NHS
South West London

Personal Health Budget Policy

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Approved By	SWL SMT
Applies To	South West London ICB (SWL ICB), Governing Body Members, Committee Members and all staff working for, or on behalf of the ICB

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Controlled Document

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Target Audience	ICB Board Members, Committee Members and all staff working for, or on behalf of NHS South West London Integrated Care Board
Brief Description	The Policy sets out the South West London (SWL) Integrated Care Board (ICB) offer for eligible people who can receive a personal health budget (PHB) in line with national legislation and guidance. It sets out the principles for the delivery of personal health budgets.
Action Required	Ensure that the contents of this Policy are shared at all Team Meetings. Ensure that the policy is available on the NHS SWL ICB public website

Contents

1. Introduction

1.1 Personal Health Budgets (PHB) are a key component of the Government drive for wider personalisation of NHS care to give people choice and control over how their care is planned and delivered.

1.2 A PHB represents the funding to meet a person's assessed and identified health and wellbeing needs, planned and agreed between the person and their local NHS team. It is not 'new' money but existing health funding which is being used differently to meet a person's assessed needs.

1.3 A PHB is an amount of money that an NHS organisation would normally spend providing or arranging someone's care which the person can spend in a more flexible way to meet their identified health need.

1.4 All PHBs are underpinned by a personalised care and support plan, which is produced jointly with the person (and their family / network where appropriate) and a health professional. The plan will be agreed by the relevant NHS service / team. The personalised care and support plan sets out the person's health and wellbeing needs, the outcomes the individual wishes to achieve, the amount of money available to meet the assessed needs and how it will be spent.

1.5 All SWL ICB PHBs must be approved by the ICB or their nominated representatives, agreed by SWL ICB. (This may include NHS Trusts or non-NHS providers if the PHB has been approved by the ICB).

1.6 Having a PHB does not entitle someone to additional or more expensive services, or to preferential access to NHS services. There should always be efficient and appropriate use of current NHS resources.

1.7 NHS England has set the expectation that ICBs ensure that the following eligible groups of people benefit from their legal right to request a PHB; this includes, people eligible for NHS Continuing Healthcare Adults, Children and Young People's Continuing Care, people eligible for after-care under Section 117 of the Mental Health Act 1983, and people in receipt of NHS wheelchairs (who have the right to a personal wheelchair budget). Within SWL ICB, these groups of people have the right to request a PHB.

1.8 This policy sets out the SWL ICB overarching principles and offer for those people eligible to receive a Personal Health Budget in line with national legislation and guidance (Section 7), and the circumstances where exclusions from receiving a Personal Health Budget will apply (Section 8).

1.9 If a person comes within the scope of the "right to request" a PHB, then the expectation is that one type of PHB (i.e. Notional, Direct Payment or Third Party) will be provided, however this can also be a combination of a Notional and Direct Payment PHB. In certain exceptional circumstances the ICB may choose not to agree to a PHB in line with the NHS England guidance which state.

"There may be some exceptional circumstances when a ICB considers a personal health budget to be an impracticable or inappropriate way of securing NHS care for an individual. This could be due to the specialised clinical care required or because a personal health budget would not represent value for money as any additional benefits to the individual would not outweigh the extra cost to the NHS."

1.10 The policy describes the criteria under which the SWL ICB will authorise a PHB on an individual basis, by balancing choice, risk, rights, and responsibilities.

1.11 Within this context, SWL ICB is legally obligated and accountable for meeting their own statutory duties, for instance in relation to quality, financial resources, equality, health inequalities and public participation.

1.12 In making these arrangements, SWL ICB has regard to relevant law and guidance, including its duties under the National Health Service Act 2006, the Health and Social Care Act 2012, the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012; and the National Health Service (Direct Payments) Regulations 2013 (as amended) and relevant guidance issued by NHS England.

1.13 The policy sets out the arrangements for managing PHBs (Section 10) and the different types of agreements that apply to these management arrangements (Section 11).

1.14 A personal health budget can be managed in three ways, or a combination of these:

- Notional budget – where the ICB (or nominated representatives) holds the budget and uses it to secure services based on the outcome of discussions with the person, their representative, or, in the case of children, their families or carers.
- Third-party budget – an organisation independent of the person, and the NHS commissioner, manages the budget on the person's behalf and arranges support by purchasing services in line with the agreed personalised care and support plan.
- Direct payment – where money is transferred to the person, their representative or nominee, or, in the case of children, their families or carers, who contracts for the necessary services.

1.15 Where a person chooses to manage the PHB as a Direct Payment the person (or their representative/nominee) will need to enter into a legal agreement with the ICB for the use of the budget and provision of care.

- The person or their Representative must use the Direct Payments to cover the cost of the care and support agreed within their Personalised Care and Support Plan and for no other purpose.

- Where a person chooses to use the PHB Direct Payment to directly employ staff (personal assistant) they must ensure that they are always compliant with Employment law and regulations. The individual or their Nominee or Representative will be the individual employer. This means anyone employed by the person or their Representative using the Personal Health Budget is an employee of the person/Representative and shall not be employed by or be considered to be an

agent or employee of the ICB. A person will not be permitted to use the PHB direct payment to contract self-employed personal assistants.

- Someone's employment status is not a matter of choice and depends on the relationship and tasks being carried out. In order to safeguard persons from potential unforeseen tax liabilities, it is the NHS view that self-employed personal assistants should not be used, as they would rarely be deemed to be self-employed when the tasks are measured against Her Majesty's Revenue and Customs (HMRC) status indicator tool.

- The NHS will not make direct payments available in cases where the prospective recipient proposes to employ an individual who claims to be self-employed without evidence being supplied to demonstrate that the self-employed status is authentic in relation to the specific job role in question.

- To demonstrate the employment status of the proposed working relationship, the individual must complete the HMRC Employment Status Indicator (ESI) Tool and forward to the ICB. The answers given must accurately reflect the job description and the terms and conditions under which it is proposed the services are to be provided at the relevant time of the contract, therefore these must be provided to the worker at the time of completing the ESI tool. HMRC will be bound by the ESI outcome where the employer or their authorised representative provides copies of the printer-friendly version of the ESI Result screen, bearing the 14-digit ESI reference number, and the Enquiry Details screen.

1.16 If the ICB is confident that the tasks are such that the personal assistant would be considered self-employed after checking the HMRC status indicator tool as above.

The ICB will also require the following assurances from the PHB holder:

- The carer provides a copy of the HMRC letter confirming the Unique Tax reference number.
- The carer has up to date and relevant training certificates.
- The carer has up to date public liability insurance which covers personal
- care/healthcare activity.
- An enhanced DBS certificate to be provided by and paid for by the self-employed PA (must be dated within the last 3 months of the PHB commencing).
- PA to provide replacement support for any absence. Additional support will have to undergo the same Self-Employment checks before being authorised to provide care for the client
- Any PPE equipment e.g. disposable gloves, aprons or face masks to be provided by self-employed PA
- Travel costs and subsistence to be covered by self-employed PA
- The self-employed PA should ensure "Business" cover is included in their vehicle insurance (if self-employed PA's vehicle is used to transport Service User).

1.17 The ICB will only agree to self-employed personal assistants in exceptional circumstances, for example, where a person has been fast tracked for an urgent package of NHS Continuing healthcare. Where a direct payment has been agreed by the ICB to pay for self-employed carers, it will be based on the following conditions:

1.18 All self-employed carers should produce an invoice for care provided to the direct payment recipient or their nominee/representative as identified in the direct payment agreement.

Invoices must include (as per HMRC guidance):

- a unique identification number (UTR)
- your company name, address and contact information
- the name and address of the customer you're invoicing
- a clear description of what you're charging for
- the date the goods or service were provided (supply date)
- the date of the invoice
- the amount(s) being charged
- VAT amount if applicable
- the total amount owed
- Payment details – Bank Account Details
  - Invoices are paid from the nominated direct payment bank account.
  - As per the direct payment agreement, all copies of paid invoices are provided to the ICB as part of the financial monitoring requirements.

1.19 Personal assistants (or self-employed PA's) who are directly employed by an individual or related representative (without the involvement of an employment agency or employment business and working wholly under the direction and control of that individual or related representative) with an agreement to provide personal care and work directly for an individual do not need to be CQC registered. This is because the current Regulated Activity of "personal care" sets out an exemption relating to PAs.

1.20 Skills for Care has a comprehensive website offering a range of support services for individuals and can offer individual advice when requested. The following link is the gateway to this support. - Support for individual employers and PAs

1.21 Support for individual employers and PAs - (Further details on the management of PHBs by a Direct Payment are included at Section 11.4 of this policy).

1.22 The policy describes how risks associated with PHBs will be managed (Section 16), the arrangements for ensuring PHBs are appropriately reviewed (Section18), and the decision-making process for the termination of a PHB (Section 19).

1.23 There is a fixed budget for healthcare for the funding of healthcare treatment and provision for everyone in South West London. SWL ICB PHBs will be delivered within the remit of its fixed commissioning budget. The ICB's expenditure must be affordable within the limits of available resources with an emphasis on the quality of care and positive outcomes for people and their families. The final decision by the ICB or its nominated representative will take account of individual choice while ensuring the equitable use of resources across the local population if the PHB has been approved by the ICB).

1.24 (For people eligible to NHS Continuing Healthcare please see the link to South West London NHS Continuing Healthcare choice and equity policy South-West-London-continuing-healthcare-and-funded-nursing-equity-policy.pdf).

1.25 This policy, and the principles within it, aim to ensure that the least restrictive approaches are adopted to support people to be given maximum choice, flexibility, and control of their healthcare provision within the boundaries of safety, viability, equity and resources.

2. Legislation and Guidance

2.1 SWL ICB will carry out its duties in accordance with legislation and guidance listed below:

- The NHS Commissioning Board and CCGs (Responsibilities and Standing Rules) Regulations (2012)
- The NHS (Direct Payments) Regulations (2013)
- NHS England » Guidance on direct payments for healthcare: Understanding the regulations
- Guidance on Direct Payments for Healthcare: Understanding the Regulations (NHS England March 2014)
- Guidance on the legal rights to have personal health budgets and personal wheelchair budgets (December 2019)
- NHS England » Guidance on the legal rights to have personal health budgets and personal wheelchair budgets Guidance on direct payments for healthcare: Understanding the regulations (December 2022)

2.2 Other legislation relevant to context and delivery of this policy is attached at Appendix 3.

2.3 National legislation is open to regular updates and SWL ICB will act in response to any guidance that is updated through the life of this policy. Any changes will be reflected in subsequent reviews of the PHB policy.

3. Scope

3.1 The PHB policy covers all residents for whom SWL ICB is the responsible commissioner and are within the ICB eligibility criteria for a PHB (see section 7 of this policy).

3.2 This Policy applies to Governing Body Members, Clinical Leads, Committee Members and all staff and services including those employed on permanent or fixed term contracts, interims, self-employed contractors/consultants, working for, or on behalf of NHS SWL ICB.

4. Responsibilities

4.1 The ICB duties encompass publicising and promoting the availability of PHBs, providing information, advice and support, considering requests for personal health budgets, and to ensure systems and processes are in place to be able to make this provision. The ICB

may choose to delegate these responsibilities to NHS Trusts to undertake on their behalf.

4.2 All individuals working for, or on behalf of the organisation(s) listed within Scope are responsible for complying with this Policy.

5. Principles for the Delivery of Personal Health Budgets

5.1 There are a series of national key principles that underpin the delivery of PHBs and personalisation in health which SWL ICB will adhere to:

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:

- Individuals 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 person is paramount. Access to a PHB will be dependent on professionals and the individual agreeing a care plan that is safe and will meet agreed health and wellbeing outcomes. There should be transparent arrangements for continued clinical oversight, proportionate to the needs of the person and the risks associated with the care package.

Tackling inequalities and protecting equality – PHBs and the overall movement to personalise services can be a powerful tool to address inequalities in the health service. A PHB must not exacerbate inequalities or endanger equality. The decision to set up a PHB for a person must be based on their needs, irrespective of race, age, gender, disability, sexual orientation, marital or civil partnership status, transgender, religion or beliefs. The ICB will expressly consider mental and physical health needs of a person. **PHBs are purely 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 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 people 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 ICBs, local

authorities and healthcare providers working together to utilise PHBs so that health, education and social care work together as effectively as possible.

6. Key Features of a PHB

6.1 The ICB will aim to adhere to the following key features of a PHB to ensure that people experience the best outcomes possible from a PHB. The person with a PHB (or their nominee or representative) should:

- Be central in developing their personalised care and support plan and agree who else is involved
- Be able to agree the health and wellbeing outcomes (and learning outcomes for children and young people with education, health and care plans) they want to achieve, in dialogue with relevant health, education and social care professionals
- Know upfront an indication of how much money they have available for healthcare and support (there may be flexibility when an indicative budget is discussed as part of a one-off budget)
- Have enough money in the budget to meet the assessed health and wellbeing needs and outcomes agreed in the personalised care and support plan
- Have the option to manage the money as a direct payment, a notional budget, a third-party budget or a mix of these approaches
- Be able to use the money to meet their outcomes in ways and at times that make sense to them, as agreed in their personalised care and support plan.

6.2 If the person lacks capacity to manage the PHB then SWL ICB will support a representative /third party to manage it on their behalf, if appropriate to do so.

7. Eligibility

7.1 SWL ICB is required to set out and publish its offer for PHBs. The SWL ICB PHB offer which reflects NHS England guidance is outlined below. The offer is published on the SWL ICB website at; Personal health budgets - NHS South West London Integrated Care Board (icb.nhs.uk)

7.2 SWL ICB has a duty to ensure eligible groups of people benefit from the legal right to request a PHB. The eligible groups who have a legal "right to request" a personal health budget are.

- Adults who are eligible for NHS Continuing Healthcare (CHC) including those on the fast-track pathway as defined by the National Framework for Continuing healthcare and NHS-funded Nursing Care.
- Children eligible for Continuing Care (CC) as defined by the National Framework for Children and Young People's Continuing Care. This refers to the element of their care package that would normally be provided by the NHS once they become "continuing care" eligible and not the elements of their package provided by social care or education.
- People eligible for after-care services under section 117 of the Mental Health Act (1983) (See Appendix 4 for a definition of eligibility for section 117 aftercare)

- People in receipt of NHS wheelchairs (who have the right to a personal wheelchair budget).

7.3 SWL ICB will put in place processes and procedures for these groups who have the "right to request" a PHB. Other than those groups outlined above no other groups currently have a "right to request" a PHB in SWL ICB.

7.4 SWL ICB and their representatives will publicise and promote the availability of PHBs to people who are eligible for the "right to request" a PHB. This will be both via outcome letters and information shared with eligible individuals and through reviews conducted by NHS teams responsible for their care.

7.5 In addition to those groups who have a right to request a PHB SWL ICB will also consider a request for PHB for the following groups of people.

- Adults and children and young people with learning disability, autism and/or mental health and behaviour that challenges living in a community setting who will benefit from having a PHB.
- Children and young people (birth to 25) who may not be eligible for Continuing Care but have an Education, Health and Care plan (EHCP) and could receive a PHB for the health element of their plan in line with the Children and Families Act (2014) and SEND Code of Practice (2014).
- Young people reaching adulthood/age 25 in receipt of a PHB but not eligible for adult NHS CHC (Young people who have been eligible for Continuing Care and have a PHB and then transition to adult services will be supported to continue to access their assessed health care needs via a PHB. They will not have the "right to request" a PHB unless eligible for adult NHS CHC but SWL ICB will consider whether it would be appropriate to retain a PHB, based on assessed clinical need within the content of an EHCP).
- People whose care is funded jointly by NHS and social care.
- People identified as benefiting from a PHB who are included within a SWL ICB project piloting the development of PHBs for specific groups in the community.

8. Where the ICB chooses not to agree a Personal Health Budget

8.1 If a person comes within the scope of the "right to request" a PHB, then the expectation is that one type of PHB (i.e. Notional, Direct Payment or Third Party) will be provided or a combination of a Notional and Direct Payment PHB. However, in certain exceptional circumstances the ICB may choose not to agree to a PHB or a type of PHB, for example a direct payment PHB, in line with the NHS England guidance which state.

"There may be some exceptional circumstances when a ICB considers a personal health budget to be an impracticable or inappropriate way of securing NHS care for an individual. This could be due to the specialised clinical care required or because a personal health budget would not represent value for money as any additional benefits to the individual would not outweigh the extra cost to the NHS."

8.2 There are also a series of additional exclusions that the ICB will apply specifically to a PHB held as a direct payment. These are set out in Appendix 1 – Addendum A of this

policy. A person who is excluded from a PHB Direct Payment may be able to receive a notional or Third Party PHB.

8.3 If a person or their nominee or representative, who comes within the scope of a 'right to request' a PHB, requests a type of PHB and is turned down, the ICB will set out in writing the reasons why the request has been refused. Once this information has been received, the person and/or their nominee or representative may request a review of the ICBs decision. The ICB will reconsider this decision and must notify the person and/or their nominee or representative in writing of the decision following a review stating the reasons for the decision. The ICB may not be required to undertake more than one review following a decision in any six-month period.

9. Exclusions from Personal Health Budget Direct Payments

There are some people to whom the duty to make direct payments does not apply. A person is unable to receive a direct payment if they are:

- subject to a drug rehabilitation requirement, as defined by section 209 of the Criminal Justice Act 2003 (drug rehabilitation requirement), imposed by a community order within the meaning of section 177 (community orders) of that Act, or by a suspended sentence of imprisonment within the meaning of section 189 of that Act (suspended sentences of imprisonment)
- subject to an alcohol treatment requirement as defined by section 212 of the Criminal Justice Act 2003 (alcohol treatment requirement), imposed by a community order, within the meaning of section 177 of that Act, or by a suspended sentence of imprisonment, within the meaning of section 189 of that Act
- released on licence under Part 2 of the Criminal Justice Act 1991 (early release of prisoners), Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release on licence) or Chapter 2 of the Crime (Sentences) Act 1997 (life sentences) subject to a non-standard licence condition requiring the offender to undertake offending behaviour work to address drug or alcohol related behaviour
- required to submit to treatment for their drug or alcohol dependency by virtue of a community rehabilitation order within the meaning of section 41 of the Powers of Criminal Courts (Sentencing) Act 2000 (community rehabilitation orders) or a community punishment and rehabilitation order within the meaning of section 51 of that Act (community punishment and rehabilitation orders)
- subject to a drug treatment and testing order imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000 (drug treatment and testing orders)
- subject to a youth rehabilitation order imposed in accordance with paragraph 22 (drug treatment requirement) of Schedule 1 to the Criminal Justice and Immigration Act 2008 ("the 2008 Act") which requires the person to submit to treatment pursuant to a drug treatment requirement
- subject to a youth rehabilitation order imposed in accordance with paragraph 23 of Schedule 1 to the 2008 Act (drug testing requirement) which includes a drug testing requirement

- subject to a youth rehabilitation order imposed in accordance with paragraph 24 of Schedule 1 to the 2008 Act (intoxicating substance treatment requirement) which requires the person to submit to treatment pursuant to an intoxicating substance treatment requirement.

- either:

    - subject to a drug treatment and testing order within the meaning of section 234B of the Criminal Procedure (Scotland) Act 1995 (drug treatment and testing order),9 or
    - subject to a community payback order under section 227A of that Act10 imposing requirements relating to drug or alcohol treatment

- released on licence under section 22 (release on licence of persons serving determinate sentences) or section 26 of the Prisons (Scotland) Act 1989 release on licence of persons sentenced to imprisonment for life, etc.) 34 or under section 1 (release of short-term, long term and life prisoners) or section 1AA of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (release of certain sexual offenders) and subject to a condition that they submit to treatment for their drug or alcohol dependency.

Although these groups are excluded from a PHB Direct Payment the ICB could still agree that an individual in this group could receive a notional or Third Party

10. Personalised Care and Support Planning

10.1 A Personalised Care and Support Plan describe how a person will use their personal health budget to meet their assessed health and well-being needs and outcomes as agreed with their NHS team. The personalised care and support plan is a document that defines what matters to the individual and explains how they will spend the PHB.

10.2 Personalised care and support planning is at the heart of making PHBs work well. As a result of discussions between the person, their representative, their families and/or carers and the local NHS team, personalised care support plans should set out the health and wellbeing assessed needs that the PHB is to address. This should include the intended outcomes, the amount of money in the budget and how this is going to be used to meet the person's assessed needs and agreed outcomes.

10.3 The assessment of health and wellbeing needs will be undertaken by the local NHS Team, this will usually be the team responsible for the case management of the person's health and care. In some instances, this team may involve other professionals or organisations in the assessment process.

10.4 Personalised care and support plans may relate to both health and wellbeing outcomes. The focus of the plan should be on the person's strengths and skills, their personal social context, what is important to them in terms of how they want to live and be supported, as well as what is important in relation to the person's identified health and wellbeing needs.

10.5 The plan must be reasonable, effective and affordable to meet the agreed health needs and agreed outcomes. This will help to calculate an agreed finalised PHB. The PHB should be sufficient to cover all the services agreed in the plan. There is recognition that the budget will adjust as the person's condition changes as well as a need to review the budget annually to ensure the amount of the budget is sufficient to meet assessed needs and is in line with legislative requirements (e.g. changes in national minimum wage, increases in national insurance) and employment law.

10.6 Consideration should be given to include the following aspects within a Personalised Care and Support Plan (some of these may not be applicable to include in all circumstances):

- The agreed assessed health and wellbeing needs of the individual.
- The desired outcomes of the individual in his/her own words.
- The amount of money available under the PHB.
- What the PHB will be used to purchase.
- How the PHB will be managed and who will manage the PHB.
- Who will be providing each element of support.
- How the plan will meet the agreed outcomes and health needs of the individual.
- Who the individual should contact to discuss any changes in their needs.
- The date of the support plan review.
- Identification of any training needs and how these will be met.
- Identification of any risks and mitigating actions.
- Contingency planning.
- How the individual has been involved in the production of the plan.
- The signed agreement of the individual (or representative/nominee) and the NHS team on behalf of the ICB.

(Note: An example Personalised Care and Support Plan is included at Schedule 1 to this policy that can be utilised by NHS teams)

10.7 The Personalised Care and Support Plan will also take account of Best Interests of the person receiving the PHB and work within the remit of SWL ICB Safeguarding Policy.

10.8 A Personalised Care and Support Plan is required irrespective of the type of PHB management option chosen and must be signed by the person, or their representative/nominee or person with parental responsibility, and an appropriate senior member of the NHS team overseeing their care on behalf of the ICB.

11. Management of Personal Health Budgets

11.1 The money in a PHB can be managed in three ways, or a combination of these. A persons NHS Team will be able to explain the available arrangements to them.

11.2 The options for **managing a PHB in NHS CHC, children and young people's Continuing Care and section 117 aftercare** are as follows.

11.3 **Notional budget**: The ICB or their nominated representative (which may include NHS Trusts or non-NHS providers) manages the PHB budget on behalf of a person and uses it to arrange and buy services based on discussions with the person and to meet the assessed needs and agreed outcomes as set out in their personalised care and support plan.

11.4 Direct payment: The PHB budget is managed by the person (or Representative/Nominee), to allow them to purchase services to meet the assessed needs and deliver the agreed outcomes in their personalised care and support plan. There are different arrangements by which a person can receive their PHB direct payment, and these are covered in paragraphs 10.4.1 to 10.4.3 below. In all instances budget holders must show what the money in their PHB direct payment has been spent on in accordance with achieving the outcomes agreed in their individual personalised care and support plan:

11.4.1 A person receiving the PHB will need a separate account to receive a PHB via a direct payment. The separate account must only be used for purchasing care via the agreed PHB.

11.4.2 In some instances, the ICB may transfer the PHB direct payments to:

- A separate and dedicated virtual bank account arrangement administered by an organisation on behalf of the ICB. This account can be accessed by either;
- the person to buy the goods and services as agreed and set out in their Personalised Care and Support Plan,
  OR,
- members of the persons NHS team who with the agreement of the ICB can purchase goods and services on behalf of the person as set out and agreed in their Personalised Care and Support Plan.

11.5 In some instances, the ICB can transfer the direct payments to a support organisation who manages the money and payments on behalf of the person. The person (or their representative/nominee) still makes all the decisions about buying the goods and services as set out in their agreed Personalised Care and Support Plan - this is often referred to as a 'Direct Payment Managed Account'

(This term is used when a direct payment is held in an account on behalf of the individual budget holder, by a direct payment support service, solicitor, accountant, or other provider. Unlike a Third Party budget, the managed account provider does not take on responsibility for arranging care and support, but co-ordinates the financial elements of the budget. The budget holder is still the person who signs the direct payment agreement and retains responsibility for decisions about how the budget is spent, and in most instances is also the registered employer for any Personal Assistants).

In all instances the budget holder must sign and comply with the ICB direct payment agreement. Failure to do so will mean the direct payment is not agreed by the ICB or may be terminated if the agreement is signed but is not complied with.

11.6 Third party budget: An organisation independent of the person, the local authority and NHS commissioners manages the budget on the persons behalf and arranges support

by purchasing services (and employing the staff if required) in line with the agreed Personalised Care and Support Plan.

11.6.1 A third-party organisation could be an independent user trust (a limited company providing a service to budget holders), or an existing voluntary organisation, user-led organisation, or community interest company.

11.6.2 The third party will monitor the account and check receipts, invoices and bank statements for the PHB. The third party will work with the ICB to ensure that the money is being spent appropriately.

11.6.3 If there are any circumstances when the third party provides an on-going role in the direction or control of the service provided, then the third party must ensure they are registered for the provision of personal care with the Care Quality Commission as a regulated activity. *This means where the third party is the employer of the PA's / staff or manages the PA's / staff and they deliver the regulated activity of personal care (see definition below) they MUST be registered with CQC.*

See link for further details - *Personal care: ongoing role, introductory agencies and individual care workers - Care Quality Commission*

NOTE: The regulated activity of personal care (Personal care - Care Quality Commission) **APPLIES** in the following circumstances: A person, an employment agency or employment business (referred to as the provider), introduces a care worker to a person who needs care, and the provider does **ANY** of the following:

- Monitors the service provided to the person and, as a result of this monitoring, takes responsibility for replacing the care worker for any reason.
- Seeks the views of the person receiving the service or acts as their advocate and, as a result, advises or directs changes to the activity of the care worker (such as changes to the frequency of visits, or the type of care provided, or the way in which the care worker performs the agreed tasks).
- Arranges a rota of care workers so that visits and care are provided when required by the individual.
- Continues to charge for the service being provided by the care worker, excluding where arrangements have been made to enable a one-off introduction fee to be paid by instalments.
- Agrees to organise cover for any sickness or leave that may arise – other than when the individual makes an independent request to the provider to introduce another care worker to cover leave or sickness.
- Reviews the care plan, including making changes as necessary, in consultation with the individual.

11.7 A Personal wheelchair budget can be managed in the following ways.

11.8 Notional personal wheelchair budget – This is where the person chooses to use their personal wheelchair budget within NHS commissioned services and the service purchases and provides the chair. This also offers the option for contributions to the

personal wheelchair budget to enhance the wheelchair people can access. This contribution may come from an integrated package with other agencies such as education, social care, a voluntary or charity organisation, or through self-pay. (This would have previously been known as a partnership voucher).

11.9 Third party personal wheelchair budget – This is where the person chooses to use their personal wheelchair budget outside of NHS commissioned services. An independent provider receives the personal budget by invoicing the NHS. This may also be contributed to as above. (This would have been known previously as an independent voucher).

11.10 Traditional Third-party PHB - This is where an organisation, legally independent of both the NHS and the person, holds the money and manages the budget. This could include provision of a wheelchair as part of a wider package of support.

11.11 Direct Payment - Direct payments are not currently routinely available as an option for managing a standalone personal wheelchair budget. Therefore, where a direct payment is requested, it would either need to meet the whole cost of the wheelchair (which may be appropriate as part of an NHS CHC package) or be part of an integrated package of care and clearly able to demonstrate the health and wellbeing outcome which required a contribution via a separately commissioned service.

12. Types of Insurance

There are four main types of insurance that need to be considered for individual employers and their personal assistants:

12.1 Employers' liability – This is a legal requirement under the Employers' Liability (Compulsory Insurance) Act 1969.

Employers are responsible for the health and safety of their employees while they are at work. Employers' liability insurance provides a level of insurance cover for a business or employer in the event that an employee is injured at work or becomes ill as a result of their work and seeks redress or compensation from a responsible employer.
Employers' liability insurance enables the employer to meet the cost of a compensation claim arising out of, or in the course of, the employment

Anyone who employs personal assistants through a direct payment must take out Employers' liability insurance and there are a number of companies that offer insurance at reasonable rates.

12.2 Public liability - Provides cover if a third-party (i.e. not an employee) suffers injury or damage to their person or property for which you are held legally responsible. If a personal assistant causes injury or damage to a third-party arising out of their employment with the individual employer, it is likely that the individual employer would be found vicariously liable for their actions. The employer therefore needs insurance cover against such liability.

Public liability insurance covers claims made by members of the public or other businesses, but not for claims by employees.

Clinical indemnity – Some insurers will insure personal assistants to carry out a wide range of complex healthcare tasks, provided they have proof of appropriate training. If a personal assistant causes an injury to the person they are supporting, this may result in a clinical negligence claim against the personal assistant by or on behalf of the person they are supporting.

12.3 Insurance for personal assistants – There are also specific policies designed to protect personal assistants from claims against them, for example where the personal assistant accidentally harms the employer (e.g. spilling a cup of hot tea on the employer).

All four types of insurance may be necessary within a PHB direct payment, depending upon the circumstances, to provide adequate protection for the employer, the personal assistant and third parties who may be affected by the employment relationship in some adverse way. This will not be the case in every circumstance, however, and each situation should be considered upon its own facts, having regard to the nature of services provided.

13. Personal Health Budget Agreements and Approval

13.1 All SWL ICB PHBs must be approved by the ICB or their nominated representatives. (This may include NHS Trusts or non-NHS providers if the PHB has been approved by the ICB).

13.2 A Personal Health Budget Agreement forms the written contractual agreement between the ICB (or their nominated representative) and either the person in receipt of the PHB Direct payment (or their Representative), or an organisation responsible for delivering care and support to a person via a Third Party PHB. The PHB Agreement stipulates the conditions upon which the payment is made. Different types of agreements will apply to the different management arrangements for PHBs as set out below.

13.3 Notional PHB – The ICB will commission the care directly from a service provider and will utilise existing NHS Standard Contract arrangements. The ICB will also require a signed Personalised Care and Support Plan for each individual that sets out the care to be delivered and the costs to be incorporated within the contractual arrangement with the service provider.

13.4 Direct payment PHB – Where a person chooses to manage the PHB as a Direct Payment the person (or their representative/nominee) will need to enter into a legal agreement with the ICB for the use of the budget and provision of care. Members of the NHS team supporting the person will explain and determine the ICB PHB Direct Payment agreement arrangement to the individual.

13.4.1 The ICB Direct Payment Agreements aim to ensure that robust processes and documentation support the management of a PHB taken as a Direct Payment. They require.

- The person holding the PHB to provide evidence to the ICB of budget expenditure on a regular basis i.e. through the submission of bank statements, receipts, invoices etc.
- That where the PHB direct payment is arranged using pre-payment cards or a virtual bank account, then the ICB, or its representative, have access to bank statements
- That all PHB records are retained by the person holding the PHB Direct Payment and made available for inspection when requested by the ICB or ICB agents such as Local Counter Fraud Service
- That any unused funds can be reclaimed by the ICB as set out in the ICB Direct Payment Agreement.
- The ICB has the right to withdraw the direct payment PHB if the individual does not comply with the requirements of the direct payment agreement including the submission of appropriate care logs, bank statements, receipts, invoices etc

13.4.2 Anyone employed by the person or their Representative using a PHB Direct Payment is an employee of the person/Representative and shall not be employed by or be considered to be an agent or employee of the ICB. The person is not permitted to use their direct payment to contract self-employed personal assistants, please refer to clause 1.15.3. For the avoidance of doubt the person or their Representative is responsible for ensuring that they comply with all of their legal obligations as an employer, including but not limited to

- issuing a statement of employment or employment contract within the requisite time period; and,
- paying all employment costs such as pay, tax, pension and National Insurance contributions.

If the person or their Representative directly employs staff, they are required to have in force employer's liability insurance which includes public liability insurance and cover for redundancy costs. This is to be with reputable insurers or underwriters with a minimum limit for any one claim as specified by the ICB (the limit to be increased from time to time as reasonably required by the ICB). The relevant insurance policy and the premium receipts must be produced as and when required by the ICB. An allowance for these insurance policies is included within the PHB.

13.4.3 The person or their Representative must let the ICB examine and take copies or make extracts of all information and documentation relating to the PHB and the provision of the care and support outlined in the Personalised Care and Support Plan upon request from the ICB or within 30 days of any such request by the ICB which shall commence from the date the person or their Representative first receives a Direct Payment or as stipulated within the Direct Payment Agreement,. In the event there is a refusal to provide these records, the ICB has a right to withdraw the PHB.

(See Appendix 1 for further information on the management of PHBs as a Direct Payment)

13.5 Third Party PHB – The ICB will contract with the third-party organisation to organise, purchase and be responsible for, the person's care and support as set out in their personalised care and support Plan. In these instances, the NHS Standard Contract will

govern the relationship between the ICB and the third-party organisation managing the health budget. Any exception to using the NHS Standard Contract will be considered on a case-by-case basis. When the third party purchases the services and products on behalf of the person as agreed in their care plan from other suppliers, the NHS Standard Contract will not be used by the third party with those suppliers of care and support.

14. PHBs in Nursing and Residential Care

14.1 Some people assessed as eligible for NHS CHC, children and young people's continuing care, section 117 after-care and funding for a wheelchair may live in nursing or residential care home or supported living settings and may also benefit from receiving care via a PHB.

14.2 Where a request for a PHB direct payment for healthcare is made for a person living in a nursing or residential care setting, the ICB must be certain that providing care in this way adds value to the person's overall care. Generally, direct payments should not be used to pay for care and support services being commissioned by the NHS that a person will continue to access in the same way whether they have a PHB or not. The ICB will therefore need to be clear that the use of a direct payment in such settings is cost effective and is a sensible way to provide care to meet or improve the person's agreed outcomes.

14.3 Any commission for nursing or residential care settings will generally include an expectation that they can meet the needs of their residents, and this may include provision of equipment, including basic wheelchairs that are for general use of residents e.g. for social outings. Therefore, these wheelchairs are not bespoke to an individual and would not be provided by an NHS wheelchair service and are not covered by the right to request.

14.4 For those people who reside in nursing and residential homes and who do require the permanent use of a bespoke wheelchair to support independent mobility, decisions to offer personal wheelchair budgets should be made on a case-by-case basis.

15. What can a Personal Health Budget be spent on?

15.1 What a personal health budget will be spent on must be outlined in a person's Personalised Care and Support Plan and agreed between the person (or their representative/nominee) and the ICB (or agreed nominated representative) or the local NHS team (as agreed by the ICB).

15.2 There are a number of exclusions that are outlined in national Regulations, and these include the following;

- Alcohol, tobacco, gambling or debt repayment or anything that is illegal.
- Emergency or urgent treatment services.
- Primary medical services provided by GPs.
- NHS charges- such as prescriptions or dental charges.
- Surgical procedures.

- Public health services including vaccination or immunisation programmes, screening, child measurement programme or NHS health checks.

15.3 A full list of exclusions is available in the National Health Service (Direct Payments) Regulations 2013 Part 2 Regulation 8. Although the Regulations refer specifically to direct payments, for consistency and good practice the exclusions will be applied by SWL ICB to all types of PHBs.

15.4 A PHB should not be used to purchase services that SWL ICB already commissions including community health services and equipment. During the personalised care and support planning process the person, or their representative or nominee will be informed of the existing NHS services.

15.5 Any agreed budget must be sufficient to ensure the person's assessed needs and agreed health and wellbeing outcomes as described in their personalised care and support plan can be realistically met. An exception to this is the provision of wheelchairs. For personal wheelchair budgets holders, this right to request does not affect the existing ability to contribute or top up the cost of the wheelchair of their choice.

15.6 There may be occasions when the ICB agrees to some elements of the care being requested, but not others. For example, this may be the case where the ICB assesses that a person would be at significant risk if he or she replaced certain health services or treatments with alternative approaches. When refusing an element of a Personalised Care and Support Plan the ICB will give reasons why this decision has been made and ensure it reconsiders this decision if requested to do so. The ICB will notify the person and/or their nominee or representative in writing of the decision following a review. The ICB may not be required to undertake more than one review following a decision in any six-month period.

15.7 The ICB may also choose not to agree the funding of certain goods or services, where it has already reached a decision that these will not normally be commissioned for the general population based on available evidence. Any such instances will be considered on an individual basis taking into account the specific circumstances and needs of the individual concerned, and equity of access to goods and service across the SWL ICB population.

15.8 If part of a Personalised Care and Support Plan is refused by the ICB, the ICB will make every effort to work in partnership with the person, their representative, family and carers to ensure their preferences are considered.

15.9 The ICB have overall responsibility for ensuring that all intended expenditure is lawful as part of the governance arrangement for PHBs.

16. Calculating a Personal Health Budget

16.1 The amount that an individual receives in their PHB will depend on the assessment of their health and wellbeing needs and the cost of meeting these needs.

16.2 The PHB will be equivalent to the SWL ICB estimate of the reasonable cost of securing the agreed provision of the service. This means that the PHB should be sufficient to enable the recipient to lawfully secure a service of a standard that the ICB considers is reasonable to meet the assessed needs to which the PHB relates.

16.3 In principle, the amount of money that would have normally been spent on NHS services as part of a person's NHS CHC, continuing care for children and young people, section 117 after-care package or a wheelchair could be available to use as a PHB. Although a PHB is not therefore new or additional NHS money, it can potentially be spent on a broader range of care and support than would be routinely commissioned by the NHS.

16.4 For personal wheelchair budgets the amount in the budget is based upon what it would cost the NHS to meet the person's assessed postural and mobility needs via the wheelchair service currently commissioned by SWL ICB.

16.5 For people who have additional health and social care needs, the personal wheelchair budget can be pooled with funding from other statutory services (if this is agreed as meeting the person's assessed needs by all services and is cost effective). With personal wheelchair budgets, people can also choose to access non-statutory funding that may be available via voluntary, charitable organisations both nationally and locally.

16.6 The ICB will include as much of the budget as possible into a person's PHB and where this is not possible, work with them, their representatives/nominee, family and carers to tailor the wider support provided for their assessed needs and ensure existing services meet their needs in a personalised way, including where and when they access those services.

16.7 Any agreed budget must be sufficient to ensure the person's assessed needs and agreed health and wellbeing outcomes can be realistically met. An exception to this is the provision of wheelchairs. For personal wheelchair budgets holders, this right to request does not affect the existing ability to add to the cost of the wheelchair of their choice.

16.8 In all other situations, if a person wants to access more services than those being provided by the NHS to meet their assessed needs, then they can do so. They would need to organise, and pay for this, and it would be separate to the PHB and any associate agreements for the supply of care and support services.

16.9 When estimating the reasonable cost of securing the support required through a PHB Direct Payment some associated costs will be included that are necessarily incurred in securing provision, without which the service could not be provided or could not lawfully be provided. The costs involved will vary depending on the way in which the service is secured, but when an individual intends to employ someone to deliver their care, such costs might include recruitment costs, staff training, National Insurance, pension, statutory holiday pay, sick pay, maternity pay, employers' liability insurance, public liability insurance and VAT. The person receiving the PHB, or their representative or nominee will need to ensure all employment regulations are followed.

16.10 SWL ICB is not obliged to fund associated costs if, taking into account the individual's assessed need, the total costs exceed the ICB's estimate of the reasonable cost of securing the service and if a service of the requisite standard could in fact be secured more cost-effectively in another way.

17. Support for Managing a Direct Payment and Third-Party Personal Health Budget

17.1 SWL ICB will advise people on the support service organisations available to provide the following services to PHB recipients and their families, representatives or nominees who are entering into a PHB managed as a direct payment:

- Employer advice and information
- Direct payment managed account and/or payroll services

17.2 Contact details of these organisations will be made available to individuals by the appropriate NHS team as they pursue the options for managing a PHB.

17.3 The support organisations will be nominated by a person (or their representative/nominee) to act on their behalf. For this arrangement to succeed the person must remain in control of directing his or her service and making key decisions, for example deciding who their personal assistant will be.

17.4 The support organisation should be able to comprehend and advise on employment legislation or the complexities of payroll arrangements and remain responsible for these elements of the Direct Payments on behalf of the person.

17.5 SWL ICB have made arrangements for support service organisations to provide the following services to PHB recipients and their families, representatives or nominees who are entering into a PHB managed as a Third Party PHB and/or a Direct Payment Managed Account.

- Work directly for the person making sure they stay in control and live the life they choose. If the person lacks capacity to make a particular decision, the PHB support organisation will work with the family or another representative if the family is not willing to take that role

- Work with the ICB/NHS team to review financial aspects of care packages in line with the agreed schedule.

- Carry out financial reviews including monitoring of direct payments, reviewing receipts and bank accounts, and handling queries relating to payments not received. This will also include alerting ICB/NHS Teams when a PHB is significantly underspent/overspent to trigger an assessment that the persons health needs are still being met.

18. Risk Management

18.1 **Clinical Risk**

18.1.1 SWL ICB is committed to promoting individual choice, while supporting individuals to manage risk positively, proportionately and realistically.

18.1.2 Enabling people to exercise choice and control over their lives and therefore manage their needs and levels of risk themselves, is central to achieving better outcomes for people. A degree of risk can be accommodated within the aim of enhancing the quality of people's lives.

18.1.3 A person who has the mental capacity to make a decision and chooses voluntarily to live with a level of risk, is entitled to do so. SWL ICB require that service providers document clearly any evidence of decision making and the reasons for decisions in relation to the management and reduction of risk where appropriate or necessary. This will be considered as part of the PHB approval process by the ICB.

18.1.4 The aim will be to support and encourage individual choice as much as possible, and to keep the person informed of any issues and risks associated with those choices and how to take reasonable steps to manage them.

18.1.5 The ICB will strive to ensure that risk is understood as fully as possible and managed in the context of ensuring that the person's needs and their best interests are safeguarded. In practice, this means that, because there are different ways to manage a PHB, those person's deemed not suitable for a direct payment should be offered a notional budget or considered for a direct payment managed account or a budget held by a Third Party.

18.2 Organisational Risk

18.2.1 SWL ICB has overall responsibility for authorising a PHB and the obligation to ensure that:

- health and well-being needs are being met
- safeguarding duties are fully met
- it is fulfilling its duty of care and broad statutory obligations
- it is fulfilling its responsibility to ensure that public funds are used to enable customers to live independent and full lives – ensuring value for money
- PHB expenditure is managed within the overall ICB budgetary allocation ensuring the ICB meets their statutory duty to break even on their resource limit
- that public funds are used appropriately
- the ICBs' reputation is protected

18.2.2 The ICB will work with the statutory Local Authority regarding any safeguarding concerns that arise in relation to physical, sexual, financial or other abuse of an individual receiving a PHB. These will be investigated accordingly.

18.3 Financial risk

18.3.1 SWL ICB requires PHBs to demonstrate value for money and be affordable within the ICB overall budgetary allocation for this purpose. This will take account

of both individual choice whilst reflecting equitable use of resources across the local population.

18.3.2 The PHB should always be sufficient to meet the assessed needs and outcomes identified in the care plan and allow for planned contingencies.

18.3.3 The financial arrangements and requirements are contained in the agreement between the ICB and the PHB holder (or their representative/nominee) in the case of PHB Direct Payments; or service providers in the case of Notional PHBs or Third Party PHBs. The agreements will be signed by both parties. If the Direct Payment is not signed, the ICB will not be able to agree a Direct Payment of Third Party PHB.

18.3.4 Any requested variation over and above the agreed PHB must by authorised by the ICB.

18.3.5 The ICB will monitor PHB expenditure – this will include at least the quarterly monitoring of invoices and annual audit of accounts. The ICB reserve the right to recover funds that are not regularly used to provide for the person's health and wellbeing needs as described in the PHB Support Plan.

18.3.6 If the person accumulates a financial surplus within their PHB that exceeds two months value of their agreed annual PHB sum, then the ICB reserve the right to contact the person to undertake a review of their personalised care and support plan.

18.3.7 SWL ICB may decide to recover any surplus funds from the person, and if so, will write to them or their representative or nominee, to inform them of their decision and how the recovery of the surplus will be managed.

18.3.8 PHB funds remain the property of the ICB until they are spent in accordance with the person's personalised care and support plan. If the PHB is ceased for any reason, all unused funds must be repaid to the ICB with immediate effect.

19. Integration with Local Authorities

19.1 Local Authorities are an integral partner in the effective delivery of PHBs. SWL ICB will work with South West London Borough Councils to ensure that the processes for managing PHBs are aligned to minimise the impact on the person where there is interface with the local authorities. For example:

- For people previously in receipt of a social care direct payment who become eligible for an NHS PHB. An LA to ICB Transfer Form will be required to be completed to inform the ICB of the current package of care. This will be reviewed by the ICB in line with the Pan London Purchasing AQP Domiciliary Care Provider Framework and in line with the Choice and Equity Policy
- Where NHS CHC eligibility ceases for a person with a PHB and the individual returns to a local authority social care direct payment;
- Developing a shared understanding of risk.

- Joint packages where the individual is in receipt of a direct payment arrangement with the Local Authority.

20. Review of PHBs

20.1 It is essential for the ICB to check how the PHB is working at appropriate intervals, and whether the Personalised Care and Support Plan is meeting the agreed health and wellbeing outcomes.

20.2 ICB NHS clinical teams responsible for the person's care will inform the person or their representative or nominee of the PHB review process when the Personalised Care and Support Plan is agreed. The expectation is that a review of the personalised care and support plan and PHB will occur within 3 months of the PHB commencing and every 12 months thereafter, depending on the level of risk, vulnerability, and needs of the person and the nature of their PHB. There may be occasions where additional reviews may be required.

20.3 Where direct payments are provided, all Personalised Care and Support Plans, the ICB will endeavour to formally review within three months of the person first receiving the direct payment. Following this, reviews should be held at appropriate intervals, but must occur at least annually. These reviews should include an appropriate level of financial review to give the ICB confidence that the budgets are being used as agreed and that the level of the budget remains appropriate to meet the person's assessed health and wellbeing needs. The annual review should ensure the amount of the budget is sufficient and is in line with legislative requirements (e.g. changes in national minimum wage, increases in national insurance) and employment law.

20.4 Where a one-off budget is provided, for example, for the purchase of an item of equipment, then ongoing or annual reviews may not be appropriate. The ICB and/or responsible NHS team will determine the nature and frequency of reviews in these instances.

20.5 When carrying out the review the ICB may:

- Re-assess the health needs of the person
- Review what is working well with the existing PHB arrangements, and what may not be working quite as well
- Consult a range of health and social care professionals and others involved in the provision of care for the individual
- Review receipts, bank statements and other information relating to the use of direct payments
- Consider whether a PHB direct payment has been effectively managed

20.6 If the ICB becomes aware, or are notified, that the health of the person has changed significantly, the ICB must consider whether it is appropriate to carry out a review of the care plan to ensure the person's needs are still being met.

20.7 If the ICB becomes aware or are notified that the Direct Payment has been insufficient to purchase the services agreed in the care plan, they will carry out a review as soon as

possible.

20.8 The person, their representative or nominee may request that the ICB undertakes a review at any time. If this happens, the ICB must decide whether or not to undertake this review, taking into account local practices and circumstances, and inform the person, their representative or nominee of their decision.

21. Termination of Personal Health Budgets

21.1 Before making a decision to terminate a PHB, wherever possible and appropriate, the ICB will consult with the person, their representative or nominee to enable any misunderstandings to be addressed and enable alternative arrangements to be considered and put in place.

21.2 The ICB will terminate a PHB if it is managed in instances where:

- A person with capacity to consent, withdraws their consent to receiving a PHB.
- A person who has recovered the capacity to consent, does not consent to their PHB continuing.
- If the person's assessed needs are not being met or the person, no longer requires care.
- The person in receipt of the PHB has died

21.3 In addition, the ICB will terminate PHBs managed as a Direct Payment in instances where;

- The money is being spent inappropriately (e.g. to buy something which is not specified in the support plan).
- Where there has been theft, fraud or abuse of a PHB Direct Payment.
- Where the person, their representative or nominee is unable to manage their responsibility as an employer to manage the PHB Direct Payment.
- Where the person, their representative or nominee declines to sign the PHB Direct Payment agreement.
- The person, their representative, or nominee, fails to comply with requests from the ICB or their nominated organisation, to supply care logs, receipts, bank statements and other information for review.

21.4 Where a PHB is terminated, the ICB will give notice to the person, their representative or nominee in writing, explaining the reasons behind the decision. The ICB will normally give a minimum of one month's notice that a PHB will be stopped. However, where there has been theft or fraud (or other exceptional circumstances) the ICB may terminate a PHB and suspend any payments immediately. In these circumstances, the ICB should endeavour to protect public money as far as possible, whilst being mindful that they are still under a duty to provide healthcare if the person requires it. The ICB will therefore be responsible for ensuring that the person continues to receive care to meet their assessed need through other NHS commissioned services.

22. Appeals / Review

22.1 If a PHB is refused in full or in part, then SWL ICB will provide the person who has requested the PHB or their representative/nominee with the reasons for that decision in writing within 10 working days of the SWL ICB decision.

22.2 On receipt of the SWL ICB decision, the eligible person or their representative/nominee may request SWL ICB to undertake a review of the decision if they are refused a PHB or refused a particular type of PHB. The person or their representative/nominee may provide evidence of information for SWL ICB to consider as part of the review. The review will be conducted by SWL ICB Clinical Lead not previously involved with the case and a response provided within 10 working days.

22.3 Following the review, SWL ICB will inform the eligible individual or their representative/nominee in writing of the decision following a review and state the reason for the decision. SWL ICB are not required to undertake more than one review of their decisions in any six-month period.

22.4 If an individual and/or his or her representative is not satisfied they can pursue the matter via the local NHS complaints processes.

23. Complaint Process

23.1 SWL ICB wish to hear all complaints and comments regarding local NHS services and are committed to investigating all of these thoroughly and as soon as is practicably possible.

23.2 Anyone who is receiving, or has received, NHS treatment or services can complain. This includes services provided by independent contractors or providers where SWL ICB have a contract with the organisation to provide NHS services.

23.3 If a person is unable to complain themselves then someone else, usually a relative or friend, can complain on their behalf.

23.4 If a complaint is raised concerning a patient who is deceased, this must be made by a suitable representative, for example their Executors personal representative of their Estate.

23.5 It is important that the complaint is made as soon as possible after the event has occurred, as the NHS will usually only investigate complaints that are made within 12 months after the event itself.

23.6 SWL ICB complaints procedure is published on the ICB website and may be used for any complaint about the operation of this policy.

24. Service User Evaluation

24.1 It is important that the ICB have systems and processes in place to review the effectiveness of PHBs to provide assurance that PHB arrangements and individual

personalised care and support plans are safe and effective in meeting a person's needs and outcomes.

24.2 The ICB will develop arrangements for seeking feedback on the experience of local PHB processes from PHB holders, their families, carers or representatives/nominees.

25. Review

25.1 The policy will be reviewed every three years, though updates will be made beforehand as and when significant changes to practice are required.

26. Internal and External References

Internal References

- SWL Health and Social Care Continuing Healthcare Dispute Resolution Protocol
- SWL ICB Safeguarding Policy

External References

- National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care (2022)
- National Framework for Children and Young People's Continuing Care (2016)
- The Special Educational Needs and Disability (SEND) Code of Practice 0-25 years (statutory guidance for commissioners) (2014)
- Guidance on Direct Payments for Healthcare: Understanding the Regulations (2014)

27. Further Information

Further information and guidance is available on the NHS England personal health budgets webpages at https://www.england.nhs.uk/personalisedcare/personal-health-budgets

28. Equality Impact Assessment

An Equality Impact Assessment has been completed for this Policy (Appendix 1), and no negative impact upon persons with protected characteristics has been identified.

29. Appendix 1: Equality Impact Assessment

	Mandatory Questions	Yes/No/ NA	Comments
1.	Does the Policy affect any group less or more favourably than another on the basis of:		
	Age?	No	
	Disability?	No	
	Gender?	No	
	Gender identity?	No	
	Marriage or civil partnership?	No	
	Pregnancy and maternity or paternity?	No	
	Race?	No	
	Religion or belief?	No	
	Sexual orientation?	No	
2.	Is there any evidence that any groups are affected differently by the Policy and if so, what is the evidence?	No	
3.	Is any impact of the Policy likely to be negative?	No	
4.	If any impact of the Policy is likely to be negative, can the impact be avoided and if so, how?	NA	
5.	If a negative impact can't be avoided, what, if any, are the reasons the Policy should continue in its current form?	NA	
6.	Where relevant, does the Policy support the FREDA principles: Fairness, Respect, Equality, Dignity and Autonomy?	Yes	

If you have identified a potential discriminatory impact of this Policy, please contact Chief of Staff.

30. Appendix 2: Management of a Personal Health Budget as a Direct Payment

1. Direct Payment Regulation and Guidance

1.1 This Appendix of the policy relates specifically to instances where the management of the personal health budget is taken as a Direct Payment.

1.2 The SWL ICB will adhere to The *NHS (Direct Payments) Regulations 2013*, and the NHS England *Guidance on Direct Payments for Healthcare: Understanding the Regulations (Version 2) 2022* when implementing and administering Personal Health Budget (PHB) Direct Payments.

2. Direct Payment PHBs

2.1 Direct payments for healthcare are monetary payments made by ICBs to individuals (or their representative or nominee on their behalf) to allow them to purchase services to deliver the agreed outcomes in their personalised care and support plan.

2.2 Direct payments for healthcare are one of the ways of providing all or part of a PHB.

2.3 SWL ICB may delegate delivery of direct payments for healthcare to a third-party (for example, a local authority or NHS Trust). However, the ICB retains overall responsibility and remains legally responsible for all decisions made under the regulations.

3. Who Can Receive a Direct Payment PHB?

3.1 A direct payment can be made to, or in respect of, anyone who is eligible for NHS care [under the National Health Service Act 2006] and any other enactment relevant to an ICB. Direct payments can be made;

- to a person aged 16 or over, who has the capacity to consent to receiving a PHB by way of a direct payment.
- to 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 the making of a direct payment.
- A child under 16 where they have a suitable representative who consents to the making of a PHB by way of a direct payment.

And where the ICB agrees with the eligible person, their nominee or their representative that:

- a direct payment PHB is appropriate for that person 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 person; or
- 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).

3.2 Direct payments for healthcare, and personal health budgets more widely, do not therefore alter NHS eligibility policy. Only those people who are eligible to receive NHS services will be able to have a personal health budget, including a direct payment.

3.3 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 'nominee' (See section 10 of this Appendix). The person who is 16 or over with capacity as well as the representatives for others retain the ability to receive and manage the direct payment themselves.

3.4 The ICB will only provide direct payments if it is satisfied that the person receiving the direct payments (which may be the person, a representative or nominee) understands what is involved and has given consent.

4. Considerations when deciding whether to make a direct payment

4.1 When deciding whether to make a PHB direct payment the ICB will aim to develop a consistent approach which considers a range of things, including for example;

- The person's wishes and feelings in relation to their care and support and receiving direct payments.
- Their capacity to consent to the making of a direct payment and where appropriate the provision of support in the form of a nominee or representative
- The benefits to the person of having a direct payment for healthcare in both the short and longer term.
- Whether the benefits of receiving a direct payment represent value for money and, where applicable, outweigh any direct additional financial costs.
- Whether it is clear where the money for the direct payment will come from and when it will be available.
- The availability of appropriate support for the person (or their representative or nominee) to be able to plan and manage direct payments.

This list is not intended to be exhaustive.

5. Exclusion from Direct Payment Personal Health Budgets

5.1 The exclusions outlined in the NHS (Direct Payments) Regulations 2013 are primarily related to those within Criminal Justice system for drug and alcohol related offences. These excluded groups are listed at Addendum A to this document.

5.2 In addition the ICB **will not grant a direct payment** in the following circumstances (although other forms of personal health budget - such as notional budget - will still be available for consideration by the ICB):

- Where a person or their representative would not be able to manage them
- Where it is inappropriate for a person given their condition or the impact on that person of their particular condition
- Where the benefit to the person of having a direct payment does not represent value for money

- That providing services in this way will not provide the same or improved outcomes
- Where the direct payment will not be used for the agreed purposes
- Where Safeguarding concerns are reported/under investigation
- Where the value of the personal health budget forms part of an existing contract, and to provide a personal health budget would result in significant double funding, and create financial risk to the ICB or provider, or set a precedent which could destabilise the service.

5.3 A person or their representative/nominee may ask for a review of any ICB decision in accordance with the Appeals process set out under the ICB Personal Health Budget Policy**.**

6. Consent and Capacity to Consent

6.1 Direct payments can only be made where appropriate consent has been given by:

- A person aged 16 or over who has the capacity to consent to the making of direct payments to them.
- The representative of a person aged 16 or over who lacks the relevant the capacity to consent.
- The representative of a child under 16.

6.2 The direct payment can be received and managed by the person who gives their consent, or that person can identify a nominee (See section 10) to receive and manage it for them. Where a person lacks the capacity to consent, direct payments can be given to their authorised representative (See Section 12), if they consent to receiving the payment on the person's behalf. The representative can also appoint a nominee.

6.3 In the case of children, direct payments can be received by their parents or those with parental responsibility for that child.

6.4 When providing direct payments, the ICB must be satisfied that the individual receiving the direct payment understands what is involved and has given informed consent.

6.5 People may need additional support to make a decision regarding consent to a direct payment. Support can be provided by the ICB directly, or by another organisation working in partnership with the ICB.

6.6 The ICB will make it clear that receiving direct payments is voluntary and that it is possible to use another form of PHB or not have one at all. It will also be made clear that it is possible to use a combination of different ways to manage the money.

6.7 The ICB will assume that a person aged 16 and over has the capacity to make decisions about the making of direct payments to them unless the individual is assessed to lack capacity.

6.8 Where there are concerns about a person's capacity to consent or manage their PHB Direct payment, this must be assessed, and appropriate steps taken by the ICB or their

representatives. A loss of capacity or ability to manage should not mean a loss of a PHB.

6.9 SWL ICB have a duty of care to ensure that individuals are protected from harm. The ICB will ensure that:

- Risk assessment forms part of personal health budget assessment and approval process
- People and their carers understand the importance of safeguarding and their role including what to do if they have concern
- Where a Personal Assistant is to be employed a Support Service must be used to provide advice on employment matters.
- All Personal Assistants engaged via a PHB direct payment must be subject to an enhanced Disclosure and Barring Service (DBS) check in accordance with the NHS Direct Payment Regulations unless the exemptions set out in regulations apply. If the individual refuses, SWL ICB will not grant a direct payment, although other forms of personal health budget will still be available.
- Where a Personal Assistant is already employed prior to the allocation of PHB (normally through local authority personal budget funding), the individual must check whether DBS checks were carried out at the time. If not, this needs to be undertaken within 3 months of the PHB commencing.

7. Ability to manage direct payments

7.1 It does not necessarily follow that if someone has the capacity to consent to receive direct payments, they are also able to manage them. When deciding whether or not someone has the ability to manage direct payments, the ICB will especially consider:

- whether they would be able to make choices about and manage the services they wish to purchase.
- whether they have been unable to manage either a heath care or social care direct payment in the past, and whether their circumstances have changed.
- whether they are able to take reasonable steps to prevent fraudulent use of the direct payment or identify a safeguarding risk and if they understand what to do and how to report it if necessary.
- any other factors which the ICB may consider is relevant.

7.2 If the ICB is concerned that a person is not able to manage a direct payment they must consider:

- the person's understanding of direct payments, including the actions and responsibilities on their part.
- whether the person understands the implications of receiving or not receiving direct payments.
- what kind of support the person may need to manage a direct payment.
- what help is available to the person.
- What arrangements the ICB or the person could make to obtain the necessary support

7.3 Any decision that a person is unable to manage a direct payment must be made on a case-by-case basis, taking into account the views of the person, and the help they have available to them

7.4 The ICB will inform the person 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.

7.5 Where an individual does not agree with SWL ICB decision they will have access to SWL ICB Appeals and Complaints procedures.

7.6 If a representative receives direct payments on someone's behalf, or the person receiving care appoints a nominee to manage the direct payments on their behalf then the ICB needs to be confident that the representative or nominee can manage direct payments on the person's behalf.

7.7 When deciding whether to make a PHB direct payment the ICB will consider whether the person, their nominee or their representative will be able to manage the direct payment including but not limited to ensuring that they:

- Can provide bank statements showing expenditure of the direct payment.
- Are fully aware of the requirement to retain ALL expenditure receipts relating to the direct payment.
- Have access to online banking for their nominated direct payment account.
- Are able to provide statements and accounts, and receipts as and when required.
- Are fully aware of HMRC regulations with regards to employment of carers and tax implications.
- Provide the ICB with regular care logs

8. Who should the ICB consult when considering when to make a direct payment?

8.1 When deciding whether to make a PHB direct payment the ICB will contact a range of people for information to help make the decision whether a direct payment may be suitable. Information will be requested from and shared with people, but this will be strictly limited to only (a) information that is relevant and (b) people who need to be involved, as described below.

- anyone identified by the person involved as someone to be consulted for these purposes
- if the person is aged between 16 and 18, the person with parental responsibility for them
- the individual primarily involved in the person's care
- health professionals involved in the provision of care/treatment to the person
- anyone else who provides care for the person
- an independent mental capacity advocate or an independent mental health advocate appointed for the person
- any health professional or other professional who provides healthcare to the person
- the person's social care team

- if the person has one, a deputy appointed by the Court of Protection in relation to matters in respect of which direct payments may be made
- a donee of a lasting power of attorney with the power to make the relevant decisions (see section 9 of the Mental Capacity Act (2005))
- a person vested with an enduring power of attorney with the power to make the relevant decisions (see schedule 4 of the Mental Capacity Act (2005))
- anyone who the ICB considers is able to provide relevant information about the person. ICBs should be particularly aware that carers will have particular insights and should be seen as partners in care wherever possible.

9. Information that may be requested when considering whether to make a direct payment

9.1 The ICB may ask the person receiving care, their representative or nominee to provide information about:

- their overall health
- the details of the condition(s) in respect of which they would receive direct payments
- any bank, building society, post office or other account into which direct payments would be paid.

9.2 The ICB will ensure that only the necessary information needed to make this judgement is requested and that as far as possible, the privacy and confidentiality of the person is protected.

10. Nominees for People with Capacity

10.1 If a person aged 16 or over who is receiving care has capacity but does not wish (for whatever reason) to receive direct payments themselves, they may nominate someone else to receive them on their behalf (a nominee).

10.2 A representative (for an individual 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.

10.3 A nominee is responsible for managing the direct payment on behalf of the person receiving care or their representative. They are responsible for fulfilling all the responsibilities of someone receiving direct payments. These include:
a) acting as the principal person for all contracts and agreements with care providers, employees, etc
b) using the direct payment in line with the agreed personalised care and support plan; and
c) complying with any other requirement that would normally be undertaken by the person receiving care as set out in this guidance (e.g. review, providing financial information).

10.4 The ICB 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.

10.5 The ICB must satisfy itself of the person's suitability for the role, including, where appropriate, requiring the nominee to apply for an enhanced Disclosure and Barring Service (DBS) check with a check of the barred list for the relevant group (adult's or children's) including suitability information relating to vulnerable adults. The ICB should then make a suitability decision in relation to the information in the response.

10.6 Before the nominee receives the direct payment, the ICB must agree that the direct payments can be made in this way. The ICB will consider whether the person is competent and able to manage direct payments, on their own or with whatever assistance is available to them. In reaching their decision, the ICB may also:

- consult with relevant people
- require information from the person for whom the direct payments will be made on their state of health or any health condition they have which is included in the services for which direct payments are being considered or which may otherwise be relevant to the direct payments.
- require the nominee to provide information relating to the account into which direct payments will be made.

10.7 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 ICB will require the nominee to apply for an enhanced Disclosure and Barring Service (DBS) and consider the information before giving their consent. If a proposed nominee in respect of a person aged 18 or over is barred the ICB will 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

10.8 An organisation (including one such as a Trust established for the purpose) may agree to act as nominee. Where this is the case, that organisation must identify the person who will, on their behalf, have overall responsibility for the day-to-day management of the direct payments

10.9 A person who has chosen to appoint a nominee may withdraw or change that nomination by writing to the ICB. If this occurs, the ICB will consider whether to stop paying the direct payment, consider paying it to the person directly, or paying it to another nominee; and they should review the direct payment and care plan as soon as is reasonably possible.

10.10 The ICB will 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.

11. The status of support organisations and managed account providers regarding the role of nominee

11.1 A managed account is where a separate entity holds the PHB funds in a designated bank account for the person. This can be a named person (e.g. a solicitor or accountant) or an organisation (e.g. a direct payment support service). However, they do not take any

responsibility for the ways in which it is spent or enter into any contractual arrangements on behalf of the person.
The individual, their representative or nominee gives all the direction as to how the budget should be managed, as agreed in the personalised care and support plan, and where it should be spent, thus maintaining the control that direct payments are designed to allow.

11.2 A managed account provider does not have the status of a nominee or representative and provides financial management and support services only to a person, their representative or nominee. In this situation the person, their representative or nominee remain fully responsible for the direct payment, including acting as the employer (where appropriate) and making all decisions about their direct payment.

11.3 The managed account provider may offer advice and support around a number of elements including being an employer, in addition to co-ordinating the financial element of the direct payment but they do not take on full responsibility for the person's care and budget.

12. Representatives

12.1 If a person does not have capacity and so may not receive direct payments personally, the ICB will establish whether someone could act as that person's representative.

12.2 In some cases someone may already be acting as a representative in another capacity. In others it may be appropriate for the ICB to appoint someone to act as a representative. This should occur if the person receiving care would benefit from direct payments, and there is no-one else who is able to act as a representative.

12.3 A representative is someone who agrees to act on behalf of someone who is otherwise eligible to receive direct payments but cannot do so because they do not have the capacity to consent to receiving one, or because they are a child.

12.4 Representatives are responsible for consenting to a direct payment and fulfilling all the responsibilities of someone receiving direct payments.

12.5 Before someone can be a representative, they must give their consent to managing the direct payment. The ICB will ensure that potential representatives are fully informed and provided with sufficient advice and support when making their decision.

12.6 In a similar way to the process for appointing nominees, the ICB should also consider whether the person is competent and able to manage direct payments, on their own or with whatever assistance is available to them.

12.7 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 ICB.

12.8 An appointed representative could be anyone deemed suitable by the ICB. However, the ICB will take into account previously expressed wishes of the person, and as far as possible their current wishes and feelings. Where possible, ICB should consider appointing someone with a close relationship to the person, for example a close family member or a friend.

12.9 A representative can be:

- a deputy appointed by the Court of Protection.
- a donee of a Lasting Power of Attorney.
- a person vested with an Enduring Power of Attorney to make the relevant decisions.
- the person with parental responsibility, if the individual is a child.
- the person with parental responsibility, if the individual is over 16 and lacks capacity; or
- someone appointed by the ICB to receive and manage direct payments on behalf of a person, other than a child, who lacks capacity.

12.10 When considering whether a representative is suitable, the ICB should where appropriate, be aware of the terms under which someone has been appointed under a Lasting Power of Attorney made by the person or by the Court of Protection as the person's deputy. The attorney or deputy may only make decisions about the person's healthcare and securing services on the person's behalf to meet their care needs if they have been appointed to deal with these matters. If an attorney or deputy lacks suitable powers, they will not be able to manage the direct payment. In such circumstances, the ICB may appoint another person as a representative.

13. The Role of the Representative

13.1 A representative is responsible for managing direct payments on behalf of the person receiving care. They, or their nominee, must:

- Act on behalf of the person, e.g. to help develop personalised care and support plans and to hold the direct payment.
- Act in the best interests of the person when securing the provision of services.
- Be the principal person for all contracts and agreements, e.g. as an employer.
- Use the direct payment in line with the agreed personalised care and support plan.
- Comply with any other requirement that would normally be undertaken by the person as set out in this guidance (e.g. review, providing information).

13.2 If a representative believes that the person for whom they are acting has regained capacity they should notify the ICB as soon as possible.

14. Deciding whether to make direct payments to a representative

14.1 When deciding whether or not to make direct payments to a representative, the ICB are required to act in the best interests of the individual receiving care and should, in particular, consider

- whether the person receiving care, when they had capacity, had expressed a wish to receive direct payments, or have someone receive them on their behalf;
- 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 if deciding whether to consent or not to receiving direct payments.
- as far as possible, the person's past and current wishes and feelings.

14.2 When considering whether to appoint a representative, the ICB may also consult the person receiving care

14.3 If a representative is not a close family member of the individual, living in the same household as the individual, or a friend involved in the individual's care, then the ICB require the representative to apply for an enhanced Disclosure and Barring Service (DBS) certificate and consider the information before giving their consent. If a proposed representative in respect of an individual aged 16 or over is barred the ICB must not give their consent.

15. When a child reaches the age of 16

15.1 When a child on whose behalf a representative has consented to direct payments reaches 16, the ICB may continue to make direct payments to the representative or their nominee in accordance with the personalised care and support plan, providing the child who has reached 16 and the representative and, where applicable the nominee, consent.

15.2 If the child who has reached 16 does not consent, the ICB will stop making direct payments. In either case, the ICB will, as soon as reasonably possible, review the making of direct payments.

16. Direct Payment to a Third Party and/or Managed Account Provider

16.1 Some people may need extra assistance to manage their Direct Payments. Direct Payments may be made to a third party (an Agent) on behalf of the person and the day to-day management of finances may be delegated in this way

16.2 A third party is an individual and/or organisation nominated by the person holding the PHB Direct Payment to act on their behalf to either receive the Direct Payment and/or take on the employment of staff and/or payroll responsibilities. For this arrangement to succeed the person must remain in control of directing his or her service and making key decisions, for example deciding who their personal assistant will be. This arrangement is referred to as a Direct Payment Managed Account

16.3 The third party should be able to comprehend employment legislation or the complexities of payroll arrangements and remain responsible for these elements of the Direct Payments on behalf of the person.

17. Named care co-ordinator

17.1 For each person receiving a direct payment, the ICB must name a care co-ordinator, and this must be recorded in the personalised care and support plan. The care co-ordinator is responsible for:

- managing the assessment of the health needs of the person as part of the personalised care and support plan
- ensuring that the person, or representative and the ICB have agreed the personalised care and support plan

- undertaking or arranging for the monitoring and review of the direct payment, the personalised care and support plan and the health of the person
- liaising on behalf of the ICB and the person receiving the direct payment.

17.2 The care co-ordinator should normally be someone who has regular contact with both the person receiving care, and their representative or nominee if they have one. They do not need to have 'care co-ordinator' 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. The care co-ordinator should be the primary point of contact between the person and the ICB.

18. Setting the amount of a direct payment

18.1 The ICB must set direct payments at a level sufficient to cover the full cost of each of the services agreed in the personalised care and support plan. NHS services, including personal health budgets, are free at the point of delivery. Contributing to the cost of their care by people is only permissible in a limited number of NHS areas such as wheelchair provision.

18.2 When calculating the PHB direct payment, the ICB should ensure that they recognise the additional on-costs often associated with a direct payment. For example, if someone is employing personal assistants, they must ensure that there is sufficient funding available to cover the additional necessary costs of employment such as tax, National Insurance, training and development, statutory sickness payments, pension contributions, redundancy payments, any necessary insurance such as employers' public liability, emergency cover, and DBS checks. If the direct payment includes agreement to purchase equipment, then any insurance or maintenance costs should be included in the budget.

18.3 If equipment purchased through a personal health budget is no longer required e.g. if it no longer meets assessed needs or the individual dies, the ICB reserve the right to request that the item be returned to the ICB.

18.4 ICBs must ensure direct payments cover the full cost of the care agreed in the personalised care and support plan. However, they do not circumvent existing government policy around additional private care. In no circumstances should the budget be set at a level where someone is expected to pay for care privately to meet their agreed health needs. If someone wishes to purchase additional care privately, they may do so, so long as it is additional to their assessed needs, and it is a separate episode of care, with clearly separate lines of clinical accountability and governance.

18.5 An individual cannot "top up" a PHB direct payment to purchase an item of higher specification, or gain greater benefit, over and above that is required to meet assessed need. For example, a PHB may include an agreed sum for gym membership based on the local market rate. This sum cannot be added to so that the individual joins a more expensive gym offering facilities which are not required to meet their agreed health outcomes. Any additional service purchased such as additional Personal Assistant

hours to help with childcare, must be subject to a separate contract and are not part of the PHB.

18.6 If the amount of a direct payment is not set at a suitable level, it must be reviewed and adjusted.

18.7 The ICB will consider including a contingency fund in the direct payment, either for the person or as part of a collective risk pool, to ensure that the budget is available to fully fund the personalised care and support plan.

19. Imposing conditions in connection with the making of direct payments

19.1 The following conditions may be imposed on the person, their representative or nominee in connection with the making of PHB direct payments:

- the recipient must not secure a service from a particular person; and/or
- the person, their representative or their nominee must provide information that the ICB consider necessary (other than information already covered by other regulations in the NHS (Direct Payment) Regulations 2013.) Conditions should only be imposed in exceptional circumstances. The reasons for the imposed conditions should be documented clearly.

20. Mixed Packages of Care

20.1 A person may want to carry on receiving some services purchased and commissioned directly by the ICB whilst purchasing some services via a Direct Payment. The person may choose to gradually take over managing their whole care arrangements via PHB Direct Payments. This flexibility and choice should be facilitated, as some Direct Payment recipients may feel unable to take on all of the responsibility involved in managing a Direct Payment immediately. For example, an individual may decide to continue receiving services from an agency at weekends and bank holidays, whilst opting to directly employ a health personal assistant (via Direct Payments) for the remaining time. Alternatively, the person in receipt of the Direct Payment may wish to transfer all services to a Notional PHB where care services are commissioned directly with the ICB who will manage all contractual payment arrangements.

21. Receiving a direct payment

21.1 NHS services are free at the point of delivery. Once the PHB has been agreed, the ICB must pay direct payments in advance. Under no circumstances, should people have to pay for services themselves and be reimbursed, even if receipts are available, for services agreed in the personalised care and support plan.

21.2 With the exception of one-off direct payments, the ICB must pay direct payments into a separate bank account used specifically for this purpose and held by the person receiving them (or held by a managed account or third-party provider). That person may be the person receiving care, or a nominee or representative. This account may also be used to receive money provided by the government for other care or services.

These include direct payments for social care, direct payments for children with special educational needs and disabilities and other money paid to disabled people to secure relevant services. The bank account should only be accessible to people agreed to by the ICB, which should normally be limited to the person purchasing services.

21.3 When receiving direct payments, the person holding the account should keep a record of both the money going in and where it is spent, for example, through keeping bank statements and receipts. Where different funding streams are paid into a single account, this may require taking copies of statements, as there may be different monitoring and review processes.

21.4 Where someone is receiving a one-off direct payment, it can be paid into the person's ordinary bank account (or that of a nominee or representative). A one-off payment is used to buy a single item or service, or a single payment made for no more than five items or services, where the person is not expected to receive another direct payment in the same financial year.

21.5 People will need to provide evidence that the direct payment was used as agreed in the personalised care and support plan. However, for one-off direct payments, this could be done by producing receipts of items/services purchased, rather than by providing copies of bank statements.

22. Stopping or reducing a direct payment

22.1 The ICB may increase or decrease the value of the direct payment at any time, if they are satisfied that the new amount is sufficient to cover the full cost of the services required to meet the person's needs in the current personalised care and support plan.

22.2 Before making a decision to stop or reduce a direct payment, wherever possible and appropriate, the ICB should consult with the person receiving it to enable any misunderstandings or inadvertent errors to be addressed and enable any alternative arrangements to be made.

22.3 Whenever a direct payment is reduced or stopped, the ICB must ensure that the person receiving the direct payment is given reasonable notice, and an explanation regarding the reasons for the organisation's decision. This must be done in writing, and it should be accessible and understandable to the person involved.

22.4 Direct payments may be reduced:

- where the ICB is satisfied that a reduced amount is sufficient to cover the full cost of the current personalised care and support plan
- if a surplus payment has accumulated that has remained unused. A surplus may indicate that the person is not receiving the care they need or too much money has been allocated. As part of the review process, the ICB should establish why the surplus has built up. Under these circumstances, a reduction in direct payment in any

given period cannot be more than the amount that would have been paid to them in the same period.

22.5 There may be occasions when a person receiving care and support via a direct payment requires a stay in hospital. However, this should not necessarily mean that the direct payment must be suspended while the person is in hospital. Suspending or even terminating the payment could result in the person having to break the employment contract with a trusted personal assistant, causing distress and a lack of continuity of care when discharged from hospital.

22.6 If a direct payment is suspended or terminated, all rights and liabilities related to the care agreed in a person's personalised care and support plan pass back to the ICB and any period of notice required for staff and other contracts and costs incurred due to the stopping of the direct payment must be met by the ICB.

22.7 Where direct payments have been reduced, the person receiving care, a representative or nominee may request the ICB to reconsider the decision and may provide evidence or relevant information to be considered as part of that deliberation. Where this happens, the ICB must inform the person receiving care and any representative or nominee in writing of their decision after reconsideration and state the reasons for the decision.

22.8 The ICB is not required to undertake more than one reconsideration of any such decision. If the person is still unhappy with the decision to reduce the direct payment, they should be referred to the local NHS complaints procedure.

22.9 The ICB will stop paying direct payments if:

- 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 direct payments continuing
- a representative withdraws their consent to receive direct payments, and no other representative has been appointed.

22.10 The ICB may stop making a direct payment if they are satisfied that it is appropriate to do so. For example, where:

- the person no longer needs care
- direct payments are no longer a suitable way of providing the person with care
- the ICB has reason to believe that a representative or nominee is no longer suitable to receive direct payments, and no other person has been appointed
- a nominee withdraws their consent, and the person receiving care or their representative does not wish to receive the direct payment themselves
- the person has withdrawn their consent to the nominee receiving direct payments on their behalf
- the direct payment has been used for purposes other than the services agreed in the personalised care and support plan
- fraud, theft or an abuse in connection with the direct payment has taken place

- the person has died.

22.11 If, for whatever reason, the person receiving care is no longer able or willing to manage the direct payment, the ICB is responsible for fulfilling the contractual rights and liabilities of the person's PHB. After a direct payment is stopped, all rights and liabilities acquired or incurred as a result of a service purchased by direct payments will transfer to the ICB.

22.12 In some cases, it may be necessary to stop the direct payment immediately, for example if fraud or theft has occurred. In these cases, 'reasonable notice' may include immediate termination of the direct payment. In these circumstances, the ICB should endeavour to protect public money as far as possible, whilst being mindful that they are still under a duty to provide healthcare if the person requires it. No person should ever be denied the care they need.

22.13 ICB acknowledges that in instances genuine errors can occur and also that circumstances beyond people's control can result in, for example, surplus, unspent funds. In such situations ICBs will work with budget holders to understand the situation and may request the excess funds be returned to the ICB. The PHB will also be reviewed to ensure the correct funding levels are in place to meet the person's health and wellbeing needs.

23. Repayment of a direct payment

23.1 In some circumstances, the ICB may ask for all, or part of, the direct payment to be repaid. The decision to seek repayment, and the amount of money to be reclaimed, is at the discretion of the ICB with consideration to be given to the duty to exercise their functions effectively, efficiently and economically and the duty to have regard to the efficiency and sustainability in relation to the use of resources.

23.2 The ICB may reclaim direct payments if:

- they have been used to purchase a service that was not agreed in the personalised care and support plan
- theft, fraud or other offences have occurred
- the person receiving care has died, leaving part of the direct payment unspent
- the personalised care and support plan has changed substantially resulting in surplus funds
- the person's circumstances have changed substantially, such as admission to hospital resulting in the person not using the direct payment to purchase their care
- a significant proportion of the direct payment has not been used to purchase the services specified in the personalised care and support plan resulting in money being accumulated.

23.3 If a substantial amount of money accumulates in the person's account due to an underspend for any reason, the ICB will consider whether it is appropriate to reclaim that money. In some circumstances, it may be more appropriate to simply reduce subsequent direct payments, factoring in the existing surplus. The ICB will also assess the reasons for the build-up of the surplus as part of the review process.

23.4 When reclaiming money from someone with a representative or nominee, the ICB will approach the person holding the money, rather than the person receiving care. The ICB will also ensure that, as far as possible, the person receiving care is also aware of their intention, and the reasons for this.

23.5 When reclaiming money from the estate of someone who has died, the ICB will approach the personal representatives of the person to seek repayment.

23.6 The ICB will bear in mind that if the person, their representative or nominee was an employer, their employees will have employment rights, which may include a paid period of notice or redundancy payment. These payments should be met immediately by the ICB and where there is accrued money from the direct payments, reimbursed by the estate at a later date. Where there is no accrued money from the direct payments the liabilities remain with the ICB.

23.7 Where the ICB has decided to seek repayment, it will give the relevant person reasonable notice in writing, stating:

- the reasons for their decision
- the amount to be repaid
- the time in which the money must be repaid
- the name of the person responsible for making the repayment.

23.8 On receipt of notice from the ICB, the person, representative or nominee may request the ICB to reconsider their decision. They may also provide additional evidence or relevant information to inform that decision. The ICB will reconsider their decision in light of any new evidence, and then notify and explain the outcome of their deliberation in writing. The ICB can only be required to reconsider their decision once. If the person is still unhappy with the decision, they should be referred to the local NHS complaints procedure.

23.9 If the ICB is seeking to reclaim money as a result of theft, fraud or another criminal offence, they may seek for that sum to be reclaimed as a civil debt. In these circumstances, ICBs will seek legal advice.

24. Using a direct payment to buy services from a provider

24.1 When using a direct payment to buy services as agreed in the personalised care and support plan, the person receiving the direct payment purchases those services themselves, including contracting directly with the provider or employing people directly and so normal NHS procurement processes do not apply. See guidance on the National Health service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013. However if the PHB is managed virtually on the My Care Bank platform, then the ICB will arrange an online contract direct with the supplier/provider on behalf of the PHB budget holder.

24.2 Some people may wish to pay a third-party organisation (e.g. via a third-party budget arrangement) to employ a personal assistant on their behalf. The third-party organisation should allow the person to have as much choice and control in the recruitment and management of the personal assistant as appropriate. However, the ultimate accountability for meeting employer responsibilities remains with the third-party organisation.

25. Using a direct payment to employ staff

25.1 People may wish to use their direct payment to employ staff to provide them with care and support. The ICB will support them to do so whenever possible, while ensuring that there is appropriate practical support available. The ICB can advise people on the PHB support organisations that can provide advice on employment regulations. PHB support organisations are responsible for helping to ensure that good practice is followed in the employment of personal assistants.

25.2 This support will be made available to all direct payment recipients, their representatives or nominees who want it and could include for example support with recruitment, provision for payroll, pensions, training, managing sickness, insurance advice or other employment related information and services.

25.3 Where direct payments are being used to employ one or more people, the person receiving care, the representative or the nominee, the ICB will ensure that they are made aware of their legal responsibilities and obligations as employers. This should include information on HM Revenue & Customs (HMRC) requirements including in relation to registering as an employer and health and safety requirements.

25.4 Anyone employed by a person or their Representative using the PHB Direct Payment is an employee of the person/Representative and shall not be employed by or be considered to be an agent or employee of the ICB. For the avoidance of doubt the person or their Representative is responsible for ensuring that they comply with all of their legal obligations as an employer, including but not limited to:

- issuing a statement of employment or employment contract within the requisite time period; and,
- paying all employment costs such as pay, tax, pension and National Insurance contributions.

25.5 If the person or their Representative directly employs staff, they are required to have in force employer's liability insurance which includes public liability insurance and cover for redundancy costs. This is to be with reputable insurers or underwriters with a minimum limit for any one claim as specified by the ICB (the limit to be increased from time to time as reasonably required by the ICB). The relevant insurance policy and the premium receipts must be produced as and when required by the ICB. An allowance for these insurance policies is included within the Personal Health Budget

25.6 The person or their Representative must let the ICB examine and, where appropriate, take copies or make extracts of all information and documentation relating to the Personal Health Budget and the provision of the Support upon request from the ICB or within 30 days of any such request by the ICB, which shall commence from the date the Patient or their Representative first receives a Direct Payment. The person or Representative will be required to allow the ICB access to the following information:

- all financial records (including Bank Statements for a virtual wallet, showing payments received and made through the wallet and any other records which show clearly the Direct Payments received from the ICB and details of how the person or their Representative has used the Direct Payments as agreed in the Personalised Care and Support Plan).
- receipts for payment made.
- agency invoices and receipts (if applicable); and
- any other information as the ICB may consider necessary.

25.7 There will also be costs associated with employing a member of staff directly, such as National Insurance, pension contributions, training, insurance costs, maternity leave, emergency cover and, at times, redundancy. When setting the budget and agreeing the personalised care and support plan, the ICBs will ensure that the full cost of employing someone is included, and people must not be expected to bear any of these costs themselves.

25.8 Where it becomes clear that payments, or returns detailing employee information deductions, have not been made, or that the person is failing to meet their obligations as an employer generally, the direct payment should be reviewed and consideration given to whether alternative arrangements that result in the direct payment recipient no longer acting as the employer need to be made.

25.9 As one of a range of support services, direct payment recipients may wish to make use of payroll services, which will take responsibility for administering wages, tax, pensions and National Insurance on their behalf. Costs such as this should be factored in when setting the PHB direct payment budget.

25.10 The ICB works within a framework of standardised rates for employment of Personal Assistants. The rates include pension, National Insurance and income tax. Deviation from the agreed rates is entirely at the ICB discretion. Annual uplifts will be applied in line with the Pan London Domiciliary Care AQP Provider Framework.

26. Paying staff living in the same household

26.1 A direct payment can only be used to pay a family member or friend living in the same household to deliver care if the ICB is satisfied that this is necessary to meet the person receiving care's need for that service; or to promote the welfare of a child for whom direct payments are being made. ICBs will need to make these judgements on a case-by-case basis and explicitly agreed in the personalised care and support plan.

26.2 Where a family member is both the direct payment recipient and the potential employee, there could be a conflict of interest. ICBs will want to assure themselves that this is a suitable arrangement and could consider employment of the family member through an agency or third-party as an appropriate solution.

26.3 The ICB will also give consideration to any impact it may have on a family member's health and wellbeing or family relationships if they are also an employee.

26.4 In order for the ICB to consider when it is necessary for a resident family member to be employed the following process needs to be followed:

- If a direct payments recipient wishes to pay a close relative who lives in the same household for their care, they should set out why it is necessary to secure services from this person in order to satisfactorily meet their needs in the care plan
- Agreement should also be sought from the family member, who will be receiving the payment, to ensure they understand the specific arrangements and the responsibilities involved. The family member should sign the agreed care plan.

27. Safeguarding and employment

27.1 When deciding whether or not to employ someone, people should follow best practice in relation to safeguarding, including satisfying themselves of a person's identity, their right to work in the UK, their qualifications and professional registration if appropriate and taking up references and ensure the appropriate type of Disclosure and Barring Service (DBS) checks are carried out.

27.2 The ICB should ensure that there is readily available advice in relation to the provision of DBS checks in respect of people who direct payment recipients may wish to employ to undertake regulated activity as per the Safeguarding Vulnerable Groups Act 2006. (It is likely that most personal assistants' work would be classified as regulated activity under the Safeguarding Vulnerable Groups Act 2006 and this is what makes them eligible for enhanced DBS checks and a check of the Adults' or Children's Barred List).

27.3 A person or their nominee or representative cannot apply for a DBS check on another individual. However, they may ask another DBS registered umbrella body for advice in relation to arranging for the prospective employee to apply for an enhanced DBS check with a check of the adult's (or children's if appropriate) barred lists. This would include when employing or contracting with people providing care to the person, such as:

- regulated health care professionals – for example, nurses or physiotherapists
- people providing healthcare under the direction or supervision of a health care professional
- people (including personal assistants) providing personal care or involved in other activities that constitute regulated activity under the Safeguarding Vulnerable Groups Act 2006.

27.4 A local authority or NHS organisation can apply for DBS checks themselves or decide to commission the processing of DBS checks through an umbrella body. The umbrella body will be responsible for processing a DBS application; however, unless the umbrella body employs someone to make the suitability decision in regard to DBS checks the

responsibility for the suitability decision remains with the organisation requesting a check.

27.5 Based on the results of the DBS check, the person employed to make the suitability decision must make the decision in relation to the particular role under consideration. The person who assesses suitability should be checking against their local safeguarding policy and recruitment of ex-offenders' policy to reach a decision on suitability. The decision should be an objective one based on facts.

27.6 If the suitability decision maker considers that the information disclosed on the DBS check indicates that the person is not suitable for employment in the specific role they are being considered for, then the individual employer cannot employ that person using a direct payment.

27.7 The individual employer cannot be involved in making the suitability decision in relation to the DBS check. Only the final decision regarding suitability can and must be shared with them but not the content of the DBS check.

27.8 If the person is deemed suitable in relation to the DBS check, then the individual employer can make a further decision about their employment in relation to other aspects of their suitability.

27.9 The person on whom the DBS check was conducted may choose to show their DBS check to the person intending to employ them if they so wish. If they agree that the person making the suitability decision can, subsequent to making the decision, share the information with the individual employer then data protection rules as outlined in the Data Protection Act 2018 must be adhered to when they do so.

27.10 The DBS Update Service allows people to reuse their certificate for multiple roles. If a potential employee or contractor has subscribed to the Update Service and has a DBS check at the appropriate level and for the appropriate workforce, the ICB may, with the person's permission, see the person's original certificate and use the free online portal to check whether that certificate is still up to date. If the Update Service indicates that the certificate is not up to date, the ICB should ask the potential employee or contractor to apply for a new DBS check.

27.11 If the potential employee is barred, they must not be used to supply services to the group with which they are barred from working with. Barred individuals are committing a criminal offence if they seek employment in regulated activity with the group, they are barred from working with. Similarly, it is a criminal offence if a person permits an individual to engage in regulated activity if they know or have reason to believe they are barred from that activity.

28. Insurance, Indemnity and Accountability

28.1 Where people employ their own staff, through the use of a personal health budget, the ICB is responsible for ensuring that everything necessary to deliver safe care is included

in the care package and that any significant risks have been discussed with the person or their representative and appropriate procedures to manage these risks have been included.

28.2 Direct payments for healthcare can be used to pay for a personal assistant to carry out certain healthcare tasks only where these are appropriately delegated.
In such cases a healthcare professional who is occupationally competent in the task and is accountable in relation to that aspect of clinical care of the person, will need to be satisfied that the task is suitable for delegation, specify this in the personalised care and support plan and ensure that the personal assistant is provided with the appropriate training, assessment of competence and ongoing support and competence review.

28.3 There are four main types of insurance that need to be considered for individual employers and their personal assistants:

- Employers' liability
- Public liability
- Clinical indemnity
- Insurance for personal assistants

Further information is provided on these four types of insurance at Addendum B.

28.4 Anyone who employs personal assistants through a direct payment must take out Employers' liability insurance. A person can choose which insurance company they use for this purpose.

28.5 All four types of insurance may be necessary, depending upon the circumstances, to provide adequate protection for the employer, the personal assistant and third parties who may be affected by the employment relationship in some adverse way. This will not be the case in every circumstance, however, and each situation should be considered upon its own facts, having regard to the nature of services provided.

28.6 Each situation should be considered upon its own facts, having regard to the nature of services provided within the PHB direct payment. The ICB will discuss insurance directly with individual employers (and personal assistants where possible) as part of the personalised care and support planning process and ensure they have access to good information and advice about available insurance policies and necessary cover.

28.7 The ICB will include appropriate funding within the personal health budget so that the personal health budget holder and personal assistants are provided with a level of protection that reflects the risk associated with the care package. They should ensure there is enough money in the budget year on year to cover the annual cost of agreed insurance.

29. Registration and Regulated Activities

29.1 If someone wishes to buy a service which is a regulated activity as listed under the Regulated Activities in Schedule 1 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, 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.
(It should be noted that the definition of regulated activity in relation to the Care Act 2014 is not the same as the definition of regulated activity in the Safeguarding Vulnerable Groups Act).

29.2 Personal assistants who are directly employed by an individual, or related third-party, and self-employed personal assistants with an agreement to work directly for a person to meet that person's own personal care requirements do not need to be CQC registered. This is only the case where the personal assistant is directly employed without the involvement of an employment agency or employment business and working wholly under the direction and control of that individual or related third-party.

29.3 A related third-party means:

a) An individual with parental responsibility for a child to whom personal care services are to be provided.
b) 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.
c) 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.
d) A trust established for the purpose of providing services to meet the health or social care needs of a named individual.

29.4 This means that individual user trusts, set up to make arrangements for nursing care or personal care on behalf of someone are exempt from the requirement to register with the CQC.

29.5 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.

29.6 All healthcare professionals employed directly by an individual or related third-party (e.g. a personal health budget holder), should check whether they need to be registered as an individual provider with the CQC, particularly if they are being employed in their professional capacity to carry out clinical care or treatment that could fall under 'treatment of disease, disorder or injury'.

29.7 In some circumstances, the provider may also need to be a registered member of a professional body affiliated with the Professional Standards Authority for Health and Social Care. If the personalised care and 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.

29.8 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 ICB to investigate this, and if they ask, the ICB must do so. The ICB must also review this as part of their assessment as to whether the direct payment is being effectively managed.

29.9 While some service providers, for example acupuncturists, counsellors and complementary therapists, are not statutorily required to be registered, there are professional associations with voluntary registers that practitioners can choose to join. The Professional Standards Authority assesses organisations such as these who register practitioners and are not regulated by law. However, there is no legal requirement to join these registers, and practitioners can still offer unregulated services without being a member of any organisation. However, 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 personalised care and support plan.

30. Employee Expenses

30.1 The ICB will consider direct payments being used to fund employee expenses on an individual basis which must be agreed as part of the budget setting of the PHB Direct Payment.

30.2 It is expected that a PA pays for his/her own food while at work. If the care plan requires the PA to incur an expense that they would not otherwise incur, the individual should consider this as a cost funded by his/her PHB.

30.3 Gloves for use when assisting with personal care, for example, are considered to be a legitimate use of the direct payments and can be funded within the individual's existing budget under a Personal Protective Equipment (PPE) provision.

31. Funding for Travel and Mileage

31.1 A PHB does not cover the costs of a PA's travel to and from their place of work at the beginning and end of the day.

31.2 The PHB can cover travel costs such as bus fares to activities which are part of the PHB personalised care and support plan.

31.3 If a number of journeys are needed to participate in activities during the week, service users should consider the most cost- effective travel option. Individuals should consider if admission is free for carers accompanying the person.

31.4 If the service user has a Mobility Car or higher Mobility Allowance the ICB would not be funding separate travel arrangements.

32. Holiday Funding

32.1 There is no formal entitlement to holiday funding within a PHB but for those individuals who do not benefit from carer's respite, the ICB recognise that a holiday or short break is beneficial to health and wellbeing.

32.2 The ICB will not support any holiday funding for overseas travel unless under exceptional circumstances and should be approved by the ICB before any arrangements are made.

32.3 The ICB 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.

32.4 The ICB will consider funding up to 14 days support, plus appropriate equipment hires, to enable the agreed holiday or breaks to take place. The individual should discuss the implications of the break (including travel and insurance) for their clinical care with their care co-ordinator and/or support planning organisation.

32.5 The additional costs must be calculated and approved by SWL ICB before the holiday is booked.

32.6 The SWL ICB reserve the right to refuse to fund support or equipment over and above that required to meet assessed need.

32.7 The PHB will not cover personal assistant travel, meals, accommodation or anything not related to the agreed personalised care and support plan.

33. Respite

33.1 Respite is to fund gaps in care when an unpaid carer takes a break. The budget can be spent by hiring a care agency or a Personal Assistant or, by purchasing a placement in a care home.

33.2 All respite will be considered on a case-by-case basis dependent on the care provision in place. For example, if care is provided 24 hours per day, the ICB may deem that respite is not appropriate.

33.3 The ICB will offer a maximum of 21 days per annum for respite provision depending on each individual's circumstances. Such arrangements should be discussed when setting the budget and included in the Care and Support Plan. This can be reviewed if needs change prior to the annual review.

34. Health and Safety for Direct Payments Employers and Staff

34.1 The health and safety of workers employed by a direct payment is the responsibility of the direct payment Employer (recipient) and there is a general "duty of care" to minimise the risks to the staff they employ. Health professionals and support organisations should support this by:

- Raising awareness about health and safety issues that may affect the recipient individual, anyone they employ, and anyone else who may be affected.
- Sharing the results of any risk assessments carried out as part of the needs assessment with the individual. Users should share these with their employees.
- Encouraging individuals to develop strategies on lifting, handling and other tasks both in the home and outside it was lifting equipment, for example, may not be available. Individuals must make note of and make their employees aware of specialist manual handling advice provided by Social Services or the NHS.

- Providing a template to assist individuals to complete their own risk assessments in order for the user to decide how to minimise the risks to anyone they employ.
- Provide an occupational therapist to advise the individual further as needed regarding their employees using specific equipment safely, raising awareness of manual handling issues and advising if specific training may be required as part of community provision.

35. One-off Direct Payments

35.1 The expectation is that the majority of one-off Direct Payments will be issued to service users for services that will improve their quality of life, i.e. training, equipment, respite or minor adaptations.

35.2 The types of services that can be purchased with a one-off Direct Payment are fairly flexible. The care co-ordinator should determine if the requested service is appropriate and in line with this policy.

35.3 One-off Direct Payments usually do not require the Direct Payment service user to set up a dedicated bank account; however, the service user is still required to sign a Direct Payment Agreement and produce any relevant receipts and complete a financial monitoring form, once the Direct Payment is used.

35.4 There is no minimum or maximum amount issued for a one-off Direct Payment. Approval will be considered by the ICB on an individual basis.

36. Contingency or Reserves Fund

36.1 A person can retain up to eight weeks surplus (contingency/reserve) money in their Direct Payment bank account at any one time. Although the money will accumulate in the account, there will be fluctuations throughout the year as annual leave and bank holidays are paid for.

36.2 The person's bank account will be monitored regularly and any obvious surplus in excess of the agreed amount may be requested to be repaid. At times an individual may need to accrue an increasing balance to cover National Insurance and tax liabilities as well as to cover annual leave of any employed staff such as:

- Statutory sick pay.
- Holiday pay.
- Recruitment costs i.e. advertising
- Insurance.

36.3 In exceptional/emergency situations the person has access to the reserve, which they can use to address the immediate problem. However, they would need to notify the ICB prior to accessing these funds or inform the ICB on the next working day if over the weekend or out of normal office hours. The person will need to account for this within the submission of the financial monitoring information, and the Direct Payment account would then need to be re-balanced.

37. Changes to Direct Payments

37.1 As soon as a change is identified and each time a change occurs that affects the level of Direct Payment, the ICB or its representatives should renew/update the PHB personalised care and support plan.

37.2 SWL ICB or its representatives will give up to one month's written notice of any significant changes (such as reduction or termination of services) to allow the service user to give notice of these changes to their staff/agent, if required.

38. Monitoring and Review of Direct Payments

38.1 It is essential for the ICB to check how the PHB direct payment is working at appropriate intervals, and whether the personalised care and support plan is meeting the agreed health and wellbeing outcomes.

38.2 As a minimum, all personalised care and support plans must be reviewed formally within three months of the person first receiving a direct payment. Following this, reviews should be at appropriate intervals, but at least yearly. These reviews should include an appropriate level of financial review to give the ICB confidence that the budgets are being used as agreed and that the level of the budget remains appropriate to meet the person's assessed health and wellbeing needs.

38.3 A review should consider:

- whether the personalised care and support plan adequately addresses the health needs of the person, and whether the agreed outcomes are being met. This includes considering whether their health needs have changed, and if so whether the personalised care and support plan is still appropriate
- any change in the person's and or representative/nominee's circumstances
- whether the direct payment has been used effectively
- whether the direct payment is sufficient to cover the full cost of each of the services
- whether the person, or their representative or nominee, has used the direct payment appropriately and fulfilled their obligations, including where relevant their obligations as an employer to pay employment tax and National Insurance
- review receipts, bank statements and other information relating to the use of direct payments
- consult a range of health and social care professionals and others involved in the provision of care for the individual
- whether the risks have changed, and whether the risk management is still effective
- if it is the first review, or if a service has been changed, reassesses indemnity and registration
- any safeguarding issues particularly if the person lacks capacity or is vulnerable. ICBs should also consider whether their liberty is being promoted by the personalised care and support plan.

38.4 In addition financial monitoring will be undertaken monthly by the ICB (or their representative), and individuals must be able to provide sufficient evidence, i.e. receipts and bank statements and invoices, that show the payment has been used in line with their care plan.

38.5 The person, their representative or their nominee (as applicable) should retain for audit purposes (for 6 years after the ICB has paid the first direct payment):

- Bank Statements;
- Cheque and paying-in books;
- Invoices and receipts;
- PAYE, NI and other payroll records;
- Any other information relating to the use of the direct payment.

38.6 If the ICB becomes aware, or are notified, that the health of the person has changed significantly, the ICB must consider whether it is appropriate to carry out a review of the care plan to ensure the person's needs are still being met.

38.7 If the ICB becomes aware or are notified that the Direct Payment has been insufficient to purchase the services agreed in the care plan, they will carry out a review as soon as possible.

38.8 The person, their representative or nominee may request that the ICB undertakes a review at any time. If this happens, the ICB must decide whether or not to undertake this review, taking into account local practices and circumstances, and inform the person, their representative or nominee of their decision.

38.9 The ICB will ensure that the recipient is clear as to what information may be required as part of its review.

39. Stopping or Increasing/Reducing Direct Payments

39.1 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 care plan.

39.2 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.

39.3 Before making a decision to stop or reduce a direct payment, wherever possible and appropriate, the ICB will consult with the person receiving it to enable any inadvertent errors or misunderstandings to be addressed and enable any alternatives to be made.

39.4 Where direct payments have been reduced, the person, their representative or nominee may request that this decision be reconsidered and may provide evidence or relevant information to be considered as part of that deliberation.

39.5 Where this happens, the person, representative or nominee must be informed in writing of the outcome of the reconsideration and the reasons for this decision. The ICB are not required to undertake more than one reconsideration of any such decision.

39.6 If the person remains unhappy about the reduction, they should be referred to the ICB complaints procedure.

39.7 The ICB 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.
- The money is being spent inappropriately (e.g. to buy something which is not specified in the personalised 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 ICB have 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.
- If the person's assessed needs are not being met or the person, no longer requires care.

39.8 Where PHBs and direct payments are stopped, the ICB will give reasonable notice to the person, their representative or nominee in writing, explaining the reasons behind the decision.

39.9 It should be noted that, after a direct payment is stopped, all rights and liabilities acquired or incurred as a result of the service(s) purchased by direct payments will be transferred to the ICB.

40. Reclaiming a Direct Payment

40.1 The ICB can claim back the value of PHB direct payment from the person in receipt of the PHB where:

- They have been used to purchase a service that was not agreed in the care plan;
- There has been theft or fraud
- The personal recipient has died leaving part of the direct payment unspent
- The personalised care and support plan has changed substantially resulting in surplus funds
- The person accumulates a significant under spend for any other reason; or the money has not been used (e.g. as a result of a change in the personalised care and support plan or the person's circumstances have changed) and has accumulated.

40.2 If a decision to reclaim payments is made, then 1-month notice must be given to the person, their representative or nominee, in writing, (except in exceptional circumstances) stating:

- The reasons for the decision.
- The amount to be repaid.
- The time in which the money must be repaid.
- The name of the person responsible for making the repayment.

40.3 The person, their representative or nominee may request that this decision be reconsidered and provide additional information to the ICB for reconsideration. Notification of the outcome of this reconsideration must be provided in writing and an explanation provided. The ICB are not required to undertake more than one

reconsideration of any such decision. If the individual remains unhappy about the reduction, they should be referred to the ICB complaints procedure.

31. Appendix 3: Glossary of Terms

Care Coordinator - A Care Coordinator (or Case Manager) is a person who coordinates services on behalf of an individual in health care, rehabilitation and social work settings. A Care Coordinator is responsible for assessment and regular review of PHB care packages that have been commissioned on behalf of the individual.

Children and Young People's Continuing Care - An equitable, transparent and timely process for assessing, deciding and agreeing bespoke continuing care packages for children and young people funded by the NHS whose health needs in this area cannot be met by existing universal and specialist services. Assessment of these needs and the delivery of bespoke packages of care to meet them will take place alongside services to meet other needs, including education and social care funded by the relevant local authority (Department of Health 2010).

NHS Continuing Healthcare - Continuing Healthcare (CHC) services apply to adults over the age of 18 years. It is a complete package of ongoing care arranged and funded solely by the NHS, where it has been assessed that the individual's primary need is a health need. It can be provided in any setting including in a person's own home. Eligibility for CHC means that the NHS funds all the care that is required to meet their assessed health needs and includes elements of social care. In care homes, for CHC funded residents the NHS also makes a contract with the care home and pays the full fees including for the person's accommodation and all their care (Department of Health 2009).

Direct Payments – The PHB money is transferred from the ICB to a person (or their Representative/Nominee), to allow them to purchase services to deliver the agreed outcomes in their personalised care and support plan. An individual choosing to enter into a PHB Direct Payment will need to enter into a legal agreement (DP Agreement) with the ICB for the use of the budget. Budget holders must show what the money has been spent on in accordance with achieving the outcomes agreed in their personalised care and support plan.

In some instances, the ICB may require the person receiving the PHB Direct Payment to receive the direct payment via a pre-loaded payment card or virtual bank account.

Some people eligible for a PHB choose to have a direct payment Managed Account service where a support service organisation provides a service to manage the financial administration of the direct payment.

Direct Payment Agreement - The Agreement is a legal document for use by SWL ICB when entering into PHB direct payment agreements with individuals in accordance with the ICBs powers and duties under Section 12A NHS Act 2006, the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 as amended (Rules), and the NHS (Direct Payment) Regulations 2013 (Regulations), all as amended from time to time.

Disclosure and Barring Service (DBS) - Disclosure and Barring Service helps employers make safer recruitment decisions and prevents unsuitable people from working with vulnerable groups. It replaces the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA).

NHS Team- - a person/s or professional/s directly employed or commissioned by the SWL ICB to act on their behalf.

Nominated Person - is the person chosen by the person holding the PHB to receive and manage the PHB on their behalf in circumstances where the person has mental capacity to make that decision.

Notional Personal Health Budget – The ICB holds and manages the personal health budget money on a person's behalf and commissions/procures or provides the goods and services set out in the agreed personalised care and support plan. Notional budgets could be an option for people who want more choice and control over their healthcare but do not feel able or willing to manage a budget. The person is advised of the amount of funding that is available to them and co-develops their agreed health and wellbeing outcomes and the solutions for achieving them. However, it is the ICB/NHS that still commissions services and manages contracts on their behalf.

Where someone chooses a notional budget, it is important to note that they will NOT be able to employ Personal Assistants directly.

Personal Health Budget (PHB) - The NHS England definition of a personal health budget is an amount of money to support the identified healthcare and wellbeing needs of an individual, which is planned and agreed between the individual, or their representative, and their local Integrated Care Board. It isn't new money but a different way of spending health funding to meet the needs of an individual

PHB Offer - The PHB offer describes those people who are eligible to receive a PHB from the SWL ICB. This includes those people who have a legal 'right to request' a PHB, and those groups of people for whom it will consider a request for a PHB.

PHBs are not means tested. If an individual is included within the 'right to request' group outlined within the ICB offer and they meet the requirements of this policy, they will be entitled to a PHB.

Safeguarding - Safeguarding is defined as 'protecting children and adult's right to live in safety, free from abuse and neglect.' (Care Act, 2014).

Personalised Care and Support Plan – A Personalised are Support Plan describes how a person will use their personal health budget to meet their agreed health and well-being needs and outcomes. It is likely to have a wider scope than a traditional health "care plan".

Representative - means the individual who receives and manages PHB direct payments on behalf of the person holding the PHB (e.g. deputy, attorney or person with parental responsibility). Where there is no such individual, any individual appointed by the ICB to receive and manage the direct payments on behalf of the person.

Support Service Organisations - Support Service Organisations can provide a range of services to support the employment of Personal Assistants, including payroll and ensuring that the requirements of employment legislation are met.

Third Party Account - With a Third Party, an organisation independent of the person receiving the PHB or the ICB, manages the budget on the persons behalf and arranges

support by purchasing services (and employing staff if required) in line with the agreed personalised care and support plan.

The key feature of a third party PHB is that the third party employ Personal Assistants (PAs) directly on behalf of the person. The PAs are employed for the purpose of supporting the person and this differs to traditional care commissioned via a care/ nursing agency in that the PAs typically only support the one person. This means there is a smaller team supporting the person, with greater continuity of care. Typically, this is an organisation that is registered with the Care Quality Commission (CQC).

The term Third Party is used very interchangeably within the health and social care sector and is not to be confused with other informal references. A Third Party as described above, can be envisaged as a 'halfway' option between a Notional Budget and employing PAs directly via a direct payment.

Please Note: families, Independent User Trusts, Managed Account services, Support organisations, may be referred to as 'third parties' in general, however there is a clear distinction in legal roles.

A Third Party may be paid directly by the ICB, or the individual may choose to pay the Third Party via a Direct Payment/ Managed Account

32. Appendix 4: Other Relevant Legislation

In addition to the key guiding legislation outlined in section/para 2.1 of this policy – the following legislation is considered relevant to the context and delivery of the policy: This includes:

- Human Rights Act (1998): including Article 8 Right to respect for private and family life, and Article 14 Prohibition of discrimination in respect of these rights and freedoms
- National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care October 2018 (Revised)
- National Framework for Children and Young People's Continuing Care (January 2016)
- The Data Protection Act (2018)
- The Carers (Equal Opportunities) Act (2004)
- The Mental Capacity Act (2005): The need to apply the Mental Capacity Act features strongly in self-directed support where there may be concerns about a service user who lacks the mental capacity to manage their own money and/or who lack the ability to make decisions about their care.
- The Equality Act (2010)
- The Children and Families Act (2014): This introduces Education, Health and Care Plans (EHCP) for children and young people with special educational needs and disabilities (SEND)
- SEND Code of Practice (2014) This requires education, health and social care to work together to meet the needs of children and young people up to the age of 25 and introduces the right to request a personal health budget for individuals with an EHCP
- 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
- The Care Act (2014): This is aimed at reshaping the system around prevention and promoting individual wellbeing, with personalisation as a key feature
- Personalised Health and Care Framework (2017)
- The Health Act (2009)
- The Mental Health Act (2007)
- The Mandate: A mandate from the Government to NHSE (2014 – 2017)
- Five year forward view (2014)
- The Forward View into Action: Planning for 2015/2016
- Delivering the Forward View (2016/2017 – 2020/2021)

33. Appendix 5: Definition of after-care services under section 117 of the Mental Health Act

The Explanatory Memorandum to section 117 of the Mental Health Act 1983 defines eligibility for section 117 after-care as:

> "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. Section 117 after-care services include healthcare, social care and employment services, supported accommodation, and services to meet people's social, cultural and spiritual needs – as long as the needs arise from or are related to the person's mental condition and helps reduce the risk of their mental condition getting worse. It also applies to people if they have been discharged onto a community treatment order (CTO), granted leave of absence under section 17 leave and are section 117, or are a restricted patient on a conditional discharge."

Chapter 33 of The Mental Health Code of Practice 2015 states that 'planning of after-care needs to start as soon as the patient is admitted to hospital'. Therefore, a PHB can be considered:

whenever planning is taking place for section 117 mental health after-care needs during an admission to hospital

- at any assessment held to review the person's section 117 after-care package of support in the community, which may be managed by either the local authority or the NHS. This will include Care and Treatment Reviews (CTR) for adults, or Care Education and Treatment Reviews (CETR) for children, who have a learning disability and/or autistic people who are section 117 eligible