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**NHS Vale of York CCG**

**Personal Health Budgets Policy**

**December 2021**

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Contents

[1. Purpose and Introduction 4](#_Toc91168208)

[2. Scope 4](#_Toc91168209)

[3. Legislation 5](#_Toc91168210)

[4. History 5](#_Toc91168211)

[5. What is a PHB? 5](#_Toc91168212)

[6. Principles 6](#_Toc91168213)

[I. Upholding NHS principles and values. 6](#_Toc91168214)

[II. Quality – safety, effectiveness and experience should be central. 6](#_Toc91168215)

[III. Tackling inequalities and protecting equality. 7](#_Toc91168216)

[IV. PHBs are voluntary. 7](#_Toc91168217)

[V. Making decisions as close to the individual as possible. 7](#_Toc91168218)

[VI. Partnership. 7](#_Toc91168219)

[7. Standards for self-directed health support 7](#_Toc91168220)

[8. Who can have a personal health budget? 7](#_Toc91168221)

[9. What a PHB can and cannot be used for 9](#_Toc91168222)

[10. Options for managing a PHB 10](#_Toc91168223)

[a) Notional budget 10](#_Toc91168224)

[b) Third party budget 11](#_Toc91168225)

[c) Direct payment 11](#_Toc91168226)

[11. Direct payments for people who lack capacity 11](#_Toc91168227)

[12. How do PHBs work? 11](#_Toc91168228)

[14. Direct Payment Support Services 12](#_Toc91168229)

[15. Consent 12](#_Toc91168230)

[16. Budget Setting 13](#_Toc91168231)

[17. Completion of a Care and Support Plan 14](#_Toc91168232)

[18. Risk assessment 15](#_Toc91168233)

[19. Organisational Risk 16](#_Toc91168234)

[20. Safeguarding 16](#_Toc91168235)

[21. Approval of the Support Plan 17](#_Toc91168236)

[22. Calculating the final budget 19](#_Toc91168237)

[23. PHB Agreement 20](#_Toc91168238)

[24. Assistance to manage PHBs 21](#_Toc91168239)

[25. Monitoring and Review 21](#_Toc91168240)

[26. Stopping or reclaiming PHBs 22](#_Toc91168241)

[27. Direct Payments 23](#_Toc91168242)

[28. Who can receive a direct payment PHB? 23](#_Toc91168243)

[29. Ability to manage direct payments 24](#_Toc91168244)

[30. Who cannot receive a direct payment? 24](#_Toc91168245)

[31. Deciding not to offer a direct payment 24](#_Toc91168246)

[32. Request for review of Direct Payment refusal 25](#_Toc91168247)

[33. Representatives and direct payments 25](#_Toc91168248)

[34. Nominees 26](#_Toc91168249)

[35. Imposing conditions in connection with the making of direct payments 27](#_Toc91168250)

[36. Assistance to manage a direct payment 27](#_Toc91168251)

[37. Direct Payment agreement 28](#_Toc91168252)

[38. Receiving a direct payment 30](#_Toc91168253)

[39. Monitoring and review of direct payments 30](#_Toc91168254)

[40. Stopping or reducing direct payments 31](#_Toc91168255)

[41. Audit and record keeping for Direct Payments and Third Party Arrangements 32](#_Toc91168256)

[42. Reclaiming a direct payment 33](#_Toc91168257)

[43. Using a direct payment to employ staff or buy services 33](#_Toc91168258)

[44. Employing a family member or person living in the same household 34](#_Toc91168259)

[45. Safeguarding and employment 34](#_Toc91168260)

[46. Indemnity 35](#_Toc91168261)

[47. Registration, regulated activities and delegation of clinical tasks 36](#_Toc91168262)

[48. Using a Direct Payment to fund short breaks and holidays 37](#_Toc91168263)

[49. Using a Direct Payment to fund Travel and Mileage 39](#_Toc91168264)

[50. Following death of an individual 39](#_Toc91168265)

[51. Funding for Personal Assistants’ pensions 39](#_Toc91168266)

[52. Funding for Personal Assistants’ redundancy 40](#_Toc91168267)

[53. Data reporting 40](#_Toc91168268)

[54. Equal Opportunities 40](#_Toc91168269)

[55. Equality and Quality Impact Assessment 40](#_Toc91168270)

[56. Review Date 41](#_Toc91168271)

[57. More information 41](#_Toc91168272)

[58. Glossary 41](#_Toc91168273)

# Purpose and Introduction

* 1. This document sets out the policy and practice guidance developed to ensure the consistent and transparent delivery of PHBs (PHBs) for Eligible Persons. This Policy supports NHSE guidance for all individuals having the “right to have a PHB” afforded from October 2014. This policy has been developed in line with current legislation and the Vale of York Clinical Commissioning Group (CCG) will review policy guidance and practice when any new guidance, regulations or national policy is published.
  2. The CCG will ensure that PHBs are value for money for patients and the CCGs. This will be done through the way in which PHBs are set up, through robust care & support planning and through effective monitoring of direct payments.
  3. A PHB is an amount of money to support a person's identified health and wellbeing needs, planned and agreed between the person and their local NHS team. The vision for PHBs is to enable people with long term conditions and disabilities to have greater choice, flexibility and control over the health care and support they receive.
  4. This policy outlines the principles for achieving the implementation of PHBs by balancing choice, risk, rights, and responsibilities. It recognises that, in the right circumstances, risk can be managed to promote a culture of choice, and independence that encourages responsible, supported decision making.

# Scope

* 1. This policy applies to all employees of:
     + NHS Vale of York CCG and where appropriate to all services implementing PHBs on behalf of the above CCG (CCG)

# Legislation

* 1. The following legislation is relevant to this policy implementation:
     + National Health Service (Direct Payments) Regulations 2013 Published March 2014
     + Human Rights Act 1998, including the Article 8 Right to respect for private and family life, and Article 14 Prohibition of discrimination
     + The Data Protection Act 1998
     + The Carers (Equal Opportunities) Act 2004 provides carers with the right to receive assessment for support and a duty on various public authorities to give due consideration to a request to provide services to carers.
     + The Mental Capacity Act 2005 (“MCA”). The Mental Capacity Act provides a framework for decision making applicable where people lack capacity to make a decision for themselves. The overriding principles of the Mental Capacity Act are set out and include a requirement to ensure that all practicable steps are taken to seek to enable a person to make a decision for himself. Where a person is unable to make a decision, any decision made on their behalf must be made in accordance with his/her best interests and must be the least restrictive of the person’s rights and freedom of action. A person is not to be treated as unable to make a decision simply because he makes an unwise decision.
     + The Equality Act 2010. The Equality Act brought together the various earlier discrimination laws under one statute. It is unlawful to act in a discriminatory manner against any “protected characteristics”.
     + The Children and Families Act 2014, which is partially in force and due to be fully in force by April 2015. This Act intends to improve services for key groups of vulnerable

children e.g., those in adoption and those with special educational needs and disabilities.

* + - The Fraud Act 2006: This sets out the general offence of fraud and is relevant to investigation of suspected fraudulent activities relating to the provision of PHBs. This is necessary to ensure the NHS Constitution principle ‘The NHS is committed to providing best value for taxpayers’ money and the most effective, fair and sustainable use of finite resources’ is upheld.

# History

* 1. Following a successful pilot programme by the Department of Health, which ended in October 2012, the Government announced that from April 2014, Eligible Persons would have the “right to ask” for a PHB, including by way of a direct payment. From October 2014, this right to ask was converted to a “right to have” a PHB.
  2. This development mirrors other changes within the NHS, including the drive generally for greater patient choice, shared decision-making and innovation in managing funds. The Government confirmed a commitment to personalised care in the NHS mandate, 5 Year Forward View published in March 2014, this included identification of those with a Long term Condition who could benefit from a PHB being given the “right to have” in April 2015.
  3. The NHS Long Term Plan aims to expand personalised care and states *“Up to 200,000 people will benefit from a PHB by 2023/24. This will include provision of bespoke wheelchairs and community-based packages of personal and domestic support. We will also expand our offer in mental health services, for people with a learning disability, people receiving social care support and those receiving specialist end of life care.”*

# What is a PHB?

* 1. PHBs are the allocation of NHS funding which patients, after an assessment and planning with their clinical team, are able to personally control and use for the services they choose to support their health needs. This enables them to manage identified risks and to live their lives in ways which best suit them. Enabling people to exercise choice and control over their lives is central to achieving better outcomes for individuals. For Eligible Persons there is a duty on CCGs to:
     + Consider any request for a PHB
     + Inform individuals of their right to have a PHB (established in October 2014)
     + Provide information, advice, and support in relation to PHBs

# Principles

* 1. **Increasing choice and achieving personalisation**

The CCG is committed to offering opportunities for patients and health care professionals to work in partnership, making shared decisions and actively co-designing services and support. The introduction of PHBs is one way of doing this. PHBs give individuals more choice and control over how money is spent on meeting their assessed health and wellbeing needs. A care and support plan is at the heart of a PHB that is developed through a combination of the healthcare professional’s vital clinical expertise and knowledge, along with the person’s expertise in their condition and their own ideas for how their needs can best be met. The CCG is committed to promoting patient choice - where available, whilst supporting them to manage risk positively, proportionately, and realistically. Good practice must support choice. The attitude of the health care professional should be to support and encourage patient’s choice as much as possible, and to keep the person informed, in a positive way, of issues associated with those choices and how to take reasonable steps to manage them.

* 1. There are six key principles for PHBs and personalisation in health:

# Upholding NHS principles and values.

The personalised approach must support the principles and values of the NHS as a comprehensive service which is free at the point of use, as set out in the NHS Constitution. It should remain consistent with existing NHS policy, including the following principles:

* + Patients and their carers should be fully involved in discussions and decisions about their care using easily accessible, reliable and relevant information in a format that can be clearly understood;
  + There should be clear accountability for the choices made;
  + No one will ever be denied treatment as a result of having a PHB;
  + Having a PHB does not entitle someone to additional or more expensive services, or to preferential access to NHS services;
  + There should be efficient and appropriate use of current NHS resources.

# Quality – safety, effectiveness and experience should be central.

The wellbeing of the individual is paramount. Access to a PHB will be dependent on professionals and the individual agreeing a support plan that is safe and will meet **assessed needs** agreed health and wellbeing outcomes. There should be transparent arrangements for continued clinical oversight, proportionate to the needs of the individual and the risks associated with the care package. All care packages will be required to have a timely review with their allocated case manager/care coordinator. For people who are eligible for Continuing Healthcare funding their initial reviews being completed within a six week timeframe and then in line with the National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care (DH 2018).

# Tackling inequalities and protecting equality.

PHBs and the overall movement to personalise services could be a powerful tool to address inequalities in the health service. A PHB must not exacerbate inequalities or endanger equality. Lack of mental capacity should not be a factor. The decision to set up a PHB for an individual must be based on their needs, irrespective of race, age, gender, disability, sexual orientation, marital or civil partnership status, transgender, religion or beliefs.

# PHBs are voluntary.

No one will ever be forced to take more control than they want.

# Making decisions as close to the individual as possible.

Appropriate support should be available to help all those who might benefit from a more personalised approach, particularly those who may feel least well served by existing services / access, and who might benefit from managing their budget.

# Partnership.

Personalisation of healthcare embodies co-production. This means individuals working in partnership with their family, carers and professionals to plan, develop and procure the services and support that are appropriate for them. It also means CCGs, local authorities and healthcare providers working together to utilise PHBs so that health and social care work together as effectively as possible.

# Standards for self-directed health support

* 1. The following standards for self-directed support are followed nationally and articulated as seven outcomes, which will be delivered through the implementation of this policy. These seven outcomes are:

**Outcome 1** - Improved health and emotional well-being: To stay healthy and recover quickly from illness.

**Outcome 2** - Improved quality of life: To have the best possible quality of life, including life with other family members supported in a caring role.

**Outcome 3** - Making a positive contribution: To participate as an active citizen, increasing independence where possible.

**Outcome 4** - Choice and control: To have maximum choice and control.

**Outcome 5** - Freedom from discrimination, harassment and victimisation: To live free from discrimination, harassment and victimisation.

**Outcome 6** - Economic well-being: To achieve economic well-being and have access to work and / or benefits as appropriate.

**Outcome 7** - Personal dignity: To keep your personal dignity and be respected by others.

# Who can have a personal health budget?

* 1. The individual must be registered with a GP within the CCG locality.
  2. Adults who are eligible for NHS Continuing Healthcare funding and children and young people eligible for Continuing Care have had a legal right to a PHB since October 2014.
  3. From 1 April 2019 it is expected that, unless there are exceptional circumstances, all individuals living in their own home in receipt of NHS Continuing Healthcare funding will have a PHB.
  4. From 2 December 2019 the following groups of people will have a legal right to a PHB.
     + People who are referred and meet the eligibility criteria of their local wheelchair service, and people already registered with the wheelchair service, when they require a new wheelchair either through a change in clinical needs or in the condition of the current chair. This group will have a right to a personal wheelchair budget to give them more choice and flexibility over the chair provided.
     + People who are eligible for aftercare services under section 117 of the Mental Health Act, which is the provision or arrangement of help and support for people who have been detained in hospital under sections 3, 37, 45A, 47 or 48 of the Mental Health Act 1983, when they leave hospital. For this group, a PHB may be considered whenever planning is taking place for section 117 mental health aftercare needs during an admission to hospital, or at any assessment held to review the person’s section 117 after-care package of support in the community.
  5. The NHS will continue to explore further extension of legal rights to other groups which will support the NHS Long Term plan in delivering personalised care.
  6. The CCG will also consider PHBs where:
     + such an arrangement appears appropriate for an individual with regard to any particular condition they have and the impact of that condition on their life
     + such an arrangement represents value for money
     + where applicable, any additional cost is outweighed by the benefits to the individual
  7. Declining involvement should not disadvantage the individual as in those cases normal routes to provision of a care package will apply. Should the individual wish to accept a PHB they are free to choose to resume a traditional care package at any time.

# What a PHB can and cannot be used for

* 1. A PHB may only be spent on the services agreed between the budget holder and the case manager that will enable the person to meet their agreed health and wellbeing outcomes (and this is documented in the persons care and support plan). All agreements are confirmed and authorised within the support plan and are reviewed through the auditing process for compliance.
  2. The Direct Payments for Healthcare: Understanding the Regulations March 2014, Paragraph 113 states “The care coordinator should normally be someone who has regular contact with both the individual receiving care, and their representative or nominee if they have one. They do not need to have ‘care coordinator’ in their job title - the important thing is that they fulfil the responsibilities above and that the direct payment recipient is aware of who they are and their role. While they can arrange with others to undertake actions, such as monitoring or review, the care coordinator should be the primary point of contact between the individual and the CCG. In The Vale of York CCG this is 'Case Manager' for people who are eligible for NHS Continuing Healthcare funding / Children's Continuing Care / section 117 mental health aftercare.
  3. A PHB cannot be used for:-
     + Alcohol or tobacco products
     + Gambling services or facilities
     + Debt
     + Core GP services
     + Planned surgical interventions
     + Prescriptions
     + Services provided through vaccination or immunisation programmes
     + Any service provided under the NHS health check or National Child Measurement Programme
     + Primary medical services (such as diagnostic tests, vaccinations, or medical treatment)
     + Urgent or emergency treatment services (such as unplanned hospital admissions)
     + NHS dentist or opticians
     + purchasing anything which is unlawful or illegal
  4. A PHB cannot usually be used for support or care provided by an individual living in the same household as the budget holder without the prior agreement of the CCG in accordance with paragraph 8(5A) of the Regulations. Agreement may only be obtained from the CCG if it considers that service is necessary to:
     + Satisfactorily meet the person's need for that service; or
     + Promote the welfare of person who is a child

The CCG will consider:

* + - The benefits that the person and the proposed individual of the same of household may already be in receipt of; and
    - The care that should naturally be expected from that of a family member/individual living in the same household.
  1. An individual in receipt of a PHB and funded via the CCG is not allowed to contribute to or 'top-up' the cost of care as set out in the Care and Support plan from their own resources, except for personal wheelchair budgets. Where an individual uses a PHB direct payment to purchase services from a private agency it would need to be in line with the CCG Choice and Equity Policy 2021 and meet the associated value for money test. Personal wheelchair budgets do not change the current regulatory framework (The National Health Service Wheelchair Charges Regulations 1996), which enables people to contribute to the cost of a wheelchair. If the budget holder considers that the direct payments are insufficient to meet his/her assessed needs, then he or she should request a review of the care package by the CCG. The budget holder can purchase additional services from their own funds which are not identified in the care and support plan but this should take place separately with clear accountability. See the CCG Choice and Equity Policy for further information.
  2. The CCG will provide PHBs so that people may use them to meet their assessed health and well-being needs and outcomes. The use of such funding does not extend to the delivery of goods or services that would normally be the responsibility of other bodies (e.g. Local authority social services, housing authorities) or are covered by other existing contracts held by the CCG (e.g. community equipment via the Joint Integrated Community Equipment Service contract). However, in some cases, the CCG may agree a service which would normally be funded by another funding stream if that service is likely to meet someone’s agreed health and wellbeing outcomes.
  3. It should be noted that this list is not exhaustive and, if unsure, the PHB holder should seek advice before expense is incurred. The CCG is responsible for agreeing that all intended expenditure is legal as part of the Personal Health Budget governance.

# Options for managing a PHB

* 1. On 1 August 2013, the National Health Service (Direct Payments) Regulations 2013 (subsequently amended by the National Health Service (Direct Payments) (Amendment) Regulations 2013) came into force across England, meaning that the NHS can lawfully offer direct payments for healthcare.
  2. The most appropriate way to manage a PHB should be discussed and agreed with the person, their representative or nominee as part of the support planning process. There are three ways in which a person can receive a PHB:

# Notional budget

Where an individual is informed of the amount of funding available to them and decides how the budget is used (by input into the support plan) but the CCG continues to commission services, manage contracts and make purchases etc. Notional budgets could be an option for individuals who want more choice and control over their healthcare but who do not feel able or willing to manage a budget.

# Third party budget

A different organisation, legally independent of both the individual and the NHS, holds the money for the individual and arranges and pays for all of the services on behalf of the individual in accordance with the support plan. The third party will arrange to recruit and employ a team of Personal Assistants and manage all employment responsibilities making the care package bespoke to the individual’s needs.

# Direct payment

* + **Direct payments for people with capacity**

Where the individual receives the funding that is available to them and they purchase the services and support they want in accordance with the agreed

support plan (with or without assistance). The individual can elect to receive and manage the payment themselves or decide for it to be received and managed by a person of their choosing (a nominee). If the individual chooses a nominee, that nominee becomes responsible for managing the funds and services and accounting for expenditure.

# Direct payments for people who lack capacity

* 1. Where the individual lacks capacity an ‘authorised representative’ receives the funding that is available to the individual as a direct payment. Alternatively, the funding could be paid to a company on behalf of the individual and they will facilitate payment for all services, this will be classified as a “managed account”. The authorised representative is responsible for managing the funds and services and accounting for expenditure. The ‘authorised representative’ must involve the individual as much as possible and act in their best interests, in accordance with the Mental Capacity Act 2005. In the case of children under 16, direct payments can be received by their parents or those with parental responsibility for that child.
  2. A combination of the above may also be appropriate. The key principle is that the PHB holder knows what their budget is, the treatment or care options and the financial implications of their choices, irrespective of the way the budget is actually managed.
  3. Direct payments are currently not routinely available as an option for managing a standalone personal wheelchair budget. NHS England and the Department of Health and Social Care are currently reviewing existing regulations to establish whether additional contributions are permissible under the Direct Payments in Healthcare Regulations. For more information about the options for managing a personal wheelchair budget visit <https://www.england.nhs.uk/personal-health-budgets/personal-wheelchair-budgets/frequently-asked-questions/#q5>

# How do PHBs work?

* 1. All individuals eligible for NHS Continuing Healthcare should be provided with a patient information leaflet explaining PHBs. The CCG also publishes information on the CCG's website which contains information relating to PHBs. Information will be provided to the Patient verbally and/or in writing using accessible language. The CCG will also offer Patients the opportunity to access independent advice in relation to their options if required.

1. **The CHC Nurse / Case Manager / Care Coordinator** 
   1. For each person in receipt of eligible care opting to receive a PHB for care and support the patient will have an assigned CHC Nurse/Case Manager. The CHC Nurse/Case Manager will normally be someone who has regular contact with the Patient, and a Representative or Nominee if they have one. They are responsible for:
      * Managing the assessment of the health needs of the individual as part of the support plan
      * Ensure that both the individual, Representative or Nominee and the CCG have agreed a care and support plan
      * Undertaking or arranging for the monitoring and review of the PHB, the care and support plan, and the health of the person
      * Liaising between the individual (or their representative or nominee), and the CCG as the primary point of contact (and the Direct Payment Advisor / Direct Payment Support Service for anyone who has opted for a Direct Payment PHB)
      * Whilst they may not have CHC Nurse/Case Manager in their job title, the important thing is that they are fulfilling the responsibilities above, while also being able to arrange with others to undertake actions, such as monitoring or review.
   2. Patients and families who wish to consider and explore PHBs further will be supported by their Case Manager. Individuals will be supported to complete a PHB support plan which includes recording the assessed clinical needs of the individual. This will begin the process of identifying risks so the care / support planning process can commence. All Commissioning Practitioners will receive the necessary training to advise on PHBs and will able to make the necessary referrals to support an individual to access personalised services. The initial information will be delivered by the care manager and will be supported by the CCG (as appropriate) to progress the request.
   3. Following sign off by the CCG, where an individual or their representative requires further support on any element of the PHB, they will be able to contact their named Case Manager as detailed in the support plan.

# Direct Payment Support Services

* 1. For people who opt to have a Direct Payment PHB they will be supported by the Direct Payment Support Service (hosted by North Yorkshire County Council) to provide information, advice and guidance to prospective and existing PHB recipients, and their families. The services provided by this organisation include:
     + carry out risk assessment and to provide appropriate information about Direct Payments tailored to individual need
     + calculate the full costings of the care and support plan
     + provide technical information and assistance to workers
     + support people in recruitment and selection including assistance in development of advertisements, job descriptions, contracts of employment DBS checks and references
     + assist people to plan and arrange alternative care and support in the event of staff illness or holiday cover and signpost to employment options, tailored employment, legal requirements and to assist in securing appropriate insurances
     + signpost to training and support for people in receipt of a Direct Payment and their employees
     + support a person to maintain appropriate records for the purposes of financial monitoring of their Direct Payment
     + monitor and review the management of direct payments

# Consent

* 1. PHBs can only be arranged where appropriate consent has been provided by:
     + A person aged 16 or over who has the capacity to consent to the arrangement
     + The representative of a person aged 16 or over who lacks capacity to consent
     + The representative of a child under the age of 16 (this can be those who have parental responsibility for the child)
  2. The fact that an individual is a child or is an adult who lacks capacity to make a decision about a PHB does not prevent them from having one. In such cases, it will be necessary for those individuals to be appointed with a representative who is willing and able to act on the individual’s behalf in relation to the PHB.
  3. In order for a PHB arrangement to be put in place for a person who lacks capacity, a ‘representative’ will need to be appointed by the CCG. A representative is someone who agrees to act on behalf of someone who is otherwise eligible to receive a PHB but cannot do so because they do not have capacity to consent to receiving one or because they are a child.
  4. An accepted ‘representative’ could be anyone deemed suitable by the CCG, and who would accept the role. Some examples of suitable representatives are:
     + a friend, carer or family member;
     + a deputy appointed by the Court of Protection;
     + an attorney with health and welfare or finance decision-making powers created by a lasting power of attorney.
  5. In the case of adults who lack capacity, the choice of the ‘representative’ must satisfy the best interest requirements of the Mental Capacity Act. This includes seeking the views of the Eligible Person, where possible, about who they would want to manage their PHB.
  6. The decision making process for the appointment of the ‘representative’ must be documented and discussed as part of the support planning process, and agreed by the CCG.
  7. The representative will take on the responsibilities associated with the PHB. Where it is believed to be appropriate to provide a PHB by way of direct payment, the representative must be fully informed about, and consent to accepting; the responsibilities relating to the receipt and management of the direct payment on the Eligible Person’s behalf.
  8. The involvement of the representative should be reviewed if the Eligible Person regains capacity and/or reaches the age of 16.

# Budget Setting

* 1. Under PHBs, after an assessment, or review an ‘indicative budget’ may be set based on assessed clinical need. The indicative budget gives an indicative financial envelope within which the PHB support plan is completed. The indicative budget is not a fixed amount, which cannot be exceeded, or a target to be reached, but a guide to make support planning more effective by giving an indication of how much money may be available.
  2. During the care and support planning process, the Case Manager will arrange a process to identify an indicative budget. The indicative budget predicts the amount of money allocated to the Patient following an assessment of their needs as part of the CHC eligibility assessment and Support Planning process.
  3. It is the responsibility of the CHC Nurse/Case Manager to inform the Patient or their Representative that the budget at this point is indicative and discuss the options for how the Personal Health Budget payment will be made. The Patient should be made aware that there is an approvals process before the final budget and form of payment can be agreed. The PHB is therefore based on the money that would otherwise be spent on a service commissioned by the CCG to meet the fully funded / Joint Funded NHS Continuing Healthcare needs of the individual.

# Completion of a Care and Support Plan

* 1. Everyone who has a PHB will go through a support planning process, which leads to a personalised care and support plan.
  2. A PHB support plan is developed jointly by the individual, (and where applicable their representative) and their case manager. A direct payment advisor from the Direct Payment Support Service is responsible for calculating the costs of what has been agreed in the care and support plan.
  3. Professionals involved in the support planning process should consider where collaborative working may be required. For example, children or young people may have in place or be eligible for an education, health and care plan. In such circumstances, case managers will need to work collaboratively with the social care and education professionals to ensure support planning is streamlined and to avoid duplication.
  4. The process should be driven by the individual’s choices and the support plan should clearly show how a PHB will be used to achieve the individual’s identified health and care outcomes. This includes:
     + the assessed health needs of the individual and the desired outcomes;
     + the amount of money available under the PHB;
     + what the PHB will be used to purchase;
     + how the PHB will be managed;
     + who will be managing the budget;
     + who will be providing each element of support;
     + how the plan will meet the agreed outcomes and assessed clinical needs;
     + who is responsible for monitoring the health condition of the individual;
     + who the individual should contact to discuss any changes in their needs;
     + the anticipated date of the first review, including review of the outcomes;
     + how any training needs will be met;
     + identifying any risks, consequences and mitigating actions;
     + contingency planning.
  5. Good support planning involves looking holistically at the individual’s life to improve their health, safety, independence and wellbeing. The individual should be supported throughout the support planning process.
  6. The PHB support plan must detail how the PHB will be used. It is during the support planning phase that delegation of clinical tasks within PHBs will be considered for those wishing to receive a Direct Payment. Please see section 47 for further information.
  7. When considering how and what care services can be commissioned, the CCG has a responsibility toward tax payers to comply with its statutory duty to ensure that commissioning decisions take full account of the most cost effective options available, whilst also ensuring the assessed care needs of individuals are met.
  8. Delay in arranging PHBs should be avoided. Where delay is unavoidable (for example, where circumstances make it difficult to plan for a person’s on-going care), the reasons for it must be made clear to the individual. Regular review should take place so that a person’s PHB can be put in place as soon as practicably possible. The CCG will make sure that this delay does not cause a delay in hospital discharges or in ensuring an appropriate package of care is in place pending finalisation of the PHB arrangements. An interim care package may be offered to avoid such delay.
  9. A Case Manager will be named in an individual’s support plan. This should be someone who has regular contact with the individual and their representative if they have one. It is likely that the named health professional will be the most appropriate person to undertake this role; this will usually be your Continuing Healthcare Case Manager.
  10. The CCG may agree to vary the support plan or the PHB if there is a change in circumstances. In the case of significant changes, this will take place following a review of the individual’s needs. In the case of minor changes, the CCG may agree to a variation without a review being required.
  11. The CCG may also agree to add to or amend a support plan and / or PHB that has previously been partially approved, once agreement has been reached on any outstanding elements. A variation may also be made following the outcome of an appeal. Irrespective of whether the change involved is major or minor, the support plan must be looked at as a whole in order to assess the full effect of the change and identify any changes in need.

# Risk assessment

* 1. During the support planning process, the named care coordinator will have a detailed discussion with the individual and representative about potential risks, and how they can be managed.
  2. The support plan will contain details of any proportionate means of mitigating the identified risks, and this will be informed by a discussion of the significant potential risks and their consequences. Examples of risks may include:
     + Risk to the individual’s health and wellbeing – clinical risk
     + The individual’s safety (including those around them) -safeguarding risk
     + Those caring for the individual – employment risk
     + The individual’s budget – financial
     + Purchasing services without appropriate indemnity cover
  3. Provided the risks are clearly identified and addressed in the support plan, the plan will be considered.
  4. No service should be included in the support plan if the CCG considers that the benefits of that service are outweighed by the possible damage to health. However, the CCG needs to ensure an appropriate balance is struck between empowerment and safeguarding.
  5. An individual who has the mental capacity to make a decision, and chooses voluntarily to live with a level of risk, is entitled to do so. However, the CCG remains accountable for the proper use of public funds and whilst the individual is entitled to accept a degree of risk, the NHS is not obliged to fund it. In contentious cases, the process of approving support plans will need to address and resolve conflict about the treatment of risk.
  6. Clinical governance should support flexibility and innovation where possible, so people can try alternative approaches to achieving their health goals providing all risks are identified and managed.

# Organisational Risk

* 1. Responsibility for approving Personal Health Budgets is the responsibility of the CCG.
  2. The CCG is committed to shifting the balance of risk towards a positive approach of supported decision-making for Patients, the organisation, and its partners.
  3. The CCG will work with the Local Authority as lead agency should any safeguarding concerns arise to ensure they are investigated accordingly.
  4. The CCG has an obligation to ensure all Personal Health Budgets:
     + Health and well-being needs are being met
     + Safeguarding duties are fully met
     + They are fulfilling their duty of care and broad statutory obligations
     + They are fulfilling their responsibility to ensure that public funds are used to enable Patients to live independent and full lives ensuring value for money
     + Patients expenditure is managed within the overall CCG budgetary allocation ensuring the CCG meets its statutory duty to breakeven on its resource limit,
     + Public funds are used appropriately and value for money achieved

# Safeguarding

* 1. The CCG has a duty of care to ensure that individuals are safeguarded and protected from harm. This is discharged through:
     + Ensuring individuals and their carers are aware of how to obtain an assessment of need or carer’s assessment. This would generally take place as part of the personalised care and support plans and review processes.
     + Risk assessment forming part of the PHB assessment and approval process.
     + Effective processes for the ongoing review of a PHB.
     + Individuals and their carers being helped to understand the importance of safeguarding, and their role, including what to do if they have a concern.
       - Ensuring the workforce that supports individuals and families or carers know, and can follow local and multi-agency safeguarding procedures for safeguarding children and safeguarding adults. Noting that in some cases where there are children under the age of 18, both the safeguarding children’s procedures and the safeguarding adult’s procedures will be working in tandem.
     + Where a Personal Assistant is to be employed, all Personal Assistants must be subject to enhanced Disclosure and Barring Service (DBS) checks. Individuals cannot request DBS checks on other individuals. The CCG must therefore assist in arranging DBS checks. The CCG will fund the cost of DBS checks which will be identified as part of the support planning process. If the individual refuses, the CCG will not grant a direct payment unless there are exceptional circumstances, although other forms of PHB may still be made available. No DBS checks can be undertaken on close family members, members living in the same household as the individual or friends of an individual (please see section 44 which details the restrictions on employing such individuals as Personal Assistants)
     + Where a Personal Assistant is already employed prior to the PHB (normally through Local Authority funding), the provider must check whether DBS (or CRB) checks were carried out at the time. If not, these will be required, as for a new employee
  2. Where there are concerns about a change to an individual’s capacity to consent, or manage their Personal Assistant, this must be assessed and appropriate steps taken by the CCG. Loss of capacity or ability to manage should not mean loss of a PHB or Personal Assistant.
  3. That there is an acceptable level of training completed by Personal Assistant’s to ensure that individual care needs can be met.
  4. The CCG will work with the Local Authorities as lead agency should any safeguarding concerns arise concerning abuse and neglect or financial abuse of an individual receiving a PHB. Workers will follow the agreed local and multi-agency safeguarding procedures for safeguarding children and or, safeguarding adults, which may also require participating in strategy meetings, writing reports or attending conferences.
  5. Cases involving allegations against workers (paid or unpaid) and or, those in a Position of Trust, multi-agency procedures should also be followed. Where children under the age of 18 are involved, seeking advice from the Local Authorities Designated Officers (LADOs) will also be required.
  6. All safeguarding concerns will be reported and investigated accordingly, and the payment mechanism for the PHB may be reviewed if deemed appropriate by the CCG.

# Approval of the Support Plan

* 1. The CHC Nurse/Case Manager will be responsible for presenting a request for a Personal Health Budget to the CCG's Clinical Considerations Panel for approval.
     + As a minimum the CHC Nurse/Case Manager will need to submit the relevant paperwork to the CHC Panel to enable them to make a decision, including completed Personalised care and support Plan documentation
     + Completed Risk Assessment
     + The costed budget
  2. Once the CCG's Clinical Considerations Panel agree the Direct Payment PHB is appropriate, the final PHB value and rationale is approved by the CCGs Clinical Considerations Panel, which includes:
     + The final budget
     + The Personalised care and Support Plan
  3. The CCG will constitute an appeals panel to consider appeals in the following situations:
     + A request for a PHB that was not approved
     + The type of PHB requested was not approved, and the type of PHB offered is not acceptable to the Patient
     + The final funding allocation is challenged by the Patient, or
     + The decision making process is challenged by the Patient
  4. The CCG must ensure it is satisfied that the support plan is:

1. **Lawful** - the proposals must be lawful and meet all regulatory requirements. In deciding whether the support plan meets with legal requirements, it must show that:
   * Informed consent has been obtained
   * Legal responsibilities that an individual will incur under the PHB arrangement are clearly stated (e.g. employment law, health and safety)
   * The support plan sets out the assessed needs and desired outcomes of the individual and will meet those needs and outcomes
   * The measures within the support plan are lawful
   * The support plan is person-centred and led by the needs of the individual
   * It is well-balanced with the highest needs receiving priority
   * There is provision for appropriate reviews of the support plan
   * The CCG will ensure that any risks have been properly identified, discussed with the individual, their representative or nominee and properly addressed to ensure such risks are eliminated, reduced or managed. These include risks to the individual or anyone else but also risks to the service or to the CCG
   * Must demonstrate compliance with the Mental Capacity Act 2005. If the individual has been assessed as lacking capacity, the support plan must make it clear how their wishes have been ascertained and incorporated into the support plan
   * Where people lack capacity or are more vulnerable, procedures such as safeguarding, promoting liberty and if required, necessary restraint procedures have been included appropriately in the support plan and any necessary legal authorisations for those procedures have been obtained
   * Any service providers identified in the plan must meet applicable regulatory requirements. A regulated activity cannot be purchased from a non-registered service provider
   * The individual, their representative or nominee and, where applicable, their carers, must receive guidance on any health and safety issues or regulatory requirements in relation to any equipment to be used or any adaptations to their home
   * Where there is a carer, the carer’s needs have been assessed and the proposals take account of their needs too
2. **Effective** - the CCG has a statutory duty to ensure funding is used effectively and in accordance with the principle of best value. The CCG will therefore make sure that the individual’s needs and desired health outcomes are taken into account and that the measures proposed in the support plan represent an effective use of the PHB. In particular it must be satisfied that:
   * The support plan has been appropriately risk assessed
   * The support plan will be effective in meeting the individual’s assessed needs and holistically supporting their independence, health and wellbeing
   * It takes account of the views and needs of carers
   * It is adaptable and flexible, so individuals can revise their plans as they learn what works best for them or as their circumstances change
   * Is reflective of the policy in the Commissioning Policy for Continuing Health Care ensuring that best value of public money has been achieved
3. **Affordable** - all costs have been identified and can realistically be met within the budget. In deciding whether the support plan is affordable, it must show that:
   * In the case of support plans that exceed the indicative budget, the plan is thoroughly checked by commissioners before being sourced to ensure best value
   * Where the support plan requires a budget that is lower than the indicative budget, the lower budget will be approved
   * The use of existing universal services, community resources, informal support and assistive technology has been explored as a first-line, and clear rationale are given and agreed as to why these are not appropriate to meet the individual’s assessed needs
   * All relevant sources of funding (e.g. Local Authority provision) have been identified and utilised in conjunction with the PHB
   * All costs have been identified and fall within the budget allocated
   * A suitable contingency amount is included within the support plan
   * The support plan fully meets the assessed, eligible needs in the most cost effective way possible
   * The support plan’s cost is not substantially disproportionate to the potential benefit
   * Where NICE has concluded that a treatment is not cost effective, CCGs will apply their existing exceptions process before agreeing to such a service. However, where NICE has not ruled on the cost effectiveness or otherwise of a specific treatment, this will not be a barrier to people purchasing such services, if those services may meet the health and well-being needs identified
4. **Appropriate** - the support plan should not include the purchase of items or services that are excluded from PHB arrangements.

# Calculating the final budget

* 1. The final budget will be shared with the individual in order for the necessary care and support to be arranged. Pay arrangements will differ dependent on the type of PHB chosen.
  2. The CCG will ensure that additional “hidden” costs are accounted for in the final budget. For example, where an individual uses a direct payment PHB to employ staff to meet their care needs there will be additional costs to consider – National Insurance, PAYE, liability insurance and pension, but also potentially payroll services and other employment support (e.g. recruitment costs). These costs will be covered in the PHB and will be detailed within the care and support plan costings.
  3. The following costs will be considered when calculating the final budget:
     + The direct cost of providing the service, including support service costs
     + Start-up costs such as internal staff training
     + Refresher training
     + Pension costs
     + Equipment costs (where equipment specifically forms part of the PHB and is not provided via the CCG’s community equipment contract)
     + Funding to cover the contingency plan (such as using an agency if a Personal Assistant is on sick leave)
     + Equipment contingency (e.g. hire fee to cover breakdown not covered by insurance or by the CCG’s community equipment contract)
     + Additional elements may be required to be funded within the PHB such as the following (unplanned contingencies):
     + Redundancy costs when a service provided by a Personal Assistant ceases, if the Personal Assistant is entitled
     + Maternity pay, if the Personal Assistant is entitled
     + Long term sickness
  4. The CCG may hold the above costs in a separate contingency fund until required by an actual liability.
  5. The CCG is not obliged to fund costs associated with the individual’s preferred method of securing a service. If the cost exceeds the ‘reasonable cost’ of securing it and the service can be secured more cost effectively (but still to the required standard) in another way, the CCG may insist on the more efficient option.
  6. The CCG is not obliged to fund particular costs incurred by the individual, for example non- statutory liabilities such as ex gratia bonus payments. Any differential in pay rate for bank holiday pay for carers should be wherever possible be agreed in advance and as part of the final budget.
  7. If the individual incurs bank charges as a result of allowing a direct payment banking account to show a deficit without the agreement of the CCG, the individual will be responsible for meeting these charges from their own funds, and the CCG will not be liable for this payment.
  8. If the individual incurs interest payments as a result of the direct payment monies held in the account, the interest will be the property of the CCG.
  9. PHBs must be reviewed (section 25) and, if the budget is not set at a suitable level, adjusted accordingly.

# PHB Agreement

* 1. When taking up a PHB as a Direct Payment the individual or their representative must sign a ‘PHB direct payment agreement’, which explains the responsibilities associated with the PHB and sets out the agreement that the PHB will be spent as set out in the support plan. More information on the Direct Payment Agreement can be found in section 37.
  2. Where an individual receives a PHB as a notional budget a Direct Payment Agreement is not required with all care agreements being recorded by the named health professional.
  3. Where an individual receives a Third Party (fully delegated) PHB - a contract will need to be arranged between the CCG and the agreed Third Party Provider; therefore, a Direct Payment Agreement is not required.
  4. If the patient is receiving the PHB as a direct payment, the agreement will confirm that the PHB will be spent in accordance with the NHS (Direct Payments) Regulations 2013. If an individual chooses a package of care which includes both a payment and notional support, all elements of the care will be included in the care and support plan; however, the notional proportion of the care will be retained by the CCG and paid upon request.

# Assistance to manage PHBs

* 1. The CCG has a duty to support individuals with appropriate advice, and support in relation to Direct Payment PHBs. Therefore, where a Direct Payment PHB is chosen the individual will be referred to the Direct Payment Support Service (hosted by North Yorkshire County Council).

* 1. The CCG, with support from the Direct Payment Support Service, will signpost individuals to a choice of support services to provide support to individuals in receipt of PHBs. It is envisaged that over time a wider range of organisations will become available to offer support and that this will be reflected in the choices available to PHB recipients. These arrangements will continue to be reviewed as the service develops.
  2. The cost of the Direct Payment Support Service is met by the CCG as part of a separate agreement with North Yorkshire County Council. Support services identified by the case manager and/or the direct payment advisor to enable the direct payment holder to manager and administer their direct payment PHB (e.g. Payroll service) will be met from CCG approved providers and included in the PHB.

# Monitoring and Review

* 1. Regular review is required in order to ensure that an individual’s support plan continues to meet their needs.
  2. In Continuing Healthcare, support plans and PHB packages will be reviewed within three months following commencement and again in 12 months’ time as a minimum. Intensity and frequency of review will be based on the risk assessment conducted for each individual.
  3. Reviews may need to take place sooner or more frequently if the CCG becomes aware that:
     + the health needs of the individual have changed significantly;
     + if it becomes apparent that the support plan, care agreements or contractual arrangements are not being followed or expected health outcomes are not being met; or
     + the individual or their representative requests it.
  4. For those with a direct payment PHB arrangement, an audit of bank statements and expenditure and relevant employee documentation such as a contract, training certificates, insurance and DBS checks for Personal Assistants will be required.
  5. The support plan will be reviewed against the following criteria:
     + whether it meets personal health and well-being outcomes
     + health and wellbeing needs and risks
     + cost neutrality or improved value for money
     + level, use and management of direct payments (where applicable)
     + the quality of support and service
     + changes in needs and circumstances
     + safeguarding and promotion of liberty
  6. Outside of scheduled reviews, the individual may request a review of their needs or a review of the making of direct payments. It is at the CCG discretion as to whether a review will be carried out following such a request.
  7. It is the individual’s responsibility (or the representative or nominee) to inform the Case Manager if there is a change in residency or if the direct payment is insufficient to purchase the agreed care in the support plan, so that the needs of the individual can be reviewed if required. The PHB will continue until a review takes place. It is also the individual’s responsibility to inform the new place of residence that they are in receipt of a PHB (and Continuing Healthcare funding if applicable).
  8. If an individual moves permanent residency into a care home, the case manager should be notified in advance. The case manager will ensure that the move is to an appropriate care setting, if this is to a care home with nursing it is expected that a nursing assessment is completed prior to placement and that this includes a rationale for the placement. The case manager will then carry out a review within 12 weeks of the move to ensure that all nursing needs are being met. If the individual is into a care home for a temporary period of time, a review will be undertaken within 6 weeks. If an individual moves into a hospice the review will take place within 10 weeks, where appropriate.
  9. There may be occasions when direct payment holders require hospital stays. However, this should not mean it is necessary to suspend a direct payment. Where the direct payment recipient is also the person requiring care and support, the CCG, along with the individual, should consider how the DP, can be used to meet needs whilst they remain in hospital, or to ensure employment arrangements are maintained. In some cases, the nominated or authorised person managing the direct payment may require a hospital stay. In these cases, the CCG must conduct an urgent review to ensure that the person continues to receive care and support to meet their needs. This may be through a temporary nominated/ authorised person, or through short-term authority arranged care and support. If after 6 weeks the individual remains in hospital, the CCG will discuss with the patient, their representatives, and the Direct Payments Support Service if it is appropriate to continue the DP.

# Stopping or reclaiming PHBs

* 1. Where it is identified that a PHB is not meeting assessed need or felt to be inappropriate to continue arrangements under, the PHB can be stopped and, where applicable, money can be reclaimed. PHBs regardless of payment method can be stopped at any time; however, initially a resolution to the identified problem will be sought. Where a solution cannot be identified the PHB will cease and a contracted provider for the CCG will be input to deliver care.
  2. The CCG will terminate a PHB arrangement following notice to the individual or their representative if:
     + The individual has deceased
     + The terms and condition of the PHB agreement are not being met
     + The individual or their representative spend money illegally
     + The individual or their representative spend money not in accordance with the support plan agreed by the CCG
     + The individual or their representative spend money not in the individual’s best interest
     + The individual’s health or safety is at risk
     + The individual or their representative are not able to provide the CCG with adequate records on spend for those with a direct payment arrangement
     + The patient or their representative inform the CCG that they no longer wish to continue with their PHB arrangement
     + The patient or their representative are no longer able to manage the PHB
     + An individual with a PHB for NHS Continuing Healthcare is found no longer eligible
  3. For notional and third party arrangements, the CCG will recover any payment made to providers from the date of death / transfer / other reason (as above) for stopping the PHB.

# Direct Payments

* 1. The National Health Service (Direct Payments) Regulations 2013 set out how direct payments should be administered and on what they can be spent on. The regulations are similar to the regulations and guidance for social care direct payments. PHB guidance on the new direct payments for healthcare regulations was published in March 2014. Although, the NHS (Direct Payments) Regulations 2013 apply to direct payment PHBs, the CCGs agreed to apply these regulations, as far as possible, to all forms of PHB to ensure transparency, fairness, and best practice. Therefore, all information in sections 27 to 52 relates in its entirety to those choosing to take a Direct Payment whether this be in the form of a Direct Payment to themselves or their representative or a managed account. It does not include those choosing a notional budget. Individuals choosing a notional PHB will have all services delivered directly by the CCG commissioned providers; however, an individual can still request for their PHB to be managed as a Direct Payment.

# Who can receive a direct payment PHB?

* 1. A direct payment PHB can be made to any Eligible Person, where they are:
     + A person aged 16 or over, who has the capacity to consent to receiving a PHB by way of a direct payment and consents to receive one;
     + A child under 16 where they have a suitable representative who consents to a PHB by way of a direct payment;
     + A person aged 16 or over who does not have the capacity to consent to receiving a PHB by way of a direct payment but has a suitable representative who consents to it.

And where:

* + - A direct payment PHB is appropriate for that individual with regard to any particular condition they may have and the impact of that condition on their life;
    - A direct payment PHB represents value for money and, where applicable, any additional cost is outweighed by the benefits to the individual;
    - The person is not subject to certain criminal justice orders for alcohol or drug misuse.However, such a person may be able to use another form of PHB to personalise their care.
  1. The CCG will only provide direct payments if it is satisfied that the person receiving the direct payments (which may be the patient or representative) understands what is involved and has given consent.
  2. People aged 16 or over who have capacity, representatives of people aged 16 or over who lack capacity, and representatives of children can request that the direct payment is received and managed by a representative (see Section 33).
  3. Decisions about providing direct payments for healthcare should be based around need rather than being based around a particular medical condition or severity of condition.

# Ability to manage direct payments

* 1. The CCG will consider whether an individual (whether the patient or their representative) is able to manage direct payments by:
     + Considering 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 heath care or social care direct payment in the past, and whether their circumstances have changed
     + Whether they can 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
     + Considering any other factor which the CCG may consider is relevant.
  2. If the CCG is concerned that an individual is not able to manage a direct payment they must consider:
     + The individual’s understanding of direct payments, including the actions and responsibilities on their part.
     + Whether the individual understands the implications of receiving or not receiving direct payments.
     + What kind of support the individual may need to manage a direct payment.
     + What help is available to the individual, this may include a request for a managed account service to facilitate payments on the individual or representatives behalf.
  3. Any decision that an individual is unable to manage a direct payment must be made on a case by case basis, taking into account the views of the individual, and the help they have available to them. The CCG will not make blanket assumptions that groups of people will or will not be capable of managing direct payments.
  4. The CCG will inform the individual in writing if the decision has been made that they are not suitable for direct payments and whether an alternative method of receiving the PHB is considered to be suitable instead. See section 31 for further information.

# Who cannot receive a direct payment?

* 1. There are some people to whom the duty to make direct payments does not apply. If the individual is subject to certain criminal justice orders for alcohol or drug misuse, then they will not receive a direct payment. However, they might be able to use another form of PHB to personalise their care and alternatives should be considered.

# Deciding not to offer a direct payment

* 1. In addition to the above, a CCG may decide to refuse to make a direct payment if it believes it would be inappropriate to do so, for example:
     + if there is significant doubt around an individual’s or their representative’s ability to manage a direct payment;
     + if there is a high likelihood of a direct payment being abused;
     + if the benefit to the particular individual of having a direct payment does not represent good value for money;
     + if it considers that providing services in this way will not provide the same or improved outcomes.
     + if there is doubt the budget will not be used for the agreed purposes
     + if there is an inappropriate conflict of interest between the recipient, the Care Provider, and the patient.
     + if a clinical risk assessment deems it to be unsafe
  2. Such a view may be formed from information gained from anyone known to be involved with the individual, including health professionals, social care professionals, the individual’s family and close friends, and carers for the individual.
  3. In all cases where a direct payment is refused, the Eligible Person and or representative will be informed in writing of the refusal and the grounds by which the request is declined. The individual or their representative has 28 days from receipt of this letter to request the CCG to reconsider this decision, in which case, the process set out in section 32 will be followed.
  4. If a direct payment is refused, other options to personalise the package of care for the individual will be explored and facilitated as much as is possible, and other forms of PHB, such as a notional budget or third party budget, may be considered.

# Request for review of Direct Payment refusal

* 1. Where the CCG decides that a direct payment would be inappropriate, the patient or representative may request the CCG to reconsider the decision within 28 days of receiving written notification of this, submitting additional information to support the deliberation. The CCG must reconsider its decision in a timely manner upon such a request being made but is not required to undertake more than one re-consideration in any six month period following the initial decision; a Clinical Lead within the CCG will make this decision.
  2. Should an individual not agree with the decision they may raise a complaint to the CCG. The Executive Director for Continuing Healthcare will make a decision regarding a request for reconsideration of a refusal to provide a direct payment. The decision will be reviewed in line with the CCG commissioning principles and will be considered on individual basis.

# Representatives and direct payments

* 1. Information surrounding the appointment of Representatives is set out earlier in this Policy. When the use of direct payments is being considered, the CCG must be satisfied that a person agreeing to act as a representative understands what is involved, and has provided their informed consent, before going ahead and providing direct payments. They should be informed of the restrictions surrounding employment of a family member or person living in the same household to provide care (see section 44).
  2. Full advice, support and information should be signposted so that people contemplating taking on the role of representative know what to expect. In addition, the CCG must provide its consent to the representative acting in this role, having duly considered whether the person is competent and able to manage direct payments, either on their own or with whatever assistance is available to them.
  3. 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 the CCG (see section 34 below).
  4. A representative must (unless they have appointed a nominee to do so):
     + act on behalf of the person, e.g. to help develop a PHB support plan and to hold the direct payment
     + act in the best interests of the individual when securing the provision of services
     + be the principal person for all contracts and agreements, e.g. as an employer
     + use the PHB and direct payment in line with the agreed support plan
     + comply with any other requirement that would normally be undertaken by the individual (e.g. participating in a review, providing information)
  5. When considering whether to make direct payments to representatives, the CCG will consider:
     + Whether the person receiving care had, when they had capacity, expressed a wish to receive direct payments
     + Whether the person’s beliefs or values would have influenced them to have consented or not consented to receiving a direct payment
     + Any other factors that the person would be likely to take into account in deciding whether to consent or not to receiving direct payments
     + As far as possible, the person’s past and current wishes and feelings. This may be through their nominee, representative, family members, legal power of attorney or deputy as appointed by the Court of Protection.

# Nominees

* 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 (a nominee) to receive them on their behalf.
  2. 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.
  3. Where a nominee is appointed, they become responsible for managing the PHB and direct payment on behalf of the individual or the appointed representative (for individuals without capacity). They must:
     + act on behalf of the person, e.g. to help develop a PHB support plan and to hold the direct payment
     + act in the best interests of the individual when securing the provision of services
     + be the principal person for all contracts and agreements, e.g. as an employer
     + use the PHB and direct payment in line with the agreed support plan
     + comply with any other requirement that would normally be undertaken by the individual (e.g. review, providing information)
  4. It is important to note that the role of nominee for direct payments for healthcare 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, however, the nominee is responsible for fulfilling all the responsibilities of someone receiving direct payments, as outlined above. Those receiving direct payments for healthcare and their nominees must be made fully aware of these responsibilities.
  5. The CCG must be satisfied that a person agreeing to act as a nominee understands what is involved, and has provided their informed consent, before going ahead and providing direct payments. Full advice, support and information will be signposted so that people contemplating taking on the role of nominee know what to expect. In addition, the CCG must

provide its consent to the nominee acting in this role, having duly considered whether the person is competent and able to manage direct payments, either on their own or with whatever assistance is available to them.

* 1. Before the nominee receives the direct payment, the CCG must consent to the nomination. In reaching its decision, the CCG may:
     + Consult with relevant people
     + Require information from the person for whom the direct payments will be made on the state of health or any health condition they have which is included in the services for which direct payments are being considered
     + Require the nominee to provide information relation to the account into which direct payments will be made.
  2. 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 CCG will require the nominee to apply for an enhanced Disclosure and Barring Service (DBS) certificate (formerly a CRB check) with a check of the ‘adults barred’ list and consider the information before giving their consent. If a proposed nominee in respect of a patient aged 18 or over is barred, the CCG must not give their consent. This is because the Safeguarding Vulnerable Groups Act 2006 prohibits a barred person from engaging in the activities of managing the person’s cash or paying the person’s bills.
  3. Such activities fall into “the provision of assistance in relation to general household matters to an adult who is in need of it by reason of age, illness or disability”, which is a regulated activating relating to vulnerable adults under Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
  4. 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, the CCG cannot ask them to apply for a DBS certificate and has no legal power to request these checks.
  5. The CCG must notify any person identified as a nominee where it has decided not to make a direct payment to them. The notification must be made in writing and state the reasons for the decision.

# Imposing conditions in connection with the making of direct payments

* 1. The following conditions may be imposed on the individual, their representative or nominee in connection with the making of direct payments:
     + the recipient must not secure a service from a particular person; and/or
     + the individual, their representative or their nominee must provide information that the CCG considers necessary (other than information already covered by other regulations in the NHS (Direct Payment) Regulations 2013.
  2. Conditions should only be imposed in exceptional circumstances. The reasons for the imposed conditions should be documented clearly.

# Assistance to manage a direct payment

* 1. The CCGs, with support from the Direct Payment Support Service, will signpost to a choice of support services to provide support to individuals in receipt of PHBs.
  2. Where an individual chooses a direct payment there are extra responsibilities on the individual (or their appointed representative) to manage their care package. These are set out within the PHB Direct Payment Agreement.
  3. It is essential that either the individual or their representative has the ability to consent to and manage their direct payment account. In certain circumstances, the option of a Managed Account can be considered. These circumstances include:
     + Where the individual or representative feels assistance is required, and this is necessary;
     + Where mental capacity indicates; or
     + Where the individual may lack the skills to financially evidence spend for the audit.
  4. For those in receipt of direct payments, Managed Accounts can assist individuals in activities such as payroll. This option for support is open to people with PHBs and direct payments. However, in circumstances where Managed Accounts are being considered, it may be more appropriate to consider the use of a notional budget. The respective benefits of each option should be discussed with the individual, their representative or nominee.
  5. The costs of support services to support people to meet their responsibilities of managing and administering a direct payment PHB (e.g. Payroll) are met from the PHB allocation.
  6. Individuals, representatives and appointed nominees employing staff must be referred to the Direct Payment Support Service for information, advice, guidance to ensure the legal responsibilities of being an employer are satisfied. Should the individual, representative or nominee not wish to accept this support the request for a direct payment may be refused because requirements of employment law will fall to the individual, their representative or their nominee as the employer. In such circumstances, the CCG would have to be satisfied that the individual, their representative or nominee are able to manage such responsibilities by other means.

# Direct Payment agreement

* 1. All direct payments as agreed by the individual or their representative / nominee in the support plan will be made by the CCG as detailed in the Direct Payment Agreement.
  2. The purpose of a Direct Payment Agreement is to ensure robust management of direct payments. The Direct Payment Agreement includes the following terms:
     + the budget holder and case manager have to sign their understanding of the PHB, its purpose, funding arrangements and restrictions
     + the budget holder must open a separate bank account solely for the purpose of the direct payment
     + the budget holder has to provide evidence to the CCG of expenditure through bank statements, receipts etc.
     + the budget holder must advise the CCG if there is slippage in the budget resulting in over eight weeks payments in their accounts
     + the CCG will write to the budget holder to request the return of accumulated budgets of more than eight weeks payment
     + records are retained by the budget holder and made available for audit by the CCG or representatives, this includes timesheets of Personal Assistants
     + CCG has a right to carry out a financial audit of a PHB, irrespective of whether it is a direct payment, managed bank account or third party arrangement
  3. In addition to the duty of the CCG to review the effectiveness of the support plan, it is the responsibility of the individual, or their nominee or representative, to inform the case manager as soon as they become aware of factors which may affect the cost to the CCG. The CCG will not automatically fund increased costs which have not been pre- approved through the support plan review process. Other benefits should also be taken into account to ensure that the PHB does not duplicate other sources of funding (e.g. winter fuel allowance, Motability allowance).
  4. For individuals moving out of area, the CCG will pay according to the Responsible Commissioner guidelines.

# Receiving a direct payment

* 1. Direct payments must be paid in advance. Under no circumstances should individuals have to pay for care and be reimbursed.
  2. Direct payments must be made into a separate bank account used specifically for this purpose and held by the person receiving them. A record of how the one-off payment was spent will need to be kept for audit purposes. This can be in the form of receipts of items or services purchased.
  3. The individual holding the account should keep a record of both the money going in and where it is spent.
  4. Payments out of the account should only ever be to meet the needs and outcomes identified in the support plan. Payments out of the account should be made by bank transfer/cheque, not by cash. In any event, receipts, statements, or payroll documentation should be available as requested by the CCG to substantiate all payments.
  5. The CCG will hold a notional contingency, if it has been identified in care and support plan.
  6. With the exception of one-off direct payments (see below), direct payments must be paid into the PHB account used specifically for the direct payment. The account must be in the name of the person receiving the care, or their nominee or representative. The individual or their representative will be required to set up the PHB account and this account should not be used for any other funds to be paid into.
  7. When receiving direct payments, the account holder should keep a record of both the money received and where it is spent. They are responsible for retaining statements and receipts for auditing.

# Monitoring and review of direct payments

* 1. As a minimum, a clinical review of an individual’s direct payments should be performed within three months of the first direct payment and then annually. Financial monitoring will take place quarterly to check the allocated budget against the money spent, and then the money spent against the support plan.
  2. There must be a review if the CCG become aware that direct payments have not been sufficient to secure the services specified in the support plan. If someone wishes to purchase additional care privately, they may do so, as long as it is additional to their assessed needs and it is a separate episode of care, with clearly separate lines of accountability and governance. They may not 'top up' the direct payment with their own money to purchase more expensive care than that agreed in the support plan.
  3. Where there are concerns regarding how the PHB is being spent, the CCG should be alerted to any concerns by the individual with the concerns, and the relevant case manager.
  4. These considerations are in addition to those set out in section 25, which requires review of an individual’s support plan to ensure it remains appropriate to meeting the individual’s needs.

# Stopping or reducing direct payments

* 1. There is an on-going duty to ensure that direct payments are reviewed. The amount provided under direct payments may be increased or decreased at any time, provided the new amount is sufficient to cover the full cost of the individual’s support plan. PHBs and direct payments are not a welfare benefit and do not represent an entitlement to a fixed amount of money. A surplus may indicate that the individual is not receiving the care they need or too much money has been allocated. It should be noted that a surplus is different to a contingency – it is permissible to include an amount for contingency in a PHB, for example, to cover where there is an increased care need in the case of an emergency. As part of the review process, the CCG should establish why the surplus has built up.
  2. Before making a decision to stop or reduce a direct payment, wherever possible and appropriate, the CCG should consult with the person receiving it to enable any errors or misunderstandings to be addressed, and enable any alternatives to be made. When a decision is taken to stop a direct payment, the CCG will take into consideration any contractual obligations such as the employment contract.
  3. Where direct payments have been reduced, the individual, their representative may request that this decision be reconsidered, and may provide evidence or relevant information to be considered as part of that deliberation. Where this happens, the individual or representative must be informed in writing of the outcome of the reconsideration and the reasons for this decision. The CCG is not required to undertake more than one reconsideration of any such decision. If the individual remains unhappy with the CCG’s decision, they should be referred to the local NHS complaints procedure.
  4. The CCG will stop making direct payments where:
     + A person with capacity to consent, withdraws their consent to receiving direct payments;
     + A person who has recovered the capacity to consent, does not consent to the direct payments continuing; or
     + A representative withdraws their consent to receive direct payments, and no other representative has been appointed.
  5. The CCG may stop direct payments if it is satisfied that it is appropriate to do so. For example where:
     + the money is being spent inappropriately (e.g. to buy something which is not specified in the care and support plan);
     + direct payments are no longer a suitable way of providing the person with care;
     + a nominee withdraws their consent, and the person receiving care or their representative does not wish to receive the direct payment themselves;
     + the CCG has reason to believe that a representative or nominee is no longer suitable to receive direct payments, and no other person has been appointed;
     + where there has been theft, fraud or abuse of the direct payment; or
     + if the patient’s assessed needs are not being met or the person no longer requires care;
     + where there are associated risks with continuing the direct payment
  6. Where PHBs and direct payments are stopped, the CCG will give reasonable notice individual, their representative or nominee in writing, explaining the reasons behind the decision. It should be noted that, after a direct payment is stopped, all rights and liabilities acquired or incurred as a result of the service purchased, as according to the support plan, by direct payments will be transferred to the CCG. This should therefore be considered. However, in some cases, it may be necessary to stop the direct payment immediately, for example, if fraud or theft has occurred.
  7. Where direct payments are to cease or be reduced, the CCG will give reasonable notice to the patient / representative / nominee in writing in accordance with the terms of the Direct Payment Agreement. What will be considered “reasonable notice” will depend on the circumstances but generally this will not exceed three months. The CCG will explain its reasons for the decision.
  8. In some cases, it may be necessary to stop the direct payment immediately, for example if fraud or theft has occurred. In such circumstances, CCGs must continue to provide healthcare if the individual requires it and should endeavour to provide a personalised service and to maintain continuity of care. The CCG will report any suspicion of fraud to the CCG’s Anti-Fraud Specialist for investigation.

# Audit and record keeping for Direct Payments and Third Party Arrangements

* 1. The CCG’s finance department is responsible for conducting audits on Direct Payment PHBs, which is supported by the Direct Payment Support Service (Provided by North Yorkshire County Council).
  2. The CCG / Direct Payment Support Service will check at appropriate intervals (in Continuing Healthcare this will be line with three or 12 month reviews) how direct payments are being used. The recipient must provide the CCG / Direct Payment Support Service with statements, receipts and invoices to enable an audit of the account.
  3. The CCG / Direct Payment Support Service will liaise with the PHB holder to conduct the financial audit.
  4. The budget holder should retain the following information for audit purposes for 6 years after the CCG has paid the first direct payment:
     + bank statements
     + cheque and paying-in books
     + invoices and receipts
     + PAYE, N.I and other payroll records
     + Any other information relating to the use of direct payments
  5. The information stated above must be:
     + legible
     + accompanied with authorisation for the CCG / Direct Payment Support Service to make copies or take extracts
     + accompanied with an explanation of the information provided (if requested by the CCG / Direct Payment Support Service)
     + accompanied with a statement informing the CCG where information is held which the person has been unable to provide (if requested)
  6. Documents submitted to the CCG for audit purposes could be subject to independent audit by the CCG’s Internal Audit Team or Anti-Fraud Specialist.

# Reclaiming a direct payment

* 1. The CCG can claim back PHBs and direct payments where:
     + they have been used to purchase a service that was not agreed in the care package / care and support plan;
     + there has been theft or fraud; or
     + the money has not been used (e.g., as a result of a change in the support plan or the individual’s circumstances have changed) and has accumulated.
  2. If a decision to reclaim payments is made, reasonable notice must be given to the individual, their representative or nominee, in writing, stating:
     + the reasons for the 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.
  3. The individual, their representative or nominee may request that this decision be reconsidered and provide additional information to the CCG for reconsideration. Notification of the outcome of this reconsideration must be provided in writing and an explanation provided. The CCGs are not required to undertake more than one reconsideration of any such decision. If the individual remains unhappy about the reduction, they will be referred to the local NHS complaints procedure.

# Using a direct payment to employ staff or buy services

* 1. People may wish to use their direct payment to employ staff to provide them with care and support where this has been agreed with the CCG it meets an assessed need. In so doing, they will acquire responsibility as an employer and need to be aware of the legal responsibilities associated with this. An individual or their representative will be advised on this responsibility and confirmed in the Direct Payment Agreement. This should not discourage people who would otherwise be willing and able to manage a direct payment. In order to ensure that people are appropriately informed and supported in meeting their duties as an employer, the person will be referred to the Direct Payment Support Service who can give information, advice and support. The costs associated with utilising a direct payment support service are met and if additional support is require (e.g. managed accounts) this will be met from the PHB allocation. This cost will be factored in when setting the budget.
  2. Personal Assistants will be paid at the agreed hourly rate with the CCG; this rate will include additional sundry costs such as uniforms, phones etc. The agreed rate will also be included in the Direct Payment Agreement.
  3. Direct payment PHBs can include an element for "travel and subsistence" (including a drink/snacks allowance), but not accommodation or meals.
  4. Further information around employing Personal Assistants and their employment status can be found at [www.skillsforcare.org.uk.](https://www.skillsforcare.org.uk/Recruitment-retention/Employing-your-own-care-and-support/Employing-your-own-care-and-support.aspx)

# Employing a family member or person living in the same household

* 1. A direct payment can only be used to pay an individual living in the same household, a close family member or a friend if the CCG is satisfied that to secure a service from that person is necessary in order to satisfactorily meet the Eligible Person’s need; or to promote the welfare of a child for who direct payments are being made. It is anticipated that this will be permitted in very limited circumstances. The CCGs must make judgements on a case by case basis, as recommended by the NHS Direct Payment Guidance.
  2. Any arrangement of this nature will be formally considered by the CCG’s Clinical Considerations Panel, and recorded in writing in both the support plan and the PHB agreement.
  3. The suitability will be reviewed at least every three months, (following the existing review schedules for complex care for children and adults).
  4. This restriction is not intended to prevent individuals from using direct payments to employ a live in assistant. The restriction applies where the relationship between the two people is primarily personable rather than contractual (for example, if the people concerned would be living together in any case).

# Safeguarding and employment

* 1. People may wish to use their direct payment to employ staff to provide them with care and support. When deciding whether or not to employ someone, patients and their families should follow best practice in relation to safeguarding, vetting and barring including satisfying themselves of a person’s identity, their qualifications and professional registration if appropriate and taking up references.
  2. Individuals cannot request DBS checks on other individuals. However, an individual, or their representative will be supported by the CCG / Direct Payment Support Service to arrange for the DBS to be completed. The prospective employee or contractor will be advised that prior to employment commencement an enhanced disclosure is required. This will be required for all individuals who are not close family members or living in the individual’s household but providing care to the individual, these may be:
     + regulated health care professionals – for example, nurses or physiotherapists
     + people providing healthcare under the direction or supervision of a healthcare professional
     + people providing personal care
  3. These are examples of regulated activity relating to vulnerable adults and children within the meaning of Schedule 4 to the Safeguarding Vulnerable regulated activity”). An enhanced Disclosure and Barring Service check including a barred list check may be obtained to assess a person’s suitability to engage in regulated activity. Refer to sections 113B, 113BA and 113BB of the Police Act 1997 (c.50) and S.I. 2002/233 and 2009/1882.
  4. Alternatively, if the individual can satisfy the DBS that they have a legitimate interest in knowing if that person is barred, the DBS may supply this information.
  5. If the potential employee is barred they must not be used to supply services as they pose an on-going risk to adults or children.
  6. If the individual is contracting with a close family member or a person who is living in the individual’s household or a friend it is not required to undertake any DBS checks although the CCG retain the right to ask for this information to ensure the support plan is achievable using the proposed employee.
  7. The DBS has launched the Update Service. This is a service that allows people to reuse their certificate for multiple roles. If a potential employee or contractor has subscribed to the Update Service and has a check of the appropriate level, the individual should ensure they see the person’s original certificate and use the free online portal to check for up to date information on that certificate. If the certificate is not up to date the individual should ask the potential employee or contractor to apply for a new certificate.

# Indemnity

* 1. Direct payments can be used to pay for a Personal Assistant to carry out certain personal care and health tasks that might otherwise be carried out by qualified healthcare professionals such as nurses, physiotherapists or occupational therapists. In such cases the healthcare professional and CCG will need to be satisfied that the task is suitable for delegation, specify this in the support plan and ensure that the Personal Assistant is provided with the appropriate training and development, demonstration of competence and have sufficient indemnity and insurance cover.
  2. Further assistance and guidance on this can be found at:

[https://www.england.nhs.uk/wp-content/uploads/2017/06/516\_Delegation-of-healthcare-tasks-](https://www.england.nhs.uk/wp-content/uploads/2017/06/516_Delegation-of-healthcare-tasks-to-personal-assistants_S7.pdf) [to-personal-assistants\_S7.pdf](https://www.england.nhs.uk/wp-content/uploads/2017/06/516_Delegation-of-healthcare-tasks-to-personal-assistants_S7.pdf)

[https://www.gov.uk/government/publications/independent-review-of-the-requirement-to-have-](https://www.gov.uk/government/publications/independent-review-of-the-requirement-to-have-insurance-or-indemnity-as-a-condition-of-registration-as-a-healthcare-professional) [insurance-or-indemnity-as-a-condition-of-registration-as-a-healthcare-professional](https://www.gov.uk/government/publications/independent-review-of-the-requirement-to-have-insurance-or-indemnity-as-a-condition-of-registration-as-a-healthcare-professional)

Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients’ rights in cross-border healthcare -OJ L 88, 4.4.2011

* 1. Where it has been agreed in the support plan for the employer to use the PHB direct payment to employ Personal Assistants, the employer will be required to have employers liability insurance from a CCG approved insurance provider. The cost of the insurance will be met as part of the direct payment PHB.
  2. In the first instance, it will be the responsibility of the person buying the service to check the indemnity cover of the provider from which they are buying services. They must make enquiries to ascertain whether the provider has indemnity or insurance, and if so, whether it is proportionate to the risks involved, and otherwise appropriate.
  3. If the person buying the service asks the CCG to undertake these checks on their behalf, the CCG must do so. Case Managers and support planners should also ensure that people are aware that this is an option as part of the risk assessment and support planning process.
  4. Regardless of who carries out the initial check, the CCG will review this as part of the first review, to ensure the checks have been made and are appropriate.

# Registration, regulated activities and delegation of clinical tasks

* 1. If someone wishes to buy a service which is a regulated activity under the Health and Social Care Act 2008, they will need to inquire as to whether their preferred provider is registered with the Care Quality Commission (CQC). A direct payment cannot be used to purchase a regulated activity from a non-registered service provider.

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2010, S.I 2010/781 <http://www.cqc.org.uk/organisations-we-regulate/registering-first-time/regulated-activities>

* 1. CQC guidance makes it clear that where a person, or a related third party on their behalf, makes their own arrangement for nursing care or personal care, and the nurse or carer works directly for them and under their control without an agency or employer involved in managing or directing the care provided, the nurse or carer does not need to register with the CQC for that regulated activity.
  2. If a person or related third party employs a care worker directly, without the involvement of an agency or employer, the employee does not need to register with CQC. A related third party means:

1. an individual with parental responsibility for a child to whom personal care services are to be provided
2. an individual with power of attorney or other lawful authority to make arrangements on behalf of the person to whom personal care services are to be provided
3. a group or individuals mentioned in a) and b) making arrangements on behalf of one or more persons to whom personal care services are to be provided
4. a trust established for the purpose of providing services to meet the health or social care needs of a named individual
   1. This means that where an individual has set up arrangements for nursing care or personal care on behalf of someone, they are exempt from the requirement to register with the CQC.
   2. Also exempt are organisations that only help people find nurses or carers, such as employment agencies (sometimes known as introductory agencies), but who do not have any role in managing or directing the nursing or personal care that a nurse or carer provides.
   3. If someone wishes to use a direct payment to purchase a service which is not a regulated activity, they may do so.
   4. In some circumstances, the provider may also need to be a registered member of a professional body affiliated with the Council for Healthcare Regulatory Excellence. If the support plan specifies that a task or tasks require a registered professional to undertake it, only a professional who is thus registered may be employed to perform that task or tasks.
   5. In the first instance it will be the responsibility of the person buying the service to check whether the provider they are purchasing from is appropriately registered. They can request the CCG investigate this, and if they ask, the CCG must do so. The CCG must also review this as part of their assessment as to whether the direct payment is being effectively managed.
   6. While some service providers are not statutorily required to be registered, there are professional associations with voluntary registers that practitioners can choose to join. Typically, such practitioners can only join these associations or registers if they meet the standards of education, training, conduct and performance required by the professional body. However, there is no legal requirement to join these registers, and practitioners can still offer unregulated services without being a member of any organisation. If a provider is not registered with an appropriate body this should not automatically be a bar to purchasing from that provider but this should be included in the discussion around risks when developing the support plan.
   7. Delegation of clinical tasks within PHBs where an NHS employee (e.g. Nurse) agrees, through the support planning process, to entrust authority and responsibility to a PA for a specific task, activity or role. Considering whether a task should be delegated involves reviewing not only the risks of delegation, but also the benefits that may come with delegation and the risks of not delegating. The Personal Assistant is often the person working most closely with the person requiring care and support; they are often able to respond quickly and in a timely manner. They may have developed a very good understanding of the person they care for, and have particular skills in communicating with them and it may make them ideally placed to carry out delegated tasks. There will also be tasks that are considered unsuitable for delegation, because of the nature of the task or the circumstances relating to it. Their skills, knowledge and availability may make them ideally placed to carry out delegated tasks. There will also be tasks that are considered unsuitable for delegation, because of the nature of the task or the circumstances relating to it.
   8. When delegating a task, the following should be considered:
      * Is delegation in the best interest of the person
      * Does the PHB holder/ employer view the Personal Assistant as competent to carry out the task
      * Does the registered practitioner view the Personal Assistant as competent to carry out the task
      * Does the Personal Assistant consider themselves to be competent to perform the activity
      * Has the Personal Assistant been suitably trained and assessed as competent to perform the task, or is there a way to make this happen
      * Are there opportunities for on-going development to ensure competency is maintained
      * Is the task/ function/ health intervention within the remit of the Personal Assistant’s job description
      * Does the Personal Assistant recognise the limits of their competence and authority and know when to seek help
   9. Regulated health professionals will also need to meet any standards for delegation set by their regulatory body (e.g. the Nursing and Midwifery Council for nurses, midwives and health visitors; the Health and Care Professions Council for physiotherapists, dietitians, and speech and language therapists etc).

# Using a Direct Payment to fund short breaks and holidays

* 1. There is no formal entitlement to holiday funding within a PHB, but for those individuals who do not benefit from carers’ respite, the CCG recognises that a holiday or short break is beneficial to health and wellbeing. The CCG acknowledges that there may be additional staffing and equipment costs to support someone away from their home in an environment which may not be suitably adapted.
  2. The CCG will consider funding up to 14 days support plus appropriate equipment hire per annum to enable the chosen holiday or breaks to take place. The individual should discuss the clinical care implications of the break (including travel) with their health care professional and address this in their support plan, including the additional costs.
  3. All funding requests for short breaks and holidays will be considered and agreed by the CCG's Clinical Considerations Panel. The CCG reserves the right to refuse to fund support or equipment over and above that required to meet assessed need. The additional costs must be calculated and approved by the CCG (through submission of the support plan) before the holiday is booked.
  4. Any other breaks or additional costs will need to be funded by the individual. The CCG acknowledges that there are times when flexibility for a support plan may be required, and individuals may want to accumulate their PHB to allow for flexibility of a temporary change in circumstances. Any savings made via the PHB should not reduce the ability to meet agreed outcomes, or be made at the expense of health or wellbeing; this should be discussed with the case manager.

# Using a Direct Payment to fund Travel and Mileage

* 1. A PHB can cover travel costs such as bus fares to activities which are fully documented in the support plan. When appropriate a PHB can provide a contribution towards the mileage at the NHS standard rate. However, if the individual has a Motability Car, or higher rate Mobility Allowance, the CCG would not pay the full HMRC / NHS Mileage rate but only at the reduced mileage rate. The standing costs for running a car should be met from the Mobility Allowance as these costs would need to be met regardless. If the individual is not in receipt of Mobility Allowance at a higher rate, then the PHB would meet the HMRC / NHS rates of mileage. Calculations are based on the average distance between the individual’s home and the activity using a nationally recognised online tool (e.g. AA Route Planner).
  2. The CCG would not normally expect to fund the purchase or lease of a car, unless there are exceptional circumstances to which the CCG agree.

# Following death of an individual

* 1. In the event of the individual’s death, the PHB does not form part of the estate.
  2. Reclaiming any unused funds will be managed sensitively. Allowing for a period of grace (up to 6 weeks before funds must be returned), the CCG will liaise with those managing the estate / responsible for managing the affairs of the budget holder following this period of time in order to close down the PHB.
  3. For those with a direct payment the individual responsible for managing the Estate / responsible for managing the affairs of the budget holder will forward the closing balance of the PHB account to the CCG along with the account’s final statement.
  4. The CCG maintains the right to lay claim to funds owed following ceasing of the PHB using the standard financial procedures for claims against an Estate.

* 1. The CCG acknowledges that if their individual (or their representative or nominees as applicable) was an employer, then they will have employment law responsibilities to fulfil.

# Funding for Personal Assistants’ pensions

* 1. The Direct Payment Support Service is responsible for helping ensure that good practice is followed in Personal Assistants’ employment, including a pension.

# Funding for Personal Assistants’ redundancy

* 1. Personal Assistants (other than through an agency or broker) are employees of the individual (or their representative or nominees as applicable) rather than self-employed and are entitled to redundancy pay as set out in employment legislation. It expected that Personal Assistant liability insurance is purchased which includes an element of redundancy provisions. If there is evidence that the employer has ignored advice from the CCG / Direct Payment Support Service, the CCG reserves the right not to fund redundancy. The CCG acknowledges that if the individual (or their representative or nominees as applicable) was an employer, then they will have employment law responsibilities to fulfil.

# Data reporting

* 1. Data reporting will be conducted in line with NHS England PHBs Mandatory Data Collection Guidance. Mandatory anonymised PHB data will be submitted quarterly via NHS Digital. Each CCG will identify an individual responsible for the mandatory data submission.

# Equal Opportunities

* 1. All public bodies have a statutory duty under the Equality Act 2010 when exercising public functions to have due regard to the need to eliminate discrimination, advance equality, and foster good relations. The duty applies to the relevant protected characteristics – age, disability, gender reassignment, pregnancy and maternity, race, religion and belief, sex, sexual orientation and marriage and civil partnership.
  2. Public authorities and other organisations when carrying out functions of a public nature have a duty under the Human Rights Act 1998 not to act incompatibly with rights under the European Convention for the Protection of Fundamental Rights and Freedoms. All health care providers are required to work within the NHS FREDA principles (Fairness, Respect, Equality, Dignity, and Autonomy).
  3. The CCG endeavours to challenge discrimination, promote equality and respect human rights, and aims to design and implement services policies and measures that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others.
  4. All staff are expected to deliver services and provide care in a manner which respects the individuality of patients and their carers and as such treat them and members of the workforce respectfully, with dignity, and with regard for diversity of background and belief.

# Equality and Quality Impact Assessment

* 1. An Equality Impact Assessment and Quality Impact Assessment has been completed for this policy. Upon evaluation, PHBs do not marginalise or discriminate minority groups; rather, they will be useful tool in the delivery of health equality.
  2. The uptake of PHBs will be monitored at review, which will include the uptake by all groups considered in the Equality Analysis.

# Review Date

* 1. This policy and procedure will be reviewed in 2024 or earlier in light of any changes to legislation or National Guidance.

# More information

The NHS England website has a section dedicated to PHBs. This has information about national policy, the implementation toolkit, stories and other resources. <https://www.england.nhs.uk/personal-health-budgets/what-are-personal-health-budgets-phbs/>

# Glossary

**Continuing Healthcare (CHC)** is the name given to a package of care solely funded by the NHS or jointly funded between the NHS and Local Authority, for individuals who are not in hospital but have complex on-going care needs. The provision of Continuing Healthcare is set out in the National Framework for Continuing Healthcare and Funded Nursing Care.

**CCG (CCG)** the statutory body responsible for the effective application of the National Framework for Continuing Healthcare and Funded Nursing Care for its registered population. In this instance the CCG includes any person or organisation authorised to exercise any of its functions in relation to Continuing Healthcare.

**Direct Payment Support Service** is the service which the CCG commissions to support people opting for a direct payment for healthcare and is provided by North Yorkshire County Council.

**“Patient” and "Individual"** mean the individual who has been assessed as being eligible for the PHB.

**"Care Co-ordinator"** and **“case manager”** means the representative from the NHS who will manage the assessment of the budget holder's health needs for the care and support plan, ensure those health needs continue to be met, and otherwise oversee the arrangements as set out in the Regulations. The care co-ordinator / case manager will be commissioned by the CCG from existing commissioned services or an appropriate external partner.

"**Direct Payment Advisor**" mean the representative from the Direct Payment Support Service who will support the CCG and the individual with managing their Direct Payment PHB.

**“Support Plan”** is the support plan developed by the budge t holder, care manager and PHB advisor / Support Service which has been agreed by the CCG. It sets out the budget holder's health needs and health and wellbeing outcomes, the amount of money in the PHB and how the money will be used. It includes a risk assessment and contingency and respite plans for managing any significant potential risks.

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**“Indicative budget”** – An indicative budget is calculated so that the person can begin to develop an individual care and support plan to meet their holistic needs including health and well-being.

**“Nominated Person”** is the person chosen by the Budget Holder to receive and manage the PHB on their behalf in circumstances where the Budget Holder has mental capacity to make that decision.

**“Representative”** means the person who receives and manages direct payments on behalf of the Budget Holder (e.g. deputy, attorney or person with parental responsibility). Where there is no such person, any person appointed by the CCG to receive and manage the direct payments on behalf of the Budget Holder.

**“Provider”** will be commissioned by the CCG from existing commissioned services or an appropriate external partner.

**“Personal Budget”** is the amount of social care money (means tested) that is available from the Local Authority to pay for support.

21 National Framework for Continuing Healthcare and Funded Nursing Care (Department of Health) November 2012 (Revised)

**Family Member** - A person’s close family members are described in the regulations (Box 3 of the Direct Payment Guidance) as

* The spouse or civil partner of the person receiving care;
* Someone who lives with the person as if their spouse or civil partner;
* Their parent or parent-in-law;
* Their son or daughter;
* Son- in- law or daughter- in- law;
* Stepson or stepdaughter;
* Brother or sister;
* Aunt or uncle;
* Grandparent; or
* The spouse or civil partners of (c)- (i), or someone who lives with them as if their spouse or civil partner.

[http://www.personalhealthbudgets.england.nhs.uk/\_library/Resources/Personalhealthbudget](http://www.personalhealthbudgets.england.nhs.uk/_library/Resources/Personalhealthbudgets/2014/Guidance_on_Direct_Payments_for_Healthcare_Understanding_the_Regulations_March_2014.pdf) [s/2014/Guidance\_on\_Direct\_Payments\_for\_Healthcare\_Understanding\_the\_Regulations\_M](http://www.personalhealthbudgets.england.nhs.uk/_library/Resources/Personalhealthbudgets/2014/Guidance_on_Direct_Payments_for_Healthcare_Understanding_the_Regulations_March_2014.pdf) [arch\_2014.pdf](http://www.personalhealthbudgets.england.nhs.uk/_library/Resources/Personalhealthbudgets/2014/Guidance_on_Direct_Payments_for_Healthcare_Understanding_the_Regulations_March_2014.pdf)

**Personalisation** a social care approach described by the Department of Health and Social Care as meaning that “every person who receives support, whether provided by statutory services or funded by themselves, will have choice and control over the shape of that support in all care settings”. This approach is now being adopted in some areas of healthcare.

**Notional Budget** the budget is held by the NHS and no money changes hands. The NHS Commissions the services on an individual’s behalf.

**Third Party Budget** the money is paid to an organisation that holds the money on the individuals’ behalf and helps them decide what they need. The company will arrange to recruit and employ a team of Personal Assistants to work directly for the individual and the care package will be made bespoke to the individual’s needs.

**Direct Payment -** cash payments are made to individuals who need care (following an assessment) by a local authority or NHS organisation to enable them to buy their own care or support services.

**Direct Payment Agreement** - The Agreement is a template for use by the CCGs in entering into direct payment agreements with individuals in accordance with the CCG’s powers and duties under Section 12A NHS Act 2006, the National Health Service Commissioning Board and CCGs (Responsibilities and Standing Rules) Regulations 2012 as amended (Rules), and the NHS (Direct Payment) Regulations 2013 (Regulations), all as amended from time to time.

**Managed Account** - The money is paid into the account of a named individual or organisation that manages the money and pays for the support on behalf of the individual. A Supported Managed Account allows the same flexibility and control as the individual receiving a direct payment. The control remains with the individual.