**LINCOLNSHIRE**

**PERSONAL HEALTH BUDGET**

**DIRECT PAYMENT**

**GUIDANCE**

**GUIDANCE DEVELOPMENT PROCESS**

**Guidance Development**

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# Aim of the Guidance

This guidance has been developed by NHS Lincolnshire Integrated Care Board (ICB) (formerly NHS Lincs CCG) to provide support for commissioners, practitioners, support services and individuals in respect of Direct Payment (self-managed and managed) Personal Health Budgets (PHB).

All information within this guidance should be considered in conjunction with the overarching Lincolnshire PHB Policy as well as the Lincolnshire PHB Direct Payment Agreement. The guidance details the CCGs processes for allocation, implementation and operation of Direct Payments, and outlines the responsibilities of the parties involved. The aim is to ensure that a consistent and transparent approach is applied to the allocation, approval and review of all Direct Payments.

The guidance has been generated pursuant to Section 12A of the National Health Service Act 2006 and the National Health Service (Direct Payments) Regulations 2013.

# What is a Direct Payment?

A Direct Payment is one of the options available for managing a personal health budget, whereby an individual (or their representative), chooses to receive payments directly from the CCG in order to purchase and manage their own care and support package.

Direct Payments offer an alternative to ‘Notional’ and ‘Third Party’ personal health budgets, which involve the ICB paying for the Care and Support package directly, or via external care organisations (See Lincolnshire PHB Policy).

In order to receive a direct payment, the individual must understand the additional responsibilities and requirements, and acknowledge that they (or their nominee), will be accountable for its use, in line with the Direct Payment Agreement Terms and Conditions.

# Who can have a Direct Payment?

The ICB is committed to offering personal choice to eligible individuals – it does not make blanket assumptions that whole groups of people will or will not be capable of managing direct payments.

Apart from exclusion by statute[[1]](#footnote-1) the ICB will make direct payments if it is satisfied that the individual is capable of managing the direct payments, by themselves or with available assistance.

Direct payments can be made to an individual, nominee or a willing and appropriate representative who receives and manages the direct payment on behalf of the individual. In most cases this will be the representative of, a family member of, or a close friend already involved in the care of the individual, and should be detailed within the Care and Support Plan and Direct Payment Agreement.

* Where applicable, the nominee or representative receiving direct payments on behalf of an individual becomes accountable for the way in which the money is spent and takes on the associated management and employment responsibilities. See Section 4.0

If the nominee is not the:

* Spouse;
* civil partner;
* partner;
* a close relative (or spouse or partner of a close relative);
* or a friend involved in the provision of care;

then the ICB must obtain an enhanced Disclosure and Barring Service (DBS) check for them,[[2]](#footnote-2) which must be renewed every three years.

* If an enhanced DBS check reveals any spent or unspent cautions, warnings, reprimands or convictions, each application will be handled on a case by case basis in accordance with the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, and will not necessarily mean the direct payment will not be granted
* If the nominee refuses to allow the DBS check, the ICB will not grant a direct payment, although other forms of PHB will still be available to the individual

The individual, their nominee or representative has the choice to manage the direct payment themselves (self-managed account), or be assisted in managing their direct payment by a non-NHS Support Service Provider (managed account).

The support service can provide assistance, where required, to holders of direct payments in areas such as carer / PA recruitment, DBS / employment checks, training, payroll / HMRC, insurance, etc. The use of a support service does not absolve the budget holder (or nominee) of their responsibilities as an employer and the support service cannot directly provide the individual’s package of care.

Where the NHS Case Manager concludes someone is not able to manage direct payments, even with assistance, the decision not to fund the PHB via Direct Payment will be communicated with the individual, and where appropriate, with family or representatives, including the reasons for coming to such a conclusion, as well as any alternative options.

# Set-up of Interim Package (Continuing Healthcare)

A direct payment can often take up to 3 months to set up. Where care needs have been identified within the care and support plan, an interim package of care through a care agency will be set up immediately following a decision that an individual is eligible for continuing healthcare.

The care requirements detailed in the care needs portrait will be used to broker this package of care. The only exceptions to this will be:

• Where a person already has a direct payment with the Local Authority (LA); this will remain in place until a direct payment PHB has been set up. The ICB will reimburse the LA directly;

• Where a person already employs carers privately; the ICB will inform the individual of the hours agreed in the care needs portrait and the maximum rate of pay allowed. The ICB will reimburse the individual at the agreed hours and rate, once the direct payment has been set up as long as receipts and invoices are supplied. Reimbursements will be backdated only to the date that formal eligibility for CHC funding was agreed;

• Where a person confirms that they do not require carers from an agency in the interim and are happy to wait for the direct payment to be set up

# What a Direct Payment can and cannot be used for

A Direct Payment can be spent on products or services that support an individual’s identified health (and care needs if continuing healthcare).

This may include items that are not usually offered via the NHS, but where it can be demonstrated that it will result in delivering a direct benefit to the individual by meeting their needs as agreed in their care and support plan. It is the responsibility of the individual or their nominee to ensure that the direct payment is only used as specified in the ICB agreed care and support plan, terms & conditions and in the final budget.

In order to be agreed by the ICB, the proposals for meeting the individuals assessed needs, as set out in the Care and Support Plan must be:

* **Lawful** - the proposals should be legitimately within the scope of the funds and resources that will be used. The proposals must be lawful and regulatory requirements relating to specific measures proposed must be addressed
* **Effective** - The proposals must meet the person’s assessed eligible needs and support the person’s independence, health and wellbeing. A risk assessment must be carried out and any risks identified that might jeopardise the effectiveness of the plan or threaten the safety or wellbeing of the person or others must be addressed. The proposals must make effective use of the funds and resources available in accordance with the principle of ‘best value’, as outlined within the NHS Constitution[[3]](#footnote-3)
* **Affordable** - All costs have been identified and can realistically be met within the indicative budget
* **Appropriate** - the support plan should not detail the purchase of items or services that are inappropriate for the state to fund or that would bring the NHS into disrepute. The support plan must have clear and strong links to a health or social care outcome

In some situations, direct payments can be combined with funding from social care and/or education, to purchase items and/or services that will effectively meet the individual’s overall care needs. These must be specified within the care and support plan, and agreed within the final budget.

However if the ICB already commissions a service that meets needs, and it cannot release funds from that service, it may reserve the right not to include that element within the care package.

## 5.1 Statutory Exclusions

There are certain things that a direct payment cannot be used for:-

* Alcohol or tobacco products;
* Gambling services or facilities;
* A debt other than for a service agreed in the care and support plan
* Primary medical services (such as diagnostic tests, vaccinations or medical treatment);
* Urgent or emergency treatment services (such as unplanned hospital admissions);
* Where a joint funded package is in place, the funding contribution from health cannot be used to cover social care services or purchases
* Anything illegal, unlawful or harmful to yourself or others;
* To pay the person who is responsible for administrating ’Self-Managed’ Direct Payment accounts (the nominee).
* Anything which does not achieve the outcomes that have been identified and approved in the care and support plan
* A direct payment cannot be used to purchase CQC regulated activities from a provider who is not CQC registered.

*However PA’s who are directly employed by an individual, or related third party, do not need to be CQC registered because the current Regulated Activity number 2, ‘Personal Care’, sets out an exemption relating to PA’s. The exemption applies in cases where a carer (PA) is employed by an individual or a related third party 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 in order to meet the individual’s own personal care requirements.*

* A direct payment cannot be used to pay for support or care provided by a person who lives in the same household as the individual without the prior agreement of the ICB in accordance with paragraph 8(5A) of the Regulations.

*Agreement may only be obtained from the ICB if it considers that the service is necessary to satisfactorily meet the individual’s need for that service, or to promote the welfare of an individual who is a child, or where local services may not satisfy needs in relation to the Equality Act i.e. religious or cultural needs.*

* Making cash payments – payments should be made by debit card, bank transfer, cheque, standing order or direct debit, unless this has been agreed in an individual's care and support plan or in advance by the ICB. *Where it is necessary to make cash payments, receipts and documentation will be required for auditing purposes. See Section 15 for expanded guidance.*

The ICB will provide direct payments so that individuals may use them to meet their identified health and well-being needs and outcomes. The use of such funding does not extend to the delivery of goods or services that would normally be the responsibility of other bodies (e.g. local authority social services, housing authorities) or are covered by other existing contracts held by the ICB (e.g. community equipment). However, in exceptional circumstances, it may be advisable for the ICB to agree a service which would normally be funded by another funding stream if that service is likely to meet an individual’s agreed health and wellbeing outcomes.

The ICB will work with third sector providers to encourage people to consider community / voluntary sector support options and to find other funding streams for equipment, adaptations etc. The ICB will also work with the Local Authority where possible to develop a shared understanding of risk and other shared approaches; and work with individuals, user groups and voluntary sector groups, to minimise duplication and maximise opportunities for involvement.

## 5.2 Personal Living Costs

There are some purchases that are considered part of everyday life that the budget should not be used for. Below is a list of some examples (although this list is not exhaustive):

* Paying for someone to do housework / cleaning, laundry, ironing, gardening, decorating (although a Personal Assistant (PA) could support with these tasks)
* Clothing (including underwear, nightwear and shoes)
* Hairdressing / beauty treatments
* Items not related to health (i.e. furniture, television, white goods (i.e. washing machine), car etc.)
* Everyday household items such as bedding, towels, toiletries
* Utility bills / general household running costs (i.e. electricity, TV licence, viewing packages)
* The costs of a holiday for the individual are not permitted (see 3.3). However additional costs associated with any specific support for the individual that enables them to go on holiday (i.e. accommodation for carers, temporary adaptation of holiday accommodation etc.) may be considered on a case by case basis as a component of the care and support plan. Where agreed, approval will be confirmed in writing within the Final Budget.

If equipment, clothing or other items which would not normally be included within a budget are required to meet a specific assessed need, a recommendation would be required from the relevant health professional which demonstrates how the item will meet that health need.

A direct payment cannot be used to reimburse for purchases made prior to the agreed start date. However there may be exceptions, i.e. if training needs to be arranged for a PA prior to employment commencement. In this situation, permission must be obtained in advance prior to training being arranged.

It should be noted that this list is not exhaustive and, if unsure, the individual should seek advice before any expense is incurred.

## 5.3 Respite Funding for Informal Carers within Continuing Healthcare (Fully Funded care only)

Lincolnshire ICB recognises that respite breaks are beneficial to health and wellbeing of the individual and their informal carers (unpaid). However there is no formal entitlement to respite funding within a PHB. For those individuals whose informal carer(s) do not benefit from carer’s respite from any other source, the ICB acknowledges that there may be additional staffing and equipment costs needed to support someone in their home, away from their home or in a more formal nursing environment whilst the informal carer takes respite.

Care provided by the informal carer must be fully detailed within the care and support plan. The ICB will consider funding up to 28 days and should cover the costs of care provided by the informal carer as detailed in the care and support plan, in addition to the normal weekly costs. If the informal carer requires longer than 28 days in a year, this request should be formally submitted to the ICB for consideration.

The individual should discuss the use of the respite funding with the NHS Case Manager and costs must be calculated and approved before breaks are booked.

Respite is available for individuals with a joint funded package of care only through the provision of Funded Nursing Care.

## 5.4 Holidays, Trips and Hobbies

**Holidays and Breaks**

The direct payment may be used to support the individual during holidays and trips in the UK, which must be pre-approved, in writing, by the ICB. The direct payment will not cover any of the individual’s costs, but it will cover costs associated with the need for PA(s) or paid carer(s) to support the individual during trips, to meet a specific health need, as agreed in the care and support plan.

Where travel insurance is required it is the responsibility of the individual to fund this. The direct payment cannot be used to cover the costs of car parking, car hire, food and drinks etc.

If a family member/friend who is not an employee accompanies the individual on their trip in the UK, their costs cannot be paid from the direct payment budget.

For example:

*A holiday cottage is rented for a week at the cost of £750 for the individual and their spouse. The PA accompanies them to support the individual. The direct payment can be used to cover £250 of the cost of the accommodation relating to the carer. The remaining costs would need to be covered by the individual (and / or spouse).*

The direct payment cannot be used for trips or holidays abroad. Lincolnshire ICB has made this decision for a number of reasons, including but not limited to the difficulty of risk assessment, repatriation in an emergency and the availability of suitable medical care.

**Trips out for activities & appointments**

The direct payment can be used for the cost of entry to venues for the PA as detailed in the care and support plan, but only if it would not be possible to attend without their support

For example:

*If a swimming trip is arranged and the PA is needed to support the individual in the pool, the entrance costs for the PA can be paid from the direct payment budget.*

However:

*If a yoga trip is arranged and the PA needs to be available before and after the class but the PA does not need to take part in the class, costs for the PA cannot be covered.*

*If someone who is not an employee (e.g. family member or friend) accompanies the individual, then the budget cannot be used for their costs.*

**Taking part in activities & hobbies**

Being able to pursue interests and hobbies can be important to health and the direct payment can be used to support the individual to take part in them. The care and support plan will need to set out the details of the activity, how the individual intends to use the budget, what is to be achieved and the benefits to health

For example:

*Using the budget to purchase suitable tools and supplies to start model making as this activity would help the individual to pass the time and feel like they can achieve something. It will help with the feeling of low mood and will assist hand to eye co-ordination.*

Or

*The individual is concerned about their weight and it makes them unhappy. They would like to lose weight to improve general health and help manage their asthma. They would like to attend yoga and would like to purchase a yoga mat using the direct payment.*

The direct payment must not be used for activities that could result in profit or financial gain, e.g. selling model planes made using NHS funds or setting up and running a business or enterprise.

## 5.5 Employee Expenses

The NHS Case Manager will consider direct payments being used to fund employee expenses on an individual basis. The NHS Case Manager should determine if workers’ expenses will be incurred during the care and support planning process.

It is expected that a worker pays for his/her own sustenance while at work. If the care and support plan requires the worker to incur an expense that they would not otherwise incur, the individual should consider this as a cost funded by his/her direct payment. Travel to and from the regular place of work for carers is excluded from the direct payment.

**Meals and Refreshments**

The budget cannot be used to purchase food, drink and groceries for the individual (including alcohol and tobacco). This includes meals and drinks when on outings or appointments.

If the PA needs to have meals or non-alcoholic refreshments while accompanying the individual (and this has previously been agreed by the ICB within the care and support plan), then either:

They can pay and reclaim the costs by completing an expenses claim form to be reimbursed from the budget via payroll

Or

The individual can pay the costs from the budget; ensuring receipts are kept and note just the cost of the PA’s meal.

The direct payment is to pay primarily for the individual’s health and care needs so costs for expenses must be kept to a reasonable amount. The ICB will not cover expenses if they are deemed to be excessive.

The PA is expected to provide their own meals and refreshments whilst working at the individual’s home. If the individual wishes to provide refreshments, then that must be at the individual’s own expense.

Additional guidance for day excursions and overnight trips (scale rates based on: <https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim05231>):

* The cost of breakfast may be claimed by the PA, up to a maximum of £5.00 (which covers costs for both food and non-alcoholic beverages), when undertaking day excursions that require travel before 6am (this does not include travel to the individual’s home), or alternatively when meals are not included in the cost of overnight accommodation.
* The cost of lunch may be claimed, up to a maximum of £10.00 (which covers costs for both food and non-alcoholic beverages), when undertaking day excursions for a period of 5 hours or more in a single day, or alternatively when meals are not included in the cost of overnight accommodation.
* The cost of an evening meal may be claimed, up to a maximum of £15.00 (which covers costs for both food and non-alcoholic beverages)when undertaking day excursions exceeding a period of 10 hours in a single day, or alternatively when meals are not included in the cost of overnight accommodation.

Note: Meal allowances represent a limit, rather than a suggested level of expenditure and they should be applied individually to each meal rather than aggregated to pay for one expensive meal. Where overnight accommodation includes breakfast, lunch or evening meal as part of the agreed rate, this should be availed where possible and additional meals must not be claimed for.

**Travel and Mileage**

A direct payment may be used to cover travel costs such as bus fares to activities which are part of the individual’s care and support plan, if it is affordable within the budget. However the most cost effective mode of transport should be used, and if the individual has a Motability vehicle, then this should be used wherever possible. The direct payment cannot be used to pay for employees travel to and from their normal place of work.

If a number of journeys are needed to participate in activities during the week, individuals should consider the most cost effective travel option.

Receipts and / or mileage logs will always be required for auditing purposes.

The budget must not be used to pay directly for petrol or diesel for the individual’s own car as this should be covered through Motability payments.

If a PA uses their own vehicle for transport whilst working (not inclusive of travel to and from their normal place of work) they can claim mileage at the standard HMRC rate. A claim form should be completed and reimbursement will be made through payroll.

## 5.6 Cash Withdrawals

Cash withdrawals should not be made from the direct payment account. Purchases and payments should be made by debit card, bank transfer, cheque, standing order or direct debit. However, if there is no alternative, cash payments for goods and services are allowed with prior agreement from the ICB. The individual must keep receipts and a record of the cash held and spent. If receipts are not provided for cash payments, then the money will need to be repaid to the direct payment account.

It is not permissible under any circumstances to pay directly employed staff ‘cash in hand’.

## 5.7 Equipment, Consumables & Other

**Equipment**

Direct payments may be used to purchase items and equipment to help the individual to carry out daily tasks or take part in activities, with the following caveats:

* The purchase must be set out in the care and support plan or an Additional Funding Request Form completed and approved in advance
* If items are available from Lincolnshire Integrated Community Equipment stores or wheelchair service, then these items must be obtained from the appropriate service (although the direct payment could be used to adapt the equipment, if appropriate)
* Depending on the item, a recommendation may be required from the GP, Occupational Therapist, or other appropriate healthcare professional
* The costs of maintenance agreements and specific insurance requirements must be confirmed prior to purchase and agreement obtained if the direct payment is to be used for the costs
* Items purchased using the direct payment will be deemed as belonging to the NHS.
* If equipment purchased through a direct payment is no longer required e.g. if it no longer meets assessed needs or the individual dies, the ICB reserves the right to request that the item be returned to the ICB to enable it to be passed to another budget holder or charitable organisation. Alternatively the next of kin may wish to purchase the item at an appropriate cost.

**Consumables**

Consumable items which are provided through an NHS contract (such as continence products) are not funded through a direct payment (this is to avoid double-funding through existing block purchasing contracts, where possible). However, if the local service is unable to meet particular needs in either an appropriate or cost effective way, sourcing via direct payment may be considered in the best interests of the individual. All consumables being purchased through the direct payment must be agreed in the care and support plan before they are purchased. Gloves and aprons for the carer's use, when assisting with personal care for example, are considered to be a legitimate use of a direct payment, and can be funded within the individual's existing budget.

**Therapy and other services available through statutory services**

The ICB will not fund private provision of therapies and other services which are already provided by the ICB as part of their mainstream contracts e.g. physiotherapy/OT where the needs can or are being met by core NHS services.

**Administrative Costs**

Administrative costs may include printer ink, paper, diaries, stationery etc. related to the administration of running a direct payment and employing staff. Where these costs are requested by the budget holder, the ICB will apply a test of reasonability towards the request and whether the items required relate specifically and exclusively to the cost of maintaining the budget. In all cases the ICB would expect the budget holder to appropriately source cost effective methods of meeting administrative costs, bearing in mind the spend of public monies.

**Adaptations to Home & Garden**

The direct payment cannot be used to make adaptations, alterations, decorating or general everyday maintenance to the individual’s home or garden. If adaptations are required, your local district council may be able to provide a disability grant facility (<https://www.gov.uk/disabled-facilities-grants>).

# Employment Requirements

## 6.1 Employing Personal Assistants / Carers

By virtue of their choice to employ (where applicable) personal assistants (PAs) and / or carers, individuals or their nominees become automatically bound by employment regulations.

It is particularly important that people consider seeking advice if they intend to use direct payments to employ staff. Independent direct payment support services can provide advice about employment and other legal requirements (for example, help with recruiting Personal Assistants / Carers, Disclosure and Barring Service (DBS) checks, training, minimum wage, annual leave, statutory sick pay, tax, national insurance, health and safety, employers’ liability insurance, redundancy and terminating employment).

They may also encourage people to consider their specific requirements, for example:

* Will a personal assistant be expected to accompany the person on holiday or be required to take their holiday entitlement while they are away?
* What will happen if the person is in hospital and therefore does not require support at home?

**Contracts of Employment**

By law, an employer must provide anyone who is classed as an employee with the terms of their contract in writing (a ‘written statement of employment particulars’). This document should include information such as remuneration, location of work, working hours, notice periods and terms of redundancy, etc. For more information, see <https://www.gov.uk/employment-contracts-and-conditions>.

**Employer Related Costs**

Although individuals may choose to manage their own payroll responsibilities, Lincolnshire ICB recommends that the services of a registered payroll provider are used to manage payroll on behalf of the employer. Where required, the cost of purchasing the service of a payroll provider will be met within an individual’s direct payment.

Individuals or their nominees must purchase employers’ liability insurance (legal requirement), register as an employer with HMRC and adhere to the Pay As You Earn (PAYE) system. The PAYE system is a method of tax deduction under which an employer calculates and deducts any income tax due each time a payment of wages/salary etc. is made to an employee in accordance with HMRC guidance.

It is not permissible under any circumstances to pay directly employed staff ‘cash in hand’.

National Insurance and pension contributions must also be paid in accordance with national guidelines.

The following employer related costs will normally be paid as part of the direct payment (where applicable):

* The direct cost of providing the service, including support service costs;
* Start-up costs such as advertising, recruitment, enhanced DBS checks and initial staff training;
* Employers’ liability insurance, including indemnity for public liability and statutory redundancy (See Section 6.8)
* Payroll & Managed Account fees;
* Employee holiday pay;
* Refresher training;

It is the responsibility of the employer to ensure that the Personal Assistant(s) covered by the Employers Liability Insurance have the appropriate training and competency ‘sign off’ to ensure that any insurance policies remain valid.

Employers’ liability insurance should include, but is not limited to the following:

* Public liability
* Maternity pay for a Personal Assistant;
* Long term statutory sickness pay for a Personal Assistant;
* Redundancy costs;

If the individual or representative / nominee has taken out employers’ liability insurance with an insufficient value, then the individual or their nominee / representative may be liable for any outstanding payment or claims.

## 6.2 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 ICB’s 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: <https://www.gov.uk/guidance/check-employment-status-for-tax>

The ICB 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.

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 Continuing NHS healthcare.

## 6.3 Employing Family Members

Direct payments should not be used by individuals to pay partners (married or not) or close relatives who live in the same household regardless of whether the individual has capacity or not. This could include a parent, parent in law, son, son in law, daughter, daughter in law, stepson or daughter, brother or sister, aunt or uncle, grandparent or the spouse or partner of these people, if they live in the same household.

There may be occasions when the ICB decides that it is necessary for the direct payment to be used to secure services from a member of the individual’s family who live in the same household. However, such situations will be exceptional and all cases must be authorised by the ICB in writing. The ICB must be satisfied that arrangements are made in the best interests of the individual.

It is important to consider that the employment of relatives is not always an appropriate option for an individual and the NHS Case Manager will need to explore with the individual the potential implications of a personal relationship changing to a contractual arrangement. It may be helpful for the NHS Case Manager, in partnership with the individual, to consider the following:

* Why does the individual believe it is necessary to employ a member of his/her household and that another person or service cannot meet the need?
* Whose choice is it? Where is the request coming from?
* Are there any conflicts of interest?
* Will the individual’s needs be met by this arrangement?
* Does the family member have the skills and ability to provide the care?
* Would the arrangement present any risks to the individual or family member receiving payment?
* What are the consequences for the individual if another service/person meets the need?
* Has the family member been given a genuine choice as to whether to provide care?

If a direct payment 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 particular person in order to satisfactorily meet their needs in the care and support plan, and complete an exceptional circumstances funding request form (Lincolnshire PHB Policy, Appendix 6). This would need to be approved by the PHB panel and if granted, will likely result in an increased level of monitoring of the direct payment. The ICB will not grant a direct payment if there is evidence of a conflict of interest.

## 6.4 Poaching of staff

 If the individual is already being cared for by an agency and wishes to use their direct payment to privately employ one of their existing carers, this is called ‘poaching of staff’. It is possible the agency will charge a fee in order to cover the loss of an employee. In this instance, the individual will need to pay the fee themselves – the NHS will not pay on your behalf. In these circumstances it is recommended that employment of the carer does not commence until formal agreements are in place.

## 6.5 Enhanced Disclosure and Barring Service Checks for Employees

It is the ICB’s requirement that the employer must obtain enhanced DBS checks on all paid staff prior to appointment, to ensure that the potential employee has no relevant criminal convictions which would preclude them from being employed in such a role. These are to be renewed at least every three years. Provision for the cost of these checks will be outlined within the final budget.

In the event that a prospective staff member refuses to authorise the check, or in the event that the results from a check indicate unsuitability for appointment, it is recommended that the employer seeks advice from a suitable support service. Alternatively, advice is available from: <https://www.gov.uk/dbs-check-applicant-criminal-record>

## 6.6 Health and Safety for Employers and Staff

The health and safety of employees is the responsibility of the employer and there is a general "duty of care” to minimise the risks to the staff they employ. NHS Case Managers should support individuals by:

* Raising awareness about health and safety issues that may affect the recipient, anyone they employ, and anyone else who may be affected
* Sharing the results of any risk assessments carried out as part of the Care and Support Plan with the individual. Individuals must share these with their employees. Individuals need to be clear about what information their workers can or must pass onto professionals. This could be written into the employee's contract and for an emergency situation for example this could be written in an advance statement.
* Encouraging recipients to develop strategies on lifting, handling and other tasks both in the home and outside where specialised equipment may not be available. Individuals must make note of and make their employees aware of specialist manual handling advice provided by Social Services or NHS.
* Providing a template to assist individuals to complete their own risk assessments in order for the individual to decide how to minimise the risks to anyone they employ.
* Providing budget for ongoing mandatory training, including manual handling.

**Delegated Clinical Tasks**

When a PA is providing care and support to someone with healthcare needs, an important component of their role can include carrying out tasks that are of a clinical nature. These tasks must be considered in the care and support planning process and delegated to the PA by a registered practitioner who has the relevant occupational competence.

Delegation needs to be recognised as something that is a considered process and properly supported. This will help ensure that the best interests of the individual are always paramount, that tasks taken on by PA’s are appropriate and that PA’s are provided with relevant training (that is provided by reputable training bodies) and assessed as competent to perform the particular tasks.

Any delegation of healthcare tasks to unregistered health and non-health qualified staff must be undertaken within a robust governance framework which encompasses:

* initial training and preparation;
* assessment and confirmation of competence;
* confirmation of arrangements for on-going support, updating of training and reassessment of competence

## 6.7 Retaining a Personal Assistant in the event of a sudden or unplanned event

Following a sudden or unplanned event, i.e. unexpected and temporary admission to hospital or care home, the ICB may continue to pay PAs for up to 28 days. The PA will be paid at a retained rate of 75% of their wages and during the 28 day retainer period, the PA must be available for work. [[4]](#footnote-4) [[5]](#footnote-5) These payments will need to come out of the agreed PHB.

* It may sometimes be appropriate for a PA to complete their working hours at the full rate of pay within the hospital to support the individual. This should be identified within the care and support plan or agreed with the NHS Case Manager if not already done.

It is the responsibility of either the individual, representative, nominee or PA to inform the NHS Case Manager that there has been a change in circumstances within 2 working days of the event occurring. The ICB will review the situation after 14 days from the date of admission, and the direct payment agreement may be suspended. However the NHS Case Manager will consider each case on an individual basis depending on the person’s circumstances, including a possible date of discharge or the need to serve notice on the PAs.

## 6.8 Funding for Personal Assistant Redundancy

A PA is the employee of the individual, and is entitled to statutory redundancy pay as set out in employment legislation. Employers are required to insure for statutory redundancy / payment-in-lieu. Provision will be made within the final budget to cover the annual premium for the policy.

The ICB will also make provision for any statutory redundancy commitments in excess of the above mentioned indemnity. In the event that this is required, the ICB will reimburse the employer following submission of all relevant documentation.

Statutory Redundancy provision will only cover the period the direct payment has been continually active.

The ICB will seek to recoup a pro rata element if the PA was previously Joint Funded through local authority direct payments. The ICB reserves the right not to fund redundancy if the employer has not followed the advice or procedure outlined by the support service provider (where applicable), this guidance, the terms and conditions, or if there is any breach of contract by the PA / carer.

# Direct Payment Agreement

Following approval, the individual, their representative, and/or their nominee will be notified of the package details including a breakdown of the Final Budget. Funding will not be released until a completed and signed copy of the direct payment agreement is returned to the ICB. The terms and conditions explain in detail the responsibilities associated with the direct payment and specify the contractual terms that the funds will be spent as agreed in the care and support plan, the approved final budget, and in accordance with the NHS (Direct Payment) Regulations 2013.

The agreement will include confirmation that the individual is expected to conduct their employment responsibilities legally.

If the individual wants to purchase something with their direct payment budget which is not included in the care and support plan, they must contact their NHS Case Manager to discuss and seek written approval prior to the item being purchased. An additional Funding Request Form (Lincolnshire PHB Policy: Appendix 4) must be completed by the individual and NHS Case Manager which will be sent to the PHB panel for consideration.

If the individual spends the direct payment budget on something that has not been agreed within the final budget, and the above procedure is not followed, the individual will be required to repay the money to the ICB. The same applies for payments for something that is not permitted under the terms and conditions of the direct payment agreement.

 Inappropriate and / or unauthorised use of the budget may result in the withdrawal of the direct payment, although other forms of personal health budget will remain available to the individual.

# Receiving a Direct Payment

Direct payments will be paid into a specific bank account as soon as the budget has been approved, the signed direct payment agreement has been returned, and the individual has been set up on the ICB’s financial system. Payments must be paid into a separate bank account used specifically for the PHB direct payment or for a joint fund account as per statutory guidance. The bank account must be in the name of the person receiving the care, or their nominee.

When receiving direct payments, the account holder is required to keep a record of both the money received as well as where it is spent, in accordance with the agreed care and support plan and terms and conditions. They are responsible for retaining all statements and receipts for auditing, which can be requested by the ICB at any time, and at least annually. Records must be kept for at least six complete financial years.

Services purchased using direct payments should be as cost effective as possible (i.e. best value for money) as services that NHS would arrange.

Direct payments must only be used as outlined within Section 5.0, to meet assessed health and care needs as agreed within the individual’s care and support plan. Where an individual’s needs change, the NHS Case Manager should be contacted immediately so that they can review the care package to ensure it meets the current needs. The individual/nominee/representative may at any time during the term of this Agreement request the ICB to undertake a review of the Personal Health Budget. Upon receipt of such a request, the ICB will decide whether to undertake such a review and will notify the individual/nominee/representative of its decision and the reasons for it.

**Increasing Funding**

If an increase in funding is required, for example as a result of increased staffing costs, increased hours of care needed, etc. a case management review will be required. Additional resources will generally not be provided until the review has concluded, and the increase will need to be approved by the PHB approvals panel.

One-off or ongoing expenses which have not been included within the individual’s care and support plan will need to be submitted to the ICB using the Additional Funding Request Form. The request will be considered, and if appropriate, approved by the PHB approvals panel.

**One off Payments**

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

**Alternative models of Direct Payment**

As a component of the ICB’s ongoing commitment to expanding and improving its offers to individuals in receipt of direct payments and in conjunction with the local authority we are currently exploring innovative additional options for budget holders in Lincolnshire, including:

* the use of pre-paid card systems
* the provision of a local digital marketplace

If these funding models become available, individuals in receipt of, or eligible for Direct Payments will be informed as a component of the application process or any scheduled reviews as they will have the right to ‘opt in’ to these systems.

# Direct Payments for People who lack Capacity

All reasonable steps must be taken to provide support to whoever may require it.

Individuals, who can provide consent, and any responsible person or the parent/guardian acting for an individual without capacity, may be capable of managing direct payments either on their own or with help.

The ICB must make sure that:

* Individuals with capacity understand that they remain responsible for how direct payments are used even when arrangements are made by someone else on their behalf.
* A representative, parent or guardian understands that they are responsible for managing direct payments.

An individual who has eligible needs but lacks the required capacity to consent can still receive a direct payment if their representative consents to the making of direct payments in respect of that individual.

The representative may appoint a willing and appropriate nominee who receives and manages direct payments on behalf of an individual who is lacking capacity (as per Section 3.0 of this guidance), or they may choose to nominate themselves.

The ICB will ensure the following requirements are met when organising a direct payment for people who lack capacity:

* An assessment under the Mental Capacity Act in relation to all the required decisions and records in the required assessment documents;
* Consultation with:
	+ Anyone who has been named by the individual before they lost capacity as someone to be consulted, or their representative;
	+ Anyone currently engaged in caring for the person lacking capacity, or anyone with an interest in their personal welfare;
	+ As far as is practicably possible, the person who lacks capacity themselves.
* If the representative is not the spouse, civil partner, partner, close relative (or spouse or partner of a close relative) or close friend involved in the provision of care of the person lacking capacity, then Lincolnshire ICB must obtain a DBS check for them;
* The direct payment agreement is signed by the representative and / or the nominee to agree that the individual’s best interests are being promoted;
* The care and support plan is updated with details of arrangements regarding the representative and / or the nominee, and how best interests of the individual can be met through this arrangement;
* Regular reviews to assess whether the person lacking capacity has gained or regained the capacity to consent to receive direct payments. The individual is allowed to continue to receive, and manage, a direct payment when they gain or regain capacity. This decision should be made at a formal care and support plan review meeting if the NHS Case Manager has been notified of a change in capacity. The date for ending the representative and / or nominee agreement will be decided at a review meeting, along with arrangements for transferring funds if a change of bank account is needed.

# Safeguarding

Current legislation and statutory frameworks in relation to safeguarding and the Mental Capacity Act 2005 (MCA 2005) must be adhered to at all times.

All NHS staff involved in PHB assessment and development must be up to date with training for safeguarding and the MCA 2005.

Individuals are entitled to make their own decisions and to take risks in the same way that any other person is entitled to make choices involving risk. It is however essential to put safeguards in place to prevent any potential abuse and to support individuals with making potentially hazardous decisions.

Safeguarding is everybody’s business and therefore it is essential that ICB staff, staff and volunteers of partner organisations and agencies, and members of the public remain alert and vigilant to the potential for physical, mental or financial abuse. Where concerns are identified regarding safeguarding, people should follow the relevant safeguarding policy.

Where individuals are in receipt of a direct payment, they may be at risk of abuse from family members, friends, carers, neighbours, professionals and strangers. Individuals employing PAs may be at greater risk of abuse depending on the level of rigour and pre-employment checks undertaken during the PA recruitment process.

The NHS Case Manager will ensure that:

* Risk assessment forms part of the PHB assessment and approval process
* Individuals and their carers are helped to understand the importance of safeguarding and their role including what to do if they have concerns in line with care act 2014
* All paid staff members, as well as any appointed nominee will be subject to an enhanced DBS check (as outlined within Sections 3.0 and 6.0 of this guidance)
* Where a PA / Carer is already employed prior to the allocation of a direct payment (normally through local authority personal budget funding), the provider must check whether DBS checks were carried out at the time and if those checks remain valid (within 3 years). If not, this needs to be undertaken.

# Monitoring Direct Payments

Personal Health Budgets are publicly funded and the ICB has a responsibility to ensure that they are used to meet the health needs as well as the broader health and wellbeing outcomes of those who receive them. THE ICB also have a responsibility to effectively manage the risks associated with people opting to take their PHBs as a direct payment, including ensuring that the agreed health and wellbeing needs are being met, minimising the risk of fraud and the risk of money being used in ways that are either illegal or otherwise prohibited.

It is important that people are given genuine scope for choice and control. In practice, this means that the uses of a direct payment are not overly prescribed and that the individual has appropriate flexibility about how the budgets can be spent. This must, however be agreed within the Care and Support Plan, as well as the final budget.

Where people have tried things that may not have been as effective as intended, it is important that the ICB does not automatically assume that the direct payment is not working. Case Managers should work with people to learn, adapt and use experience of what works and what does not to influence future decisions about the person’s care, including within the personalised care and support plan. This will help to ensure direct payments are being used as effectively as possible.

Individuals (or nominees) receiving direct payments are required to provide the NHS Case Manager with the following after 3 months:

* Annotated copy of monthly bank statements;
* Carer’s payslips (if a care component is involved);
* Receipts, invoices etc. for any other payments / purchases made e.g. payroll fees, agency invoices
* Cheque & paying in books
* PAYE, NI and other payroll records
* Employee expense claim forms
* Any other information relating to the use of the direct payment

The frequency of ongoing financial monitoring will be established following the initial three month review. The frequency with which the individual (or nominee) will be asked to supply the information detailed above will depend on whether they are to be monitored on a quarterly, six-monthly or an annual basis. Where possible, clinical and financial reviews will be performed simultaneously.

When carrying out a review of a person’s direct payment the NHS Case Manager may:

* Re-assess the health needs of the individual;
* Review receipts, bank statements and other information relating to the use of direct payments; and
* Consider evidence around whether direct payments have been effectively managed, including evidence as to whether service providers have appropriate indemnity, insurance and registration.

# Excess Funds

It is recommended that individuals should hold sufficient funds in their direct payment account to cover any bills relating to their care. Lincolnshire ICB allows individuals to hold up to the equivalent of six weeks of funding. If an individual holds more than six weeks of funding, the ICB may reclaim the funds in excess of this following the financial monitoring review, unless the underspend has been agreed as part of the care and support plan.

Recurrent underspends could be a flag to indicate that either the budget or the care package hasn’t been set up correctly.

# 13.0 Reclaiming a Direct Payment

There may be other circumstances where the ICB requires repayment of an individual’s direct payments. For example:

* Where there has been an overpayment to the individual;
* Where the care and support plan has changed substantially, resulting in surplus funds;
* Where the direct payment has been used for other purposes than identified in the care and support plan;
* Where the direct payment has been used to pay a relative or person living in the same address without prior agreement to such an arrangement;
* Where there is evidence of theft or fraud (funds cannot be reclaimed if the individual has been the victim of fraud);
* The recipient has died, leaving part of the direct payment unspent (See Section 14.0)

In such circumstances, the ICB will notify the individual or their representative / nominee to discuss and understand the facts of the situation and, if appropriate, explain:

* The reason for the decision
* The amount to be repaid
* The timescale in which the money must be repaid

The individual, their representative or nominee may request that this decision be reconsidered and provide additional information to the ICB for consideration. This request must be submitted to the ICB within 14 days of the original notification.

Notification of the outcome of this consideration must be provided in writing and an explanation provided. The ICB are only required to undertake one consideration of any such decision.

If the individual remains unhappy about the reclaim they should be referred to the local NHS complaints procedure.

If a final decision to reclaim payments is made, then 14 days’ notice in writing must be given to the individual, their representative or nominee.

If the individual is unable to repay the total funds within the 14 day notice period, the case will be passed onto the credit control team to set up a repayment plan.

In the event of an individual failing to return the funds, The ICB may decide to take legal action to reclaim the money.

# Suspending or Terminating Direct Payments

Direct payments may be suspended or end if one of the following occurs:

* The individual no longer has the capacity to consent – although in this situation the ICB will look for a representative to receive the payments on behalf of the individual;
* Conditions outlined in the direct payment agreement and associated terms and conditions are not met;
* Support for which the direct payments were made is no longer needed;
* Support for which the direct payment was paid is not needed for a short period of time (for example, through admission to hospital); or
* The direct payment is placed under a condition or requirement by the courts relating to drug or alcohol dependency.

Depending on the circumstances, the NHS Case Manager will advise the individual, or their representative, of the end of the direct payment. The individual, or their representative, should then immediately give notice to any employed workers and calculate all outstanding bills. Where applicable they can contact their support service for assistance with settling these matters. A closing audit will be carried out and any unallocated direct payment funds that remain will be reclaimed.

In addition, if the individual moves out of the area and the ICB is no longer the **Responsible Commissioner[[6]](#footnote-6)**, the direct payment will cease in line with responsible commissioner guidelines. A closing financial audit will be carried out and any unallocated direct payment funds that remain will be reclaimed.

If the individual receiving the direct payment dies, the ICB will cease the payments as soon as possible. Any outstanding contractual obligations for support should be met from the budget, a closing financial audit will be carried out and any unallocated direct payment funds will be reclaimed.

Where direct payments are stopped or reduced, due to a change in eligibility, the NHS Case Manager will give 28 days’ notice to the individual or representative in writing. However the time taken before stopping or reducing direct payments will depend on any contractual obligations the individual may have entered into, and all monies left, once contractual obligations have been met, will be returned to the relevant ICB.

Individuals who use a bank account or managed payroll should settle their bills and then arrange for any remaining funds to be returned to Lincolnshire ICB, either by cheque or bank transfer. Lincolnshire ICB will require a final financial return from the bank account. A final return will automatically be supplied by the managed payroll service for individuals utilising those services.

# 15.0 Concerns and Complaints

If an individual has any concerns or complaints regarding service providers (e.g. payroll providers, support service providers, etc.), this should be handled directly between the individual (or their representative / nominee) and the provider.

If the individual wishes to raise a concern or complaint specifically about the Direct Payment, in the first instance attempts should be made to resolve this informally with the relevant Case Manager. If this is not successful the process outlined below should be followed:

1. Informal discussion between the individual / nominee / representative and the NHS Case Manager, or their supervisor
2. If local resolution does not solve the issue to the satisfaction of the individual, a formal complaint can be made to the ICB via Lincolnshire ICB’s complaints team
3. If the complainant remains unsatisfied with the response from the ICB, they may refer the matter to the Health Service Ombudsman. The Ombudsman is independent of both the NHS and the Government. Please note that the Ombudsman will expect complainants to have tried to resolve their concerns through the local ICB complaints procedure prior to contacting the Ombudsman’s service.

The ICB will investigate all concerns raised thoroughly, and as soon as is practicably possible.

# Appendix A: Glossary of Terms

|  |  |
| --- | --- |
| **Term** | **Meaning** |
| **Additional Funding Request Form** | An additional form to be used to request funding for purchasing something supplemental to an existing Care and Support Plan which is not included in the agreed direct payment final budget |
| **Advocacy** | A process of supporting and enabling people to:* Express their views and concerns
* Access information and services
* Defend and promote their rights and responsibilities
 |
| **Audit** | Regular examination of the financial (and other) records of an individual’s PHB direct payment account, including but not limited to: expenditure, payroll, insurance, training  |
| **Bank Account**  | A bank account held by an individual or their nominee, and approved by the ICB, into which Direct Payments are paid under the terms of this Policy, Direct Payment Guidance, the Direct Payment Agreement and the associated Terms and Conditions.  The account must be used solely for the purpose of administering the PHB Direct Payment. Where someone receives joint funding for healthcare and adult social care, the same bank account may be used for managing both funding streams |
| **Brokerage** | Brokerage is the help and support people may need in order to plan spending their budget. Brokerage functions may include:* Exploring what is available and possible
* Providing information and technical advice
* Developing informal support, co-ordinating resources and obtaining clinical support where necessary
 |
| **Capacity** | The ability to use and understand information to make a decision, and communicate any decision made |
| **Care and Support Plan** | A Care and Support Plan brings together aspirations, goals and outcomes for an individual and outlines how an indicative budget might be used to meet them. The plan should be completed by the individual with the support of family, friends, carers, other interested parties and NHS clinical staff. The Care and Support Plan should be lawful, effective, affordable and appropriate to the individuals needs |
| **Care Needs portrait** | A tool utilised by the ICB to calculate the ‘Indicative Budget’, and to establish the ‘Interim Package of Care’ if required |
| **Carer** | A carer is anyone, including children and adults who looks after a family member, partner or friend who needs help because of their illness, frailty, disability, a mental health problem or an addiction and cannot cope without their support |
| **Case Manager** | A clinical professional who is responsible for oversight of an individual’s care. For a Personal Health Budget this includes:* Assessing needs,
* Ensuring that the individual can access support to plan their care,
* Ensuring that the care and support plan is agreed and signed off
* Ensuring that the Personal Health Budget is monitored and reviewed at agreed intervals
 |
| **Children’s Continuing Care** | Continuing Care is organised differently for children and young people than for adults and is governed by the Department of Health National Framework for Children and Young People's Continuing Care (CYPCC).A continuing care package will be required when a child or young person has needs arising from disability, accident or illness that cannot be met by existing universal or specialist services alone |
| **Cohort** | A group of people or subjects with a shared characteristic |
| **Consent** | Agreement to treatment, test, or decision. To be valid, consent must be voluntary, informed and the person consenting must have the capacity to provide consent |
| **Continuing Healthcare (CHC)** | 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. In care homes, it means that 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 |
| **Co-Production** | Co-Production is about engaging effectively with people to enable them to play an equal role alongside clinicians and other practitioners in managing their own care. ORCo-production is a practice in the delivery of public services in which citizens are involved in the creation of public policies and services. It is contrasted with a transaction based method of service delivery in which citizens consume public services which are conceived of and provided by governments |
| **Decision Support Tool (DST)** | The CHC decision support tool is a framework used by the multidisciplinary teams (MDTs) that assess whether someone is eligible for NHS continuing healthcare |
| **Direct Payments** | This is one of the ways that an individual can receive their personal health budget. It is an amount of money paid directly to an individual (or their nominee) to support the identified health and wellbeing needs of the individual. This funding stream allows the individual to make their own arrangements to meet the needs identified within the Care and Support Plan |
| **Direct Payment Agreement** | This document, along with the Terms and Conditions, explains the formal responsibilities associated with direct payment and sets out the agreement that the direct payment will be spent as set out in the care and support plan and approved final budget.  The agreement confirms that the direct payment will be spent in accordance with the NHS (Direct Payment) Regulations 2013.  The agreement is between the individual, or their nominee/representative, and the ICB. |
| **Disclosure and Barring Service (DBS)** | The national DBS service carries out Disclosure and Barring Service checks (previously known as CRB checks) which allow an employer to check the criminal record of a potential employee. DBS checks can also be performed by the ICB to determine the suitability of individuals and / or nominees to manage a direct payment |
| **Education, Health and Care Plans** | The Children and Families Bill 2014 requires that Statements of Special Educational Need will be replaced by a new birth-to-25 integrated education, health and care plan, to deliver better support for children and young people with special needs |
| **Employment Costs**  | The total amount of money that it costs a company (an employer) to employ people, including wages, DBS checks, National Insurance, Training, Benefits, etc. |
| **Exceptional Circumstances Funding Request Form** | An additional form to be used to request approval to employ a direct family member as a PA / Paid Carer while they are living in the same home as the individual. All requests must be approved by the ICB which will only be applied in exceptional circumstances |
| **Family (close family)** | 1. The spouse or civil partner of the adult;
2. A person who lives with the adult as if their spouse or civil partner;
3. A person living in the same household as the adult who is the adult’s:
* parent or parent-in-law,
* son or daughter,
* son-in-law or daughter-in-law,
* stepson or stepdaughter,
* brother or sister,
* aunt or uncle,
* grandparent;
1. The spouse or civil partner of any person specified in subparagraph (c) above who lives in the same household as the adult;
2. A person who lives with any person specified in subparagraph (c) above as if that person’s spouse or civil partner
 |
| **Fast Track** | If a person’s condition is deteriorating rapidly or they are entering a terminal phase, the Fast Track CHC pathway can be used. Fast Track CHC allows a clinician (which can be a doctor or a nurse) with appropriate knowledge of the patient to immediately assess that they should receive CHC-funded support without the need for the lengthy checklist and DST assessment process |
| **Final Budget** | The final budget is an amount of money that is agreed once a support plan has been finalised. This is usually calculated by estimating the costs of the care and support arrangements included in the plan. This is likely to be a more accurate guide to the actual costs of support.  The final budget - rather than the indicative budget - is the point at which an approval process takes place |
| **Guidance** | 1. Publicly available documentation and support, designed to enable NHS Commissioners to develop local policies and procedures within the constraints of national regulations, specified in this document within Annex 8: Legislation and Guidance

OR:1. Information provided by the NHS or local ICB to provide practical instruction, help, or advice for individuals, representatives, nominees and / or other parties about the policies, processes and terms and conditions within a specific application or service
 |
| **Health Care Need** | Whilst there is not a legal definition of a **health care need** (in the context of NHS continuing health care), in general terms it can be said that such a need is one related to the treatment, control or prevention of a disease, illness, injury or disability, and the care or aftercare of a person with these needs (whether or not the tasks involved have to be carried out by a health professional) |
| **Indicative Budget** | An indicative budget is an amount of money identified at an early stage in the process to inform care and support planning. It is a prediction of how much money it is likely to cost to arrange the care and support that would be sufficient to meet the assessed health needs and achieve the outcomes in the care and support plan |
| **Individual** | The person eligible for NHS funding via a Personal Health Budget |
| **Interim Package of Care** | Where care needs have been identified within the care and support plan, an interim package of care, through a care agency, will be set up immediately (where applicable) following a decision that an individual is eligible for continuing healthcare. The care requirements detailed in the care needs portrait will be used to broker this package of care. |
| **Integrated Care Board (ICB)** | The statutory organisation which brings the NHS together locally to improve population health and establish shared strategic priorities within the NHS. Responsible for the commissioning/funding of NHS health services locally. |
| **Joint Fund** | In respect of a person who is not eligible for NHS CHC funding, however has some specific needs (identified through DST) that are not of a social care nature or are beyond the power of a Local Authority to solely meet, they may receive an integrated package of health and social care, known as ‘Joint Funding’ |
| **Local Authority (LA)** | Lincolnshire County Council |
| **Legislation** *(in the context of Continuing Healthcare)* | Law, or a set of laws, enacted by parliament, determining amongst others the rights and responsibilities of individuals and authorities to whom the legislation applies, specified in this document within Annex 8: Legislation and Guidance |
| **Long Term Condition**  | Long-term conditions are chronic diseases or conditions for which there is currently no cure, and which are managed with drugs and other treatment, for example: diabetes, chronic obstructive pulmonary disease, arthritis and hypertension |
| **Nominee** | A person who is nominated to receive and manage a PHB direct payment by:* An individual, in circumstances where the individual has mental capacity to make that decision and is not a child
* The representative of an individual who lacks capacity or is a child – The representative may also be the nominee
* The CCG (under certain circumstances, if an individual lacks capacity)
 |
| **Notional Budget** | This is one of the ways an individual can receive their personal health budget: Individuals develop their care and support plan with their healthcare professional. The NHS hold all the funds and manages the budget and payments |
| **Outcomes** | Health and well-being objectives, outlined within the Personalised Care and Support Plan, that an individual wishes to achieve, and can be supported to achieve, with the use of a personal health budget |
| **Person of good standing in their community** | A witness must be a professional person or a person of similar standing, who enjoys a good reputation in the community, possesses credentials that can be checked, who would put at risk their career or reputation by knowing making an untrue statement in completing the witness section of an application |
| **Personalisation** | Personalisation is fundamentally about better lives, not just services or packages of care. It means working with people, carers and families to deliver better outcomes for all, and ensuring that the person is at the centre of their care. Personalisation in healthcare is not focused on changing systems and processes, or allocating funding, but centred on making the necessary changes to ensure people have greater independence, enhanced wellbeing and the choice and control over the way their care is delivered |
| **Personal Assistants** | A Personal Assistant (sometimes called a PA, Paid Carer or a Support Worker) is employed by people who need health and social care, either because of their age, condition or disability, to enable them to live as independently as possible. Personal assistants carry out a wide range of tasks as required by the employer, including support with things such as washing and getting dressed, cooking, feeding, and supporting people to have greater independence and the ability to live their life more fully |
| **Personal Health Budget (PHB)** | An amount of money to support the identified healthcare and wellbeing needs of an individual, which is planned and agreed between the individual (or someone who represents them) and the local ICB. At the centre of a PHB is the care and support plan. This plan helps people to identify their health and wellbeing goals together with their NHS Case Manager and set out how the budget will be spent to enable them to reach their goals and keep healthy and safe. A personal health budget can be managed in three ways (or a combination of these):* Notional Budget
* Third Party Budget
* Direct Payment
 |
| **Personal Living Costs** | Includes activities such as, but not limited to:1. Paying for assistance with housework, laundry, gardening, decorating
2. Clothing
3. Hairdressing/beauty treatments
4. Non health related items (e.g.- furniture, white goods, car)
5. Everyday household items such as bedding, towels, toiletries
6. General household running costs (e.g.- utility bills, TV licence)
 |
| **Recognised profession** | Common examples of recognised professions include:* Accountant
* Bank or building society official
* Civil servant (permanent)
* Pharmacist
* Police officer
* Post Office official
* Solicitor
* Teacher or lecturer

A list of additional recognised professions can be found on the Government website:<https://www.gov.uk/countersigning-passport-applications/accepted-occupations-for-countersignatories> |
| **Regulations** | Legal Acts that govern ICB policy, procedure and processes, specified in this document within Annex 8: Legislation and Guidance  |
| **Representative** | A person who is appointed to act ‘on behalf of, and in the best interest of’:* Children
* An individual (other than a child) who lacks mental capacity

The representative may also be the person who receives and manages a PHB direct payment (the nominee) |
| **Responsible Commissioner** | The ICB responsible for commissioning and paying for care, as defined within ‘Who Pays? Determining responsibility for payments to providers, NHS England, 2013’ (updated July 2022) |
| **Safeguarding** | Measures to protect the health, well-being and human rights of individuals, which allow people – especially children, young people and vulnerable adults – to live free from abuse, harm and neglect |
| **Section 117** | 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 |
| **Self-Directed Support** | A system that gives people increased choice and control over the support they use to meet their care needs, including the use of PHBs |
| **Social Care** | Social care in England is defined as the provision of social work, personal care, protection or social support services to children or adults in need or at risk, or adults with needs arising from illness, disability, old age or poverty |
| **Social Care Need** | In general terms (not a legal definition) it can be said that a social care need is one that is focused on providing assistance with activities of daily living, maintaining independence, social interaction, enabling the individual to play a fuller part in society, protecting them in vulnerable situations, helping them to manage complex relationships and (in some circumstances) accessing a care home or other supported accommodation |
| **Start-up costs** | Costs related to establishing a PHB direct payment care package, e.g.- DBS checks, Liability Insurance, Recruitment and Staff Training |
| **Support** | The arrangements made to meet your health care needs as specified in your Care and Support Plan |
| **Support Service Providers** | Independent organisations that can provide a range of services to support individuals who choose to receive their PHB via Direct Payment. This can include the recruitment of PA’s / Carers, payroll services, insurance and training as well as ‘Managed Account’ services  |
| **Third Party Budget** | This is one of the ways an individual can receive their personal health budget: An organisation, completely independent of the individual, the local authority and the ICB, holds and manages the budget for you and buys the services and support agreed within your personalised care and support plan  |
| **Wheelchair Service** | NHS Wheelchair Services assess people with mobility needs, to decide what sort of wheelchair or other mobility equipment they should be provided with. Usually, it is a GP, hospital doctor or occupational therapist who makes a referral to wheelchair services |

# Appendix B: Legislation and Guidance

|  |  |
| --- | --- |
| **Legislation/guidance** | **Link** |
| NHS Operational Planning and Contracting Guidance 2019/20 | <https://www.england.nhs.uk/wp-content/uploads/2018/12/nhs-operational-planning-and-contracting-guidance.pdf> |
| National Health Service Act (2006) Section 12A | <http://www.legislation.gov.uk/ukpga/2006/41/contents> |
| NHS Long Term Plan | <https://www.longtermplan.nhs.uk/wp-content/uploads/2019/01/nhs-long-term-plan-june-2019.pdf>  |
| NHS constitution for England. (2012). [eBook] Department of Health | <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/480482/NHS_Constitution_WEB.pdf> |
| Care Act 2014 | <http://www.legislation.gov.uk/ukpga/2014/23/pdfs/ukpga_20140023_en.pdf> |
| Health Act (2009) | <https://www.legislation.gov.uk/ukpga/2009/21/pdfs/ukpga_20090021_en.pdf> |
| National framework for NHS continuing healthcare and NHS funded nursing care (2022) | [National framework for NHS continuing healthcare and NHS-funded nursing care - GOV.UK (www.gov.uk)](https://www.gov.uk/government/publications/national-framework-for-nhs-continuing-healthcare-and-nhs-funded-nursing-care) |
| The National Health Service (Direct Payments) Regulations (2013) | <https://www.legislation.gov.uk/uksi/2013/1617/pdfs/uksi_20131617_en.pdf>  |
| Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 | <http://www.legislation.gov.uk/uksi/1975/1023/contents/made> |
| The Data Protection Act (2018) | <http://www.legislation.gov.uk/ukpga/2018/12/pdfs/ukpga_20180012_en.pdf> |
| General Data Protection Regulation (2018) | <https://www.gov.uk/government/publications/guide-to-the-general-data-protection-regulation> |
| The Mental Health Act (1983) | <https://www.legislation.gov.uk/ukpga/1983/20/contents> |
| The Mental Capacity Act (2005) | <https://www.legislation.gov.uk/ukpga/2005/9/pdfs/ukpga_20050009_en.pdf>  |
| The Carers (Equal Opportunities) Act (2005)  | <https://www.legislation.gov.uk/ukpga/2004/15/pdfs/ukpga_20040015_en.pdf>  |
| The Equality Act 2010 | <https://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf> |
| The Equality Act 2010 – Chapter 6, Carers | <https://publications.parliament.uk/pa/ld201516/ldselect/ldeqact/117/11709.htm>  |
| Personal health budgets | <http://www.nhs.uk/choiceintheNHS/Yourchoices/personal-health-budgets/Pages/about-personal-health-budgets.aspx>  |
| HMRC | <https://www.gov.uk/government/organisations/hm-revenue-customs>; |
| Who Pays? Determining responsibility for payments to providers – NHS England, 2013 | [NHS England » Who Pays?](https://www.england.nhs.uk/who-pays/) |
| Guidance on Direct Payments for Healthcare: Understanding the Regulations | https://www.england.nhs.uk/publication/guidance-on-direct-payments-for-healthcare-understanding-the-regulations/ |

The following web link may be useful to provide information on PHBs and is available in a standard or easy read format:

<http://www.nhs.uk/choiceintheNHS/Yourchoices/personal-health-budgets/Pages/about-personal-health-budgets.aspx>

1. The National Health Service (Direct Payment) Regulations 2013 No.1617 [↑](#footnote-ref-1)
2. The National Health Service (Direct Payment) Regulations 2013 No.1617 [↑](#footnote-ref-2)
3. The NHS Constitution for England, 2012 [↑](#footnote-ref-3)
4. If specified within the employees Contract of Employment [↑](#footnote-ref-4)
5. Ensuring the retained rate of remuneration does not fall below legislated minimum wage levels [↑](#footnote-ref-5)
6. Who Pays? Determining responsibility for payments to providers, NHS England, 2013 - Updated July 2022 [↑](#footnote-ref-6)