direct Payments Policy' are designed to inform parents and families about their options and the regulations around the monitoring of such budgets.

It is also intended that the documents help the LA and its partners to work better together in delivering a joined up approach that will give more flexibility to parents and families in meeting the needs of Children and Young People with SEND.

Consultation on draft documents has been conducted with parents and stakeholders, and they have commented on format and language. Further consultation is necessary to refine the documents; however the LA is currently at risk of not fulfilling statutory duties due to the Personal Budget Policy not being published.

RECOMMENDATIONS

Cabinet is recommended to review and approve the draft policies (Personal Budget Policy & Guidance for Parents, and Direct Payments Policy.)

1. The recommendation is for Members to accept the draft policies for further parent and stakeholder consultation.
2. Members are also asked to delegate sign off of the final policy following consultation to the Director of Children's Services in consultation with the Deputy Leader, and Cabinet Member for Education, Children and Families.

REPORT DETAIL

1. Background

Cabinet, 10 October 2018

1.1 Section 49 of the Children and Families Act 2014 provides that the Local Authority have a duty to prepare a personal budget for children, young people and young adults with Special Educational Needs and Disabilities (SEND) where the young person or the parent requests this and subject to being satisfied of a number of matters.

1.2. Under the SEND reforms in the Children and Families Act 2014 Education, Health and Care Plans (EHC Plan) replaced Statements of Special Educational Needs. Where a child or young person has been assessed as requiring an EHC Plan, the child's parent/s or the 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.

1.3. The SEND Code of Practice states that *'Personal Budgets should reflect the holistic nature of an EHC plan and can include funding for special educational, health and social care provision. They should be focused to secure the provision agreed in the EHC plan and should be designed to secure the outcomes specified in the EHC plan'*.

1.4. The key principles of the Code of Practice require 'greater choice and control for young people and parents over support'. Personal Budgets are one means by which that control can be delivered.

1.5. The Code of Practice also states that *'Local authorities must ensure that children, young people and parents are provided with the information, advice and support necessary to enable them to participate in discussions and decisions about their support. This should include information on their rights and entitlements.'*

1.6 Direct Payments are one way in which parents can be provided a Personal Budget. Guidance to support the way in which these are administered and used by parents/families are outlined in the Direct Payment's Policy for children and young people (up to 18 years old). There is a separate policy for direct payments provided by Adult Social Care.

1.7 The policy for direct payments for children's has been developed following an internal audit recommendation to make the regulation for children's direct payment's clearer. It may be possible to develop a combined policy for both adults and children in the longer term.

1.8 The draft Personal Budgets Parents Guide and Direct Payments Policy Guidance ("the Statements") ensures that the Council is compliant with the current legislation and guidance regarding Personal Budgets. Both policies may need to be read in conjunction in order to truly understand the options that are available to access personal budgets.

1.9 Both policies have undergone an initial consultation with stakeholders, this includes parents and carers.

1.10 It is proposed that the draft Statements should be subject to further consultation before a final decision is taken upon its content, format and style. The following groups will be consulted with:

- (a) children and young people with special educational needs and the parents of children with special educational needs;
- (b) children and young people with a disability, and the parents of children with a disability;
- (c) the governing bodies of maintained schools and maintained nursery schools;
- (d) the proprietors of Academies 1;
- (e) the governing bodies, proprietors or principals of post-16 institutions;
- (f) the governing bodies of non-maintained special schools;
- (g) the management committees of pupil referral units;
- (h) the advisory boards of children's centres;
- (i) the providers of relevant early years education;
- (j) the youth offending teams that the authority thinks have functions in relation to children or young people for whom it is responsible;
- (k) voluntary sector organisations

1.11 The consultation will run from October 2018 to December 2018

1.12 After consultation, and subject to Cabinet's decision above, the Director of Children's Services will approve the final version of the policies. These will then be published and available as part of the Local Authority's SEND Local Offer and made available on request to children and young people with SEND and their families.

1.13 It is intended that following consultation the policies would be implemented from January 2019.

REASONS AND OPTIONS

2. Reasons

2.1 Reasons for the decision: The Policies and Guidance are requirements of the Children and Families Act 2014. Information about Personal Budgets and Direct Payments must be placed on the Local Offer. This is a statutory obligation.

3. Options

3.1 Other options considered: There are no other options given the statutory requirement.

IMPLICATIONS AND RISKS

4. Financial implications and risks:

4.1 None

5. Legal implications and risks:

5.1 As set out in the Report the provision of direct payments to young people/carers of children and young people who have EHC Plans is obligatory if a request has been made for them and the Authority is 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 person 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 the local authority provides or arranges for children and young people with an EHC plan which the authority maintains; and
- (d) securing the proposed agreed provision by direct payments is an efficient use of the authority's resources

5.2 Direct payments cannot be used for anything that is not in the EHC Plan or for funding a place at a school or post 16 institution. (Regulation 6 Special Educational Needs (Personal Budgets) Regulations 2014/1652)

5.3 Under Regulation 3 of the Special Educational Needs and Disability Regulations 2014/1530 the Authority must include in its local offer “the arrangements the local authority has for funding children and young people with special educational needs including any agreements about how [providers of education] will use any budget that has been delegated to that person by the local authority.”

5.4 The Local Authority also has a duty to consult on its local offer before finalising and publishing this, and must then publish the final version in the prescribed manner.

5.5 The main requirements for lawful consultation are that the consultation occurs before any final decisions have been taken, that all consultees have sufficient information and time to make intelligent comments and that all responses are then conscientiously taken into consideration before any final decisions are taken.

6. Human Resources implications and risks:

6.1 None

7. Equalities implications and risks:

7.1 The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- (i) the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are: age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

7.2 The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants. Direct Payments management will adhere to the Equality Act 2010 in the manner in which all recipients are included and respected.

7.3 Consultation (and research)

In terms of administrative law this has a specific meaning, and has to be done properly and fairly i.e. sufficient time and information for consultees to comment meaningfully on the proposed plan and the consultation responses taken conscientiously into account by the decision maker.

BACKGROUND PAPERS

None