# Personal Health Budgets Policy

*Policy relating to the provision of Personal Health Budgets for eligible Continuing Healthcare adults, Children and Young People Continuing Care*

## NHS Devon

Proud to be part of One Devon: NHS and CARE working with communities and local organisations to improve people's lives

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| **Policy Sponsor** | Chief Nursing Officer |
| **Policy Lead** | Head of Quality Assurance |
| **Approved by** | Chief Nursing Officer and Chief Medical Officer |
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| 06/04/2017 | Review and update | | Final version (V1) added to ICB website |
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|---|---|---|---|
| | | | amendment to S 23.1 following legal advice |
| 09/05/2018 | Review and update | | Policy Updated and circulated internally for comments |
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| 02/01/2020 | Review and update | | Policy Updated and discussed at CHC CC |
| 16/03/2023 | Review and update | | Policy content remained the same, branding changed |
| | Review and update | | |
| 20/12/2023 | Policy Amendment | | Policy received final approval by Chief Nursing officer and chief medical officer Dec 2023. Updated to version 2.0 |
| 20/12/2024 | Policy Amendment | | |
| December 2025 | Policy reviewed, no changes required | | |

## Equality, diversity and inclusion statement

NHS Devon is committed to the promotion of equal opportunities, addressing health inequalities and fostering of good relations between people protected under the terms of the Equality Act 2010, the Health and Social Care Act 2012 and Human Rights legislation. We are equally committed to the elimination of unlawful discrimination, harassment and victimisation. To demonstrate this commitment, we develop, promote and maintain policies, strategies and operating procedures. Every effort is made to ensure that patients, employees, contractors or visitors do not experience discrimination; either directly or indirectly, because of their vulnerability; disadvantage; age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; sex (gender) or sexual orientation.

All staff must comply with this policy. Compliance must reflect our organisational commitment to and policy on, equality, diversity and inclusion. In addition, each manager and member of staff involved in implementing this policy must give due regard to the needs of those protected under law.

If you, or any other groups, believe you are discriminated against under the terms of the Equality Act, the Health and Social Care Act 2012 or Human Rights legislation by

anything contained in this document; or you need this document in an alternative format, for example, large print, Braille, Easy read or other languages; please contact our Patient Advice and Complaints Team (PACT):

Tel: 0300 123 1672
Email: d-icb.patientexperience@nhs.net
Post: Patient Advice and Complaints Team,
NHS Devon
Aperture
Pynes Hill
Rydon Lane
Exeter
EX2 5AZ

**Contents**

# 1. Introduction

1.1 This document describes the standards, guidelines, and regulations that Devon Integrated Commissioning Board (Devon ICB) adheres to in the administration of Personal Health Budgets (PHBs).

1.2 People who are eligible for Continuing Healthcare (CHC) funding[1] (including Fast-Tracked patients) and who are living in the community have the right to have a Personal Health Budget from October 2014. The Department of Health guidance[2] and 'Personal Health Budgets: Including people with learning disabilities'[3] guidance makes clear who can receive a PHB and provides a useful tool for understanding the regulations within healthcare.

1.3 From 1st April 2019 Personal Health Budgets are the default delivery model for NHS CHC funded home care in line with the national commitment to deliver on the mandate expectation from NHS England for 200,000 people to have a PHB by 2023/24.

1.4 The NHS England Long Term Plan "recognises personalised care as one of five major practical changes to the NHS to ensure we have a service that is fit for the future. This means people will get more control over their health, and more personalised care when they need it – including access to personal health budgets"[4]

1.5 NHS England Personal Budget Quality Framework 2023 provides structure and focus on PHB delivery to improve health outcomes, tackle inequalities and make best uses of resources.

# 2. Purpose and objectives

2.1 The vision for PHBs is to enable people to have greater choice, flexibility and control over the healthcare and support they receive. The Commissioning and Provider organisations across Devon are committed to embedding these principles within their individual operating models and to embracing the introduction of personalisation and choice within healthcare practices.

Within the Devon ICB footprint there is an emphasis on, and commitment to, actively engaging and promoting the opportunity to receive a PHB to all people eligible to receive funding who are living in the community. This applies whether the individual's primary health needs relate to physical or mental health, whether they are young people in transition to adult services, or whether they are requiring care at the end of their lives.

It is the aim of the policy to always ensure a positive patient experience and promote choice and control wherever possible. The ICB is committed to promoting personalisation within healthcare and ensuring PHBs are delivered safely, efficiently, and effectively.

[1] National framework for NHS continuing healthcare and NHS funded nursing care, July 2022 (Revised), Published May 2022
[2] Guidance on Direct Payments for Healthcare: Understanding the Regulations', March 2014
[3] TLAP 'Personal Health Budgets: Including people with learning disabilities', February 2014
[4] Personal Health Budget (PHB) Quality Framework

This policy will set out local and national decisions to support practitioners and individuals to understand 'how, when, where, and what' the PHB can be used for once a level of funding has been agreed.

2.2 A Personal Health Budget is an amount of money to support a person's identified health and wellbeing needs, planned, and agreed between the person and their local NHS team.

a. People will know what their budget is, will be involved in personalised care
b. and support planning and have greater control over how the budget is used,
c. including the option of a direct payment.

2.3 PHB's offer service users greater choice and flexibility over how their assessed needs are met. An individually agreed personalised care and support plan is created which identifies the care, support and services the PHB will be spent on. Individuals can also choose to receive their funding through:

1. **Notional Budget**: The money is held by the NHS and services are commissioned by the NHS according to the agreed personalised care and support plan.

2. **Third party provider**: An organisation independent of the person, the Local Authority and NHS commissioners manage the budget and are responsible for ensuring the right care is put in place, working in partnership with the person and the family to ensure the agreed outcomes can be achieved.

3. **Direct payment:** A monetary payment to a person (or their representative or nominee) funded by the NHS, to allow them to purchase the services that are agreed in the personalised care and support plan. 'Managed account' is the term used when a direct payment is held in an account on behalf of the 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.
    i. A representative is responsible for arranging the care as set out in the personalised care plan. If the Personal Assistants are to be employees, then the following applies:
        - The representative role could include recruitment of Personal Assistants, interviews, checking Personal Assistants are appropriately trained and their training is up to date, including core skill training, DBS checks, employment issues with Personal Assistants, planning rotas and liaising with payroll provider in submitting timesheets for the

employed Personal Assistants to ensure the tax and pay are appropriately paid to the Personal Assistants.

- The representative will become the employer of the Personal Assistants and have a contract of employment with each member of staff (the PHB team is able to offer a template for the PHB Budget Holder to use) and will operate within employment law regulations.
- The PHB budget will factor in costs for core skills training and will also include funding for the costs for the Personal Assistants' holiday, pension and tax and insurance for the Personal Assistants (if the Personal Assistants are employed). The PHB budget will also include funding for employer's liability insurance that the representative can access if they have a concern with one of their Personal Assistants for example sickness, maternity advice or disciplinary action.

ii. The above position is different if the Personal Assistants are self-employed. In line with this policy, the ICB does not usually allow the use for self-employed Personal Assistant but a request for this model can be made and will be considered on a case by case basis. The PHB policy sets out of the considerations that the ICB will take into account when making this decision (if such a model is requested) including:

- The risks and benefits of being self-employed;
- The training / skills of the Personal Assistant to undertake care tasks;
- The Personal Assistants right to work in the UK;
- HMRC registration regarding self-employees status;
- Enhanced DBS check.

# 3. Scope

3.1 This policy applies to health funded individuals who are living in the community in the Devon ICB footprint, where this is directly paid for by the ICB, however we expect our NHS providers who hold delegated budgets, Torbay and South Devon Foundation Trust (T & SD) to apply the principles of this policy when offering Personal Health Budgets.

3.2 This includes adults in receipt of NHS Continuing Healthcare (CHC) funding, children and young people in receipt of Continuing Care. NHS services are free at the point of delivery.

3.3 Where a package is joint funded, one Commissioner will take the lead on the budget and will require adherence to their user agreement and relevant policies. This policy will only apply to joint packages where the ICB is the Lead Commissioner, considered on a case-by-case basis.

3.4 This policy is expected to apply to all mechanisms of delivering a Personal Health Budget, including Direct Payments. Direct Payments are "monetary payments in lieu of services – made by ICBs to individuals (or to a representative or nominee on their behalf) to allow them to purchase the

care and support they need”[5].

3.5 Funding decisions made using the Personal Health Budget policy are also governed by the principles of the Individual Package of Care Policy[6] which sets out the funding expectations of the ICB to ensure each package is both safe and cost-effective.

3.6 The Personal Health Budget User Agreement, a contract between the individual holding the budget and the ICB, sets out individual responsibilities and accountabilities for the way in which the PHB is used to meet agreed health outcomes.

# 4. Definitions

| Terms | Definition |
|---|---|
| PHB | Personal Health Budget is an amount of money to support identified healthcare and wellbeing needs of an individual, which is planned and agreed between the individual, or their representative, and the local ICB. |
| PHB Budget Holder | Person identified and agreed by NHS Devon responsible for financial management of the Direct Payment PHB allocated budget and implementation of the agreed support and care services in line with the Personalised Care and Support Plan |
| NHS CHC | Where an individual has a primary health need, and is eligible for NHS Continuing Healthcare, the NHS is responsible for commissioning a care package that meets the individual’s assessed health and associated social care needs and solely funded by the National Health Service. |
| CHC Fast Track | Where an individual has a primary health need arising from a rapidly deteriorating condition and the condition may be entering a terminal phase. |
| ICB | Previously known as NHS Devon Clinical Commissioning Group (CCG) which transitioned to Integrated Care Board for Devon (ICB = NHS Devon for easier reference) – NHS and CARE working with communities and local organisations to improve people’s lives |
| PA | Personal Assistant is the person who will be providing care paid for by the Direct Payment Personal Health budget. |
| PCSP | Personalised Care and Support Plan – is the plan developed ad led by the NHS professional in conjunction with the budget holder or their representative. This plan sets out how the direct payment for care provision can be used and will need to be approved by NHS Devon |

[5] Guidance on Direct Payments for Healthcare: Understanding the Regulations
[6] http://www.devonICB.nhs.uk/your-ICB/nhs-funded-patients/nhs-continuing-healthcare-/100114

| | |
|---|---|
| CQC | Care Quality Commission – the independent regulator of health and adult social care in England |
| Self-employed PA | A self-employed personal assistant (PA) is an individual who provides care or support services to a client under their own business terms, rather than being directly employed by the client. Their self-employed status means they operate as an independent contractor rather than an employee, and they are responsible for managing their own taxes, insurance, and other business-related obligations. |

# 5. Content – Personal Health Budgets Policy

## 5.1 Resource allocation

5.1.1 Across the Devon ICB footprint, the ICB will work with an individual to complete a Personalised Care and Support Plan encompassing their identified health and wellbeing needs. This support plan will be costed using the ICB's budget calculator to determine the required budget.

5.1.2 The final budget will need to be authorised in line with the organisational scheme of delegation applying the principals set out within the Individual Package of Care Policy[7]. The final authorised budget will then be communicated to the eligible individual.

5.1.3 There may be a requirement to add a 'one off' amount on top of the budget to allow for start-up costs including training, insurance, recruitment for staff and other such requirements. Where this is included, the cost should be broken down as a weekly cost to give an indication of the true cost of the PHB.

5.1.4 Respite/contingency should be included when generating the final budget where family members or representatives are providing a level of informal care, if required. This should be assessed on a case-by-case basis. Where this is included, the cost should be broken down as a weekly cost to give an indication of the true cost of the PHB.

5.1.4 a) Due to the payment structure of Notional Personal Health Budgets (PHBs), this type of PHB does not include a respite or contingency component. Any requests for respite should be discussed directly with the Integrated Care Board (ICB).

5.1.4 b) The PHB Direct Payment budget has sufficient funds within the contingency to cover full costs of care for an eight week period in advance. This should be sufficient to cover short term contingencies as described in the personalised care plan i.e. needing to use agency support due to a shortfall in PA support. However, the budget holder must ensure they inform the case manager and the PHB team on the next working day if the budget is used for contingency purposes so that the case manager is aware of the changes in

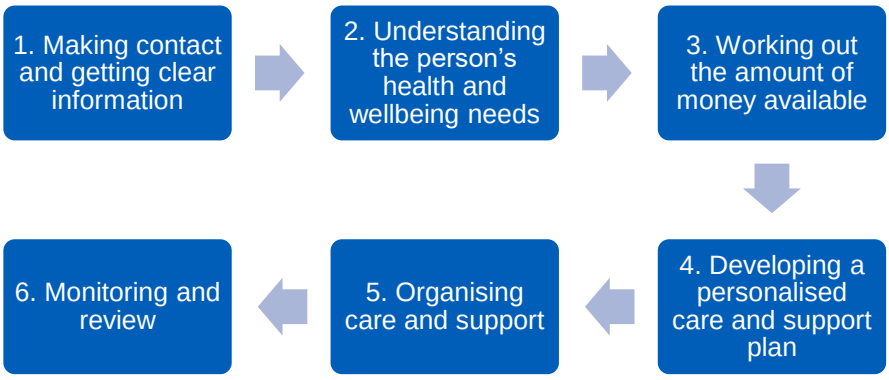
[7] http://www.devonICB.nhs.uk/your-ICB/nhs-funded-patients/nhs-continuing-healthcare-/100114

care provision and can liaise with the budget holder to clarify the ongoing need to ensure the PHB team adjust the PHB account to ensure sufficient monies are within it.

5.1.5 NHS funded healthcare is subject to regular review, and if the individual's condition changes, or there are changes in the applicable law, the individual may no longer be eligible for a health funded package of care. If this happens, the individual's health funded Direct Payment will cease after a period of consultation and the budget holder will be assessed by social services for eligibility for any continued financial support. The budget holder will receive at least 28 days' notice.

5.1.6 The NHS Devon may increase or decrease a Direct Payment amount as a result of a care plan review. If the Direct Payment is reduced, NHS Devon will provide notification in writing stating the reasons for the reduction and when the change will take effect. If the budget is used to employ personal assistants, the budget holder will be given enough notice to meet the minimum statutory responsibilities under employment law before the changes take effect. The Managed Account service will also be made aware of these changes to funding.

**5.2 The process**




5.2.1 The PHB process starts with individuals receiving clear, accessible information about Personal Health Budgets (PHBs) and the different ways to manage them. They are supported in making informed choices about their health and wellbeing, with access to advocacy services if needed.

5.2.2 The individual's health and wellbeing needs are assessed in a personalised manner. They are involved in the process, ensuring their voice is heard and their expertise is respected.

5.2.3 The individual is informed about the budget available to meet their needs, ensuring it is sufficient and transparent. They can request a review if the budget does not meet their needs.

5.2.4 The individual works with their NHS team to create a personalised care and support plan that is tailored to their needs and preferences, giving them control and flexibility over how their care is delivered.

5.2.5 The individual has control over organising their care, with appropriate support to manage the budget and any responsibilities involved.

5.2.6 The individual's PHB and care plan are regularly reviewed to ensure they continue to meet their needs. They can request a review if their circumstances change.

## 6. Support plans

6.1 All individuals who wish to have a PHB, will need to have a personalised care and support plan. This will be developed by the individual in partnership with their case manager, family/representative, an independent agency, or a combination of these. The expectation is that all Personalised Care and Support Plans will be highly personalised, detailing all health and wellbeing needs.

6.2 All proposed PHBs will be considered by the ICB and will require evidence that proposed costs are reasonable, equitable and appropriate in relation to the identified health and wellbeing outcomes, prior to approval.

## 7. Notional Personal Health Budgets

7.1 All eligible individuals who choose to have a notional PHB will be given the opportunity to have a personalised conversation with the case manager to arrange the commissioning of the package of care to best meet the individual's assessed health and wellbeing outcomes.

7.2 The ICB will be responsible for commissioning and paying for a package of care and will hold the contract directly with the provider.

## 8. Third Party Budgets

8.1 To support eligible individuals to achieve the outcomes agreed in their personalised care and support plans, Devon ICB are currently working with a small group to offer third party budgets. This allows for the budget to be used in a tailored and flexible way. This offer is subject to market availability.

8.2 The third-party organisation is contractually and financially responsible for the care and support, along with being the employer for any PAs.

8.2 Any management charge for a third-party budget must be agreed by the ICB.

## 9. Direct Payment Personal Health Budgets

9.1 All eligible individuals who choose to take a PHB Direct Payment will be given the opportunity to choose how they receive their money and be given support and advice about how to manage this.

9.2 The ICBs required mechanism of delivering PHB funding is through a Managed Account or a Prepaid Card. The budget holder is the person identified and agreed by NHS Devon responsible for financial management of the Direct Payment PHB allocated budget and implementation of the agreed support and care services in line with the Personalised Care and Support Plan

9.2 The budget holder should be clear on what the Direct Payment can be spent on before the PHB commences as they will continue to be the accountable budget holder. This information will be shared by NHS Devon with the Managed Account service.

9.3 The PHB cannot be used to:

- Pay for everyday expenses like food and drinks, clothing, housing related expenses such as rent, utility bills or repairs.
- Withdraw cash.
- Repay a debt.
- Pay personal assistants who are self-employed, unless authorised by NHS Devon
- Purchase primary medical services (such as diagnostic tests, vaccinations, immunisation, screening, or general medical treatment)
- Purchase urgent or emergency treatment services (such as unplanned hospital admissions)
- Purchase planned surgical procedures.
- Pay for certain charges relating to dental treatments, optical appliances, medical appliances or pharmaceutical products or services, as the NHS already funds these services through existing contracts.
- Purchase items not specified in Section 15 – 'Schedule of Payments'
- Be used in ways that would bring NHS DEVON into disrepute (for example drugs, alcohol, tobacco, gambling services/facilities or anything illegal)

9.4 NHS funded healthcare is subject to regular review, and if the individual's condition changes, or there are changes in the applicable law, the individual may no longer be eligible for a health funded package of care. If this happens, the individual's health funded Direct Payment will cease after a period of consultation and the budget holder will be assessed by social services for eligibility for any continued financial support. The budget holder will receive at least 28 days' notice.

9.5 NHS Devon may increase or decrease a Direct Payment amount as a result of a personalised care and support plan review. If the Direct Payment is reduced, NHS Devon will provide notification in writing stating the reasons for the reduction and when the change will take effect. If the budget is used to employ personal assistants, the budget holder will be given enough notice to meet the minimum statutory responsibilities under employment law before the changes take effect. The Managed Account service will also be made aware of these changes to funding.

9.6 The budget holder has an explicit right to relinquish their role at any time, should they wish to do so. The PHB holder should liaise with the PHB Team to establish alternative arrangements.

9.7 The budget holder has a right to seek a review where the budget needs adjustment because of external factors.

9.8 The ICB adheres to the NHS England guidance in relation to when it is appropriate to decline a PHB and reserves the right to explore this on a case-by-case basis. Individuals whose application has been declined will be given information on the ICB Patients Advice and Complaints service should they wish to progress through this route.

9.9 The ICB may decide not to provide someone with a direct payment if for example it considers:

- that the person (or their representative) would not be able to manage them.
- that it is inappropriate for that person given their condition or the impact on that person of their particular condition.
- that the benefit to that individual of having a direct payment for healthcare does not represent value for money in line with the NHS Devon IPOC policy.
- that providing services in this way will not provide the same or improved outcomes.
- that the direct payment will not be used for the agreed purposes[8].

[8] Guidance on Direct Payments for Healthcare: Understanding the Regulations

## 10. Managed Accounts

10.1 “Managed Account” means the payment management service funded by NHS Devon, to support you with holding the Direct Payment in a Personal Health Budget Account and to make payments on your behalf.

10.2 Devon ICB can offer individuals a managed account service to hold the Personal Health Budget on their behalf.

10.3 The ICB provides the costs within the PHB for the Managed Account service.

10.4 Direct Payments are made to fund services and support for individuals to meet their identified needs.

10.5 This user agreement reflects the way in which a PHB Direct Payment can be used in line with the (National Health Service (Direct Payments) Regulations 2013.

10.6 The Managed Account service will be funded by NHS Devon.

10.7 The Managed Account service will receive the Direct Payments from NHS Devon on your behalf and will in turn make payments for your care and support in accordance with your agreed care plan.

10.8 The Managed Account service will liaise with NHS Devon on your behalf regarding the funds that you have been allocated for your care and support.

10.9 The Managed Account service will hold the finances of your Personal Health Budget and you will remain the accountable budget holder. You will continue to be responsible for arranging your care either through a care agency or using Personal Assistants.

10.10 The Managed Account service will not be the employer of any Personal Assistant(s) and will have no employer responsibilities to any Personal Assistant(s) employed through the funding of the Personal Health Budget.

10.11 The payroll provider will act as a payment agency for all employer financial transactions, including but not limited to processing P46 or P45 for personal assistants, issuing pay slips, calculating payments due from timesheets, calculating statutory payments, and obtaining refunds from HMRC, holiday leave and pension payments where applicable and within the required time frames. The payroll provider will maintain correct audit procedures in relation to the above activities.

10.12 Establish the status of the personal assistant through a signed declaration from the individual to declare that they are registered with HMRC under self-assessment. If such a declaration is not received, then the personal assistant will be advised at that point by the payroll provider that they will be treated for the purpose of payroll as an employee.

10.13 When a case is to be closed, payroll provider contacts the direct payment recipient and obtain a final timesheet so that a final payment can be made, P45s issued and the relevant third parties closed, for example, HMRC PAYE Scheme and the Nest Pension Scheme.

10.14 For Direct Payment recipients paying an agency, the payroll provider will liaise with service providers regarding all invoices to be paid, pay invoices to service providers and keep records of payments due and payments made each month.

10.15 On account closure contact service providers to arrange to pay the final balance.

## 11. Prepaid Cards

11.1 The cards will be ordered and supplied at no cost to the individual/budget holder.

11.2 The ICB holds contracts with providers for the provision of prepaid cards in partnership with the local authority. The Council will manage the Prepaid Card system on behalf of NHS Devon.

11.3 The Prepaid Card is a secure and convenient way to use the Direct Payment and includes facilities such as the ability to make bank transfers, set up standing orders and direct debits and utilise telephone and online banking.

11.4 The prepaid card will hold the funds of your Personal Health Budget and you will remain the accountable budget holder. You will continue to be responsible for arranging your care either through a care agency or using Personal Assistants.

11.5 The prepaid card has a contactless function however this has been disabled by the card provider.

11.6 Cash withdrawals from the prepaid card are prohibited. If this creates an issue for the individual in meeting outcomes identified as part of their personalised care and support plan, the ICB will work with the individual to identify a solution.

11.7 The use of the Prepaid Card will be monitored electronically by NHS Devon. NHS Devon may request the PHB Budget holder for information to clarify purchases or request a return of surplus funds.

11.8 The budget holder must be accountable and keep a record of all expenditure from the PHB account and associated receipts. The budget holder must keep financial records in line with the requirements set out under the Records Management Code of Practice for Health and Social Care 2016 retention schedule. This is currently six years.

11.9 NHS Devon may request copies of these records at any time. If NHS Devon does not receive the evidence within four weeks of the requested date, NHS Devon reserves the right to suspend any further payments into the account, until the requested documentation is received.

## 12. Bank Accounts

12.1 Where individuals have a separate bank account for Direct Payments which has been set up for previous services from Social Care or Children's services, the ICB would expect this to transfer to a prepaid card.

12.2 The ICB will only allow individuals to maintain an existing bank account for their PHB to be paid into, where the individual can evidence exceptional circumstances.

12.3 This evidence will need to mitigate the additional administrative burdens related to monitoring spend on individual bank accounts (for both the ICB and the individual), the decreased oversight of the spend of public funds, and the added difficulties in returning surpluses to the ICB.

12.4 Where individuals maintain an existing bank account that has been agreed as an exceptional circumstance, the budget holder must send statements to the ICB PHB Team on a three-monthly basis for account monitoring, or on request of the ICB if these are required more frequently.

12.5 In the event of an individual having a separate nominated bank account for their PHB funding, the individual must return any surplus identified to the ICB within 14 days of the request being received. Failure to do so will result in action being taken by the ICB through the misspend process.

12.6 Where individuals have a bank account for their PHB funding, should the individual decease, the funding within the PHB bank account should be immediately returned to the ICB and not go into the personal assets/estate of the individual. This is an explicit requirement under the PHB User Agreement.

## 13. Roles and responsibilities of PHB budget holders

13.1 The ICB would expect all PHB budget holders to:

- Always operate within employment law regulations.
- Have a clear job description and contract of employment for each PA
- Ensure a DBS check is undertaken for each PA
- Plan rotas, manage and record PA annual leave and sickness
- Oversee staff retention, manage employment issues and ensure that all PAs have the relevant training. For more information on Training refer to the Training Guidance.

- Keep written notes of care delivery (activities, care interventions performed, medication administered, any changes to normal condition, etc…). These records should be kept for 6 years.
- Submit timesheets/invoices of PA hours worked to the payroll provider.
- Contact the identified case manager prior to making any changes in care provision that may be required.

## 14. Clinical risk

14.1 The ICB is committed to promoting individual choices, while supporting them to manage risk positively, proportionately, and realistically. The ICB acknowledges that supporting people to make informed decisions with an awareness of risks in their daily lives enables them to achieve their full potential and to do the things that most people take for granted.

14.2 An individual who has the mental capacity to make decisions and chooses voluntarily to live with a level of risk, is entitled to do so. The ICB requires that the NHS providers clearly document any evidence of decision making and rationale 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.

14.3 Ways of mitigating the risk should be explored with the individual. Depending on the situation and the risk, it may be possible to agree a trial period with the individual that includes more frequent monitoring and reviews.

## 15. Authorisation

15.1 Authorisation of packages will be undertaken in line with ICB scheme of delegation – depending on the proposed cost of the budget.

15.2 When authorising packages, the ICB will require the case manager to have submitted a personalised care and support plan and, in line with schemes of delegation, complete an Individual Package of Care request, if applicable. The authoriser will consider the safety of the proposed package and the likelihood of the plans to meet the individual's assessed health and wellbeing outcomes.

15.3 The authorising individual / Individual package of care panel will embrace the principles of personalisation and equitability of service by providing clear rationale for declining the cost of a PHB or any element of the proposed support within the plan.

## 16. Appeals

16.1 If an individual or their representative chooses to appeal a decision made by, or on behalf of the ICB, then their appeal will need to be based upon the procedure that was applied to reach that decision, or the application of the policy decision in relation to their specific case. The process by which an

individual or their representative can appeal or complain is through the ICB complaints procedure[9].

## 17. Top ups (non-care related)

17.1 In line with the Continuing Healthcare Framework, PHBs cannot be topped up by individuals or their families to meet assessed health and wellbeing needs. Top ups for non-care costs should also not be added into the PHB account, as this is not appropriate for audit purposes/monitoring spend on the account/bringing back identified surpluses of public funds to the ICB.

17.2 If the budget holder considers that the direct payments are insufficient to meet the assessed health and wellbeing needs in the care plan, the individual should request a review of the care package, in the first instance, by the case manager.

17.3 The budget holder may purchase additional services from their own funds which are not identified in the personalised care and support plan, but this should take place separately, with clear accountability (i.e. cleaning, shopping etc.).

## 18. Case management

18.1 Recipients of a Personal Health Budget (PHB) financed through NHS Continuing Healthcare will be assigned a dedicated case manager. This case manager serves as the primary point of contact for the budget holder, facilitating discussions regarding any prospective adjustments in their care requirements before their implementation. The ICB PHB Team does not case manage individuals in receipt of a PHB.

## 19. Commissioned or existing services

19.1 The ICB will provide PHBs so that individuals may use them to meet their identified health and wellbeing outcomes. The use of such funding does not extend to the delivery 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 via the Joint Integrated Community Equipment Service contract, continence services, primary care services, community therapy services, district nursing services etc).

[9] https://onedevon.org.uk/contact-us/patient-advice-and-complaints/

## 20. Use of PHB funding

20.1 A Personal Health Budget can be spent on a broad range of services that will enable the person to meet their health and wellbeing needs. Individuals should be empowered to choose from a wide variety of resources and activities to meet their identified health and wellbeing outcomes.

20.2 Individuals may only use their PHB to purchase care, items or activities agreed in their personalised care and support plan and set out in their signed PHB User Agreement.

20.3 Any expenditure will adhere to the Direct Payments Guidance and the terms and conditions of the PHB User Agreement. The PHB User Agreement is a contract between the individual or nominated person and the ICB, which clearly details the agreed budgetary spend.

20.4 The ICB will always aim to ensure that innovative, personalised packages of care are designed and put in place to support people to have choice and control wherever possible over their care, and that funding can be used reasonably and flexibly to meet individuals agreed health and wellbeing outcomes.

20.5 The PHB Team reserve the right to review of offers of funding for some Categories of a PHB: such as, Stationery, Contracting, Electrical Equipment, Recruitment and PPE/Consumables.

## 21. Exceptional circumstances around the use of the PHB

21.1 There may be occasions where exceptional circumstances need to be agreed to ensure that a Personal Health Budget is able to meet the needs of the individual and their family, fully and flexibly, where no other options are available.

21.2 In order for Devon ICB to consider exceptional circumstances, the case manager must demonstrate the rationale as to why as exception should be considered.

21.3 All case managers will review the Direct Payments for Healthcare Guidance and/or Guidance for People with Learning Disabilities before submitting an extenuating circumstances request. Examples of an extenuating circumstance request could include employing family members providing paid support and living in the same address as the PHB recipient; PAs who wish to remain self-employed; the purchase of equipment; the engagement of a therapist with specialist skills.

21.4 The ICB PHB Team will consider extenuating requests submitted by case managers, who are required to provide details and supporting rationale of the

request. PHB Team will complete an extenuating circumstance form and forward for authorisation to the head of service or deputy. The request does not set a precedent for other future cases.

21.5 The guiding principles of the extenuating circumstances application are centred on:

- A case-by-case approach to each request – what works well for one person may not work well for another and as such it is not appropriate to create a blanket policy for exceptional requests.
- The extenuating circumstances request being based on assessed needs and not wants.
- An open approach and commitment to encourage creativity in support planning by commissioners

## 22. Supporting people to manage their Personal Health Budget

22.1 The ICB works with several services across Devon to enable people to consider and access a wide range of support options, advice and information to help them to meet their agreed health and wellbeing outcomes.

22.2 The ICB will jointly commission Direct Payment Support Services with Local Authorities to ensure that good quality advice and information is available to all PHB recipients.

22.3 The Direct Payment Support Service will provide on-going support to individuals with their PHB, once the plan is agreed and implemented, including general advice and information, employment support including financial support for PHB holders and/or their representatives.

22.4 The case manager will be available for on-going clinical advice, changes in identified care needs, information and to support people to make good decisions about their care and to manage any risks.

22.5 Individuals in receipt of a PHB will be able to access Direct Payment Support Services at no cost to them to support them to manage their PHB. The ICB provides funding for payroll services and/or managed account services, where this is required or requested. The ICB also funds Employer's Liability Insurance for Direct Payment PHBs, which will support with any HR issues/employment law advice.

## 23. Employers Liability Insurance

23.1 It is the responsibility of any employer paying staff through a PHB to ensure that Employer's Liability Insurance is in place and that the staff training is appropriate to ensure the insurance is valid.

23.2 The ICB would expect that all Personal Assistants have an appropriate level of cover (e.g., to include healthcare tasks where relevant) and for the

employer to add new staff to the policy where required. The insurance should be renewed annually using the accrued amount within the Personal Health Budget.

23.3 It is also the responsibility of the employer to ensure that the Personal Assistants covered by the Employers Liability Insurance have the appropriate training and competency sign off to ensure the insurance is valid.

23.4 Individuals who do not have the appropriate level of cover through their Employers Liability Insurance will be in breach of the User Agreement.

23.5 It is the responsibility of the employer that self-employed personal assistants hold liability insurance to undertake personal care responsibilities.

## 24. Employed Personal Assistants (PAs)

24.1 In line with the PHB Policy, NHS Devon will not usually allow the employment of Personal Assistants who reside at the same address but a request for this model can be made and will be considered on a case-by-case basis. The request will be considered by NHS Devon ICB on completion of an extenuating circumstances form.

24.2 The budget holder acts as the employer of personal assistants and takes full responsibility for all employment matters, including but not limited to:

- Purchase of Employer Liability Insurance
- Ensure each personal assistant has a contract in place. Should a budget holder feel any changes to contracts are required, those changes should only be enacted after seeking legal advice from the employment insurance provider. It is the budget holders' responsibility to seek advice from the employment insurance provider on the implications of contractual changes.
- Ensure enhanced Disclosure and Barring Service (DBS) checks are carried out and that references are sought for each personal assistant or person who may provide care for the individual.
- Compliance with Working Time Regulations.
- Paying tax, National Insurance, holiday pay and employer pension contributions (in line with national legislation) for any personal assistants employed through the PHB.

24.3 The Direct Payment Support Service and the Personal Health Budget Team will be able to advise on the relevant areas above relating to employing personal assistants.

## 25. Self-employed Personal Assistants (PAs)

25.1 The ICB does not usually allow the use of self-employed PAs, but a request for this model can be made and will be considered on a case-by-case basis.

The request will be considered by NHS Devon ICB on completion of an extenuating circumstances form.

25.2 The ICB will only agree to self-employed Personal Assistants in extenuating circumstances, if assured that:

- The risks and benefits of being self-employed vs employed to make an informed choice.
- Individual is skilled/trained to undertake care tasks.
- The Personal Assistants have the right to work in the UK - it's important to ensure that the individual has the right to work in the UK and are complying with any visa or immigration requirements, if applicable.
- HMRC registration/UTR number regarding self-employees status.
- Enhanced DBS check.

The use of self-employed Personal Assistant(s) needs to be agreed by the ICB, prior to the work being undertaken.

25.3 The budget holder is responsible for checking the self-employed Personal Assistant have the appropriate level of Public Liability Insurance in place before they commence work.

25.4 It is the expectation of NHS Devon that self-employed Personal Assistants have the appropriate training and competency to carry out the tasks as identified in the personalised care and support plan. It is the budget holder's responsibility to verify that the self-employed Personal Assistants have the appropriate training and competency.

25.6 Should the PHB recipient be admitted to hospital, the budget holder should inform the PHB Team immediately to discuss the retention of self-employed Personal Assistants for this period. Please refer to paragraph 43 for more information.

If using self-employed PAs, the budget holder must ensure that they are registered as self-employed via HMRC, that they have appropriate training and that they hold liability insurance to undertake personal care responsibilities.

25.7 A self-employed person will usually have the unfettered (or unrestricted) freedom to provide a substitute of their choosing to complete the job in his or her place. It is the responsibility of the budget holder to check the substitute PA's training and ensure it is relevant to meet the individual's needs.

25.8 Where an individual has been fast-tracked and has an existing team of self-employed PAs, the ICB will continue this arrangement for a period of three months whilst consideration to moving to employed status is undertaken. At the point of review, if the person remains eligible for CHC funding, the PHB

Team will complete an extenuating circumstance form in order to consider an extension of the arrangement.

## 26. Rates of pay for Personal Assistants

26.1 The ICB will use the "Personal Assistant Hourly Rate Framework" to support the decision of rates of pay for Personal Assistants on a case-by-case basis, considering the care interventions and competencies required by a PA to meet the assessed needs of an individual.

26.2 The framework is based on a table of care interventions that lists various care tasks typically undertaken by healthcare professionals with different levels of complexity, categorised in bands. Each level of complexity is associated to a pay band (Band 3 to 5). This approach will recognise and distinguish different levels of complexity and skills on a case-by-case basis. The ICB will also consider the difficulty in recruitment/retention of a suitable workforce etc.

26.3 To continue recognising the workforce and their valuable contribution in delivering complex healthcare tasks, as NHS pay awards are agreed annually, the PHB team will consider if it's appropriate to apply these increases to the personal assistant's hourly rate. These increases will only to those PAs who are on an appropriate assessed and agreed pay band.

26.4 The terms and conditions of the Personal Assistant's employment will be set out in individual employment contracts.

26.5 If an individual is assessed as requiring support of a sleeping night, the ICB will only pay the PAs the national minimum wage.

26.6 A sleeping night is defined as staff providing support no more than twice a night and the duration of the care interventions, if woken, should not be longer than 15 minutes, otherwise, this would constitute a waking night.

26.7 The ICB will adhere to the NHS England guidelines and "recognise the additional 'hidden' costs. For example, if someone is employing an assistant, they must ensure that there is enough funding available to cover the additional necessary costs of employment such as tax, National Insurance, training and development, pension contributions, any necessary insurance such as public liability, emergency cover and so on."[10]

## 27. DBS Checks

27.1 The ICB requires all Personal Assistants to have a current enhanced DBS check before working for an individual through a PHB.

[10] Guidance on Direct Payments for Healthcare: Understanding the Regulations

27.2 DBS checks will be completed by Local Authority (only for employed personal assistants).

27.3 The budget holder must ensure enhanced Disclosure and Barring Service (DBS) checks are carried out for each personal assistant or person who may provide care for the individual.

## 28. Living at same address

28.1 In line with national guidance, the ICB does not usually permit the employment of Personal Assistants who live at the same household as the PHB recipient. For the ICB to consider paying an individual living in the same household as a Personal Assistant, the ICB has to be assured that it is necessary to secure a service from that person, in order to meet the PHB recipient needs. This will be considered on a case-by-case basis.

## 29. Training for Personal Assistants

29.1 The ICB will include a set amount of money for training. The required training should be discussed with the individual, the case manager and the PHB Team.

29.2 It is the responsibility of the employer using a PHB to employ staff to ensure that their training is up to date and to liaise with their case manager if further training or updates are required.

29.3 PHB recipients should not purchase training outside that in their care plan and must contact their case manager if they feel additional training needs are identified.

29.4 Self-employed PAs are responsible for meeting the costs associated to Core Skills Training required to deliver to meet the identified needs of the PHB recipient.

29.5 The ICB is responsible for meeting the costs associated to self-employed PAs Training, where they are required to undertake Delegated Healthcare Tasks (DHTs).

29.6 Mandating and Monitoring Training Completion

a) The Integrated Care Board (ICB) requires that all staff funded through Personal Health Budgets (PHBs) complete specific mandatory training in accordance with national and local standards. This training ensures the safety, quality, and compliance of the care delivered. Mandatory training as detailed in the “Training Summary - Employer Guidance v2”

b) Training must be completed within an agreed timeframe following employment or a change in needs.

c) Where the PHB recipient is the employer, they must work with the ICB to ensure that training aligns with local care requirements and standards. The ICB will review training compliance as part of assessments and reviews, and failure to meet training requirements could result in the suspension or reduction of PHB funding.

d) In the event that mandatory training is not completed, the **ICB** may take the following actions:
   - A formal reminder will be issued to the PHB recipient
   - A review meeting may be requested to assess training needs and timelines for completion.

29.7 Continued non-compliance may result in a reduction or withdrawal of PHB funding for services or staffing.

## 30. Review of offers of funding for PHB Categories Framework

30.1 The ICB recognises that certain components, such as stationary, consumables/PPE, recruitment, contracting and electrical equipment may be required to support the effective management of a PHB. A framework has been developed with the core objective of enhancing the fairness and efficiency of resource allocation for PHB recipients, based on the specific needs of each care package, with a particular focus on the number of Personal Assistants (PAs) involved.

30.2 The document “Review of Offers of Funding For PHB Categories” is available upon request and will be provided when applying the framework.

30.3 Items can be bought within the set budget at the individual’s discretion; however, individuals may choose to purchase more expensive items. In this case, NHS Devon ICB expects the additional cost to be funded by the individual. The amount awarded for each budget line is set to last for one year and will not be topped up if funds are spent before the end of the award period. Funds will reset each year and will not accumulate in future years. The arrangements are periodically reviewed to ensure they remain appropriate.

30.4 All equipment purchased through the PHB remains the property of the PHB recipient and must be used exclusively for purposes related to managing the PHB and its associated care package. It is the responsibility of the PHB recipient to ensure the appropriate use, safekeeping, and maintenance of the equipment. Once the equipment has been purchased and is no longer required or functional, it will be written off as a non-recoverable cost. The ICB does not anticipate recovering these funds.

30.5 If the allocated funding for equipment is not used, the ICB PHB Team will recoup the funds.

30.6 The PHB Team reserve the right to apply the review of offers of funding for PHB Categories Framework when budgeting the individual's agreed care plan.

## 31. Consumables

31.1 The ICB would expect that all options for consumable delivery through commissioned contracts are explored through the individuals personalised care and support plan, before agreeing a set cost for this in the PHB (e.g., through commissioned continence services).

31.2 Where consumables cannot be provided through existing community services or prescriptions, the ICB will discuss with the individual an appropriate weekly amount to be included in the PHB.

31.3 PPE/Consumables: This category encompasses items that may serve dual purposes, hence their combination into a single category. It includes, but is not limited to, gloves, aprons, masks, goggles, hand soap, hand sanitiser, surface disinfectant, soiled bags, blue rolls, and any other specific components necessary for a care package.

31.4 The ICB will include the cost of PPE, on a case-by-case basis, to assure itself that the package is clinically safe – acknowledging that to practise whilst not wearing PPE would put the individual at risk and potentially others around them. The ICB's principle is that the PHB will cover the cost of consumables equivalent to what an individual receiving a contracted personal care service would receive.

31.5 The PHB Team reserve the right to apply the Review of offers of funding for PHB Categories Framework.

## 32. Non-care related tasks

32.1 The ICB would not expect to fund Personal Assistant time to run non-care related tasks for the PHB recipients (e.g., collecting prescriptions, shopping, cleaning etc.) unless these are specifically set out in the care plan as meeting an assessed health and/or social care need. The ICB would expect appropriate benefits and allowances to be used for tasks related to day-to-day activities

32.2 The ICB may fund the Personal Assistants time to accompany the individual to do these tasks if it forms part of the personalised care and support plan as 'enabling'. In all circumstances, this should be set out in the individuals plan and Personal Health Budget User Agreement.

## 33. Agency support

33.1 It is possible for an individual to have a direct payment to pay for care directly from an agency. In this case, the individual will contract directly with the agency for this support. Where an individual has a notional budget, the contract remains between the ICB and the agency.

33.2 It is also possible for an individual to have a direct payment to pay for care directly from an agency together with an element of care provided by Personal Assistants.

33.3 Where a direct payment is used to pay for a care agency or regulated service, the budget holder should use a provider who is registered with the Care Quality Commission in respect of that activity.

33.4 Direct payments cannot typically be used to purchase regulated activities from non-registered service providers. However, exceptions may be authorised by the ICB for specific situations, such as day care or occasional agency support, where these arrangements are deemed appropriate and meet the individual's needs.

33.5 The ICB retains the right to negotiate packages of care on behalf of the service user.

33.6 NHS Devon ICB expects that agency providers will cover the subsistence costs of their staff, including agency carers, as part of their operational expenses. It is anticipated that these costs will be managed internally by the provider and not passed on to the commissioning body.

33.7 Providers may be required to submit their subsistence policy for review.

33.8 NHS Devon ICB expects providers to explore cost-saving measures, such as free transportation options or complimentary event entries for carers, to further minimise subsistence expenses. This approach ensures that funding provided by NHS Devon ICB is focused on directly benefiting service users, maintaining the integrity and efficiency of budget allocation.

33.9 Requests for subsistence support will be considered on an individual basis, ensuring they NHS Devon ICB decisions are reasonable, proportionate, and cost-effective.

## 34. Mileage

34.1 The ICB would not routinely agree to pay mileage to individuals or to allocate mileage funding for their Personal Assistants. The ICB would not usually allocate funding for mileage for Personal Assistants to get to their place of work.

34.2 The ICB may consider mileage payments in exceptional circumstances; for example, for Personal Assistants to use their own vehicles to enable recipients of a PHB to access the community/appointments etc. – however the ICB would need clear reasoning as to why this could not be covered through mobility benefits such as Personal Independence Payment (PIP).

34.3 Where the ICB does agree to pay mileage in exceptional circumstances, the HMRC mileage rate will be applied. As of April 2022, this is £0.45p per mile.

## 35. Transport

35.1 The ICB would expect that transport to and from appointments, activities etc., would be met through existing resources (PIP, Patient Transport Services, Motability vehicles, their own resources).

35.2 Transport to and from respite and day care will be considered on an exceptional circumstances basis where there is clear evidence available to support delivery of an assessed health and wellbeing outcome as a result.

## 36. Equipment

36.1 It is not expected that PHBs should be used to purchase equipment. The ICB would expect that equipment would continue to be sourced through usual routes (i.e. Community Equipment Store contracts - CES).

36.2 The ICB may, in exceptional circumstances, agree to fund a specific piece of equipment using a PHB where it is not possible to purchase equipment from CES, the exceptional circumstance will apply– but is conscious that PHBs are not a way for individuals to access services/equipment/provision that is not available to CHC eligible individuals who are not in receipt of a PHB. The ICB will therefore follow the usual process for agreement of funding for equipment.

Any equipment or medical devices purchased via a PHB are for the sole use of the recipient and remain the property of the NHS. If no longer required, items should be returned to the relevant equipment store.

## 37. Accommodation

37.1 A PHB should not be used to fund accommodation for individuals as it is expected that accommodation costs should be met through existing benefits or other income.

37.2 The ICB may consider funding accommodation for the individual where this represents respite provision and will review this on an individual basis. The ICB will not fund accommodation for Personal Assistants but may fund their

hours worked to support an individual during a period of respite. This would be considered as an Exceptional Circumstance.

## 38. Utilities

38.1 The ICB will not usually agree to fund utility bills/costs through a PHB. It is expected that, in most cases where individuals have higher utility costs due to the nature of their condition, these additional costs should be met through existing benefits.

## 39. Respite for 24/7 packages

39.1 Where the Personal Health Budget is used to fund a 24/7 supported live in arrangement, the ICB recognises the need for respite to allow for the PHB recipient to have a break from the home.

39.2 In order to meet agreed identified outcomes there is the option for respite. Where this need is identified, the ICB will contribute a maximum annual amount of 1% of the total PHB, to solely cover:

a) the PA's travel costs. If the PA is travelling in the car with the PHB recipient, then no costs should be claimed via the PHB as the PHB recipient would have the same fuel expenses whether travelling alone or with the PAs.
b) and/or PA accommodation. If the choice is to hire shared accommodation, such as a house, then the costs can be split. For example: 4-bedroom house hired for PHB recipient and 3 PAs then the PHB can contribute 3/4 of the funding.
c) and/or pay for additional hours worked by PAs while away with the PHB recipient. Unused hours can also be 'banked' from previous weeks to save up for this, such as having family members provide required care, but please ensure care needs are always met as per the care plan.
d) and/or a subsistence allowance for PAs of up to £20 per PA per 24-hour period for meals/drinks (no alcohol) if the PAs are not staying in self-catered accommodation whilst away. If in self-catered, they can take their own food with them and cook as they would at home.
e) Travel insurance costs for PAs, if required, should be taken from the allocated 1% budget.
f) Any remaining cost will be the responsibility of the PHB recipient.

39.3 The equivalent of the annual amount of 1% can only accumulate in the PHB account for a maximum of 2 years and does not apply to individuals living within residential or nursing home placements.

## 40. Respite

40.1 Respite allocation should be identified in the individual's personalised care and support plan and agreed through usual processes. Respite funding can be added into the PHB account but should only be used in the way described in the agreed care plan and PHB User Agreement.

## 41. Working Time Regulations (WTR)

41.1 Working Time Regulations are designed to protect the health and safety of employees and to ensure the safe operation of the work being undertaken.

41.2 It is the responsibility of the PHB Representative to ensure that there are enough Personal Assistants in place to meet Working Time Regulations.

41.3 In extenuating circumstances, there may be the need to opt out of the Working Time Regulations. This will need to be considered by the ICB, with clear evidence as to the rationale behind this request to be provided by the PHB Representative and the Case Manager. This may not be agreed if the ICB considers the request is not conducive to safe and sustainable care delivery.

41.4 If PAs are requesting to opt out of the Working Time Regulations (WTR), the ICB would require full disclosure of their working hours, not only the proposed hours within the PHB but also additional employment they may be undertaking. The ICB may consider requests for opting out of the WTR but will need to take into consideration safe and sustainable care delivery.

In extenuating circumstances, the ICB will need to consider the longevity of the care package, considering contingency planning and suitable work/life balance of employees.

## 42. National Minimum Wage (NMW)

42.1 In agreed exceptionalities, where the Personal Assistants live at the same address, the Personal Assistants are exempt from National Minimum Wage regulations. [11]

- family members of the employer living in the employer's home
- non-family members living in the employer's home who share in the work and leisure activities, are treated as one of the family and are not charged for meals or accommodation, for example au pairs.

[11] The National Minimum Wage and Living Wage: Who gets the minimum wage - GOV.UK (www.gov.uk)

## 43. Support in hospital

43.1 The ICB would not expect Personal Assistants to undertake healthcare tasks while an individual is in hospital. The ICB may consider a 'retainer' payment to Personal Assistants, where the PHB recipient is admitted to hospital to retain the staff; although would expect that annual leave options are also explored by the Personal Assistants.

43.2 There may be circumstances where it is appropriate for a Personal Assistant to support an individual in hospital (e.g. where the individual has challenging behaviours or specific communication approaches); however, this will be at the discretion of the ICB and in line with the personalised care and support plan.

43.3 In all circumstances the Personal Assistant will follow the hospital delegation policy and not the community care plan.

43.4 The ICB may pay Personal Assistants for up to 28 days at the minimum hours outlined in their employment contracts, followed by 14 days half pay. If an employment contract does not exist, or the contract is zero hours, the ICB will use its discretion over the appropriateness of the retainer period, considering the established staff team and difficulty in starting a new package should the Personal Assistants need to find new employment while the individual is in hospital. NHS Devon will liaise with the Managed Account service so that they are aware of any staff retainer payments.

43.5 Any such request for discretion around hospital admission and the retention of Personal Assistants must first be discussed with the PHB Team.

## 44. Monitoring and review

44.1 The ICB will monitor transactions on the PHB account on a regular basis. Where transactions do not meet the agreed and identified outcomes, the ICB will request immediate evidence of spend to assure itself there has not been misspend on the account.

44.2 Spend on the accounts will be reviewed on a three-monthly basis, unless the ICB has reason to believe there is misspend on the account, at which point it will request immediate rationale for spend that appears to be outside the parameters of the support plan/User Agreement.

44.3 The ICB commits to leaving at least 8 weeks' worth of funding in each account. This can be considered on an individual basis by discussion between the ICB and the budget holder. The ICB will always write to individuals to advise that a surplus has accrued and request these funds are returned, except where misspend has occurred.

44.4 PHB reviews will be in line with individual's healthcare review. As per the National Framework,12 this should take place after three months of CHC eligibility and annually thereafter unless a change in need is identified.

## 45. Misspend

45.1 Regular basis and if transactions do not fall within the identified parameters, the ICB will request immediate evidence of any unauthorised spend to avoid closure of the account.

45.2 Where misspend forms a genuine mistake on the part of the budget holder, the ICB will liaise with them to repay the misspent funds in line with reclaim policy and procedures.

45.3 Where the ICB identifies fraudulent activity, a referral will be made to Counter Fraud to progress, or legal advice will be sought.

## 46. Gratuitous Payments

46.1 The ICB is committed to ensuring that all Personal Health Budget (PHB) funds are used responsibly and in accordance with the approved personalised care and support plan and budget agreement. Employers are prohibited from using PHB funds for gratuitous or non-essential payments, including ex-gratia payments, bonuses, or any other payments not tied to a contractual obligation or direct care provision, unless such payments have been explicitly discussed with and approved in writing by the ICB in advance.

46.2 Any unauthorised payments will be considered a misuse of public funds, and the employer or budget holder will be solely liable for any associated consequences. The ICB reserves the right to review, audit, and recover misused funds, as well as to take appropriate action, which may include suspension or termination of the PHB agreement.

46.3 Employers are strongly encouraged to consult with the ICB before making any expenditure outside the approved care plan.

## 47. Leave Policy for Personal Assistants (PAs) Funded by PHBs

47.1 Employers are encouraged to consult their employer liability insurance provider for advice and guidance to ensure compliance with legal requirements and best practices related to employment matters, including leave policies, workplace risks, and employee welfare. Additionally, the Integrated Care Board (ICB) should be consulted for further support and clarification on policies or procedures relevant to PHB-funded employees and care arrangements.

[12] National framework for NHS continuing healthcare and NHS funded nursing care

47.2 *Sick Leave*

- Entitlement: PAs are entitled to statutory sick pay (SSP) as outlined by national employment laws, provided they meet eligibility criteria.
- Notification: PAs must inform their employer (PHB recipient or their representative) as soon as possible when they are unable to work due to illness.
- Documentation: A doctor's note is required for absences exceeding 7 consecutive calendar days.
- Cover Arrangements: PHB recipients may use the PHB budget to arrange temporary cover, subject to approval and within the agreed care plan.

47.3 *Maternity Leave*

- Entitlement: PAs are entitled to statutory maternity leave and pay, including statutory maternity pay (SMP) or maternity allowance, in accordance with employment law, if they meet the qualifying criteria.
- Notification: PAs must inform their employer at least 15 weeks before the expected due date, providing a MATB1 form from their healthcare provider.
- Cover Arrangements: The PHB can be used to recruit temporary cover for the duration of the leave, subject to approval and within the agreed budget.

47.4 *Bereavement Leave*

- Entitlement: Employees should be entitled to bereavement leave for the loss of:
    - Immediate family members (spouse, partner, child, parent, or dependents).
    - Close relations or others significant to the employee (e.g., a non-dependent living in their household).Notification: PAs should inform their employer as soon as possible, specifying the duration of leave required.
- Notification: PAs should inform their employer as soon as possible, specifying the duration of leave required
- Pay: Statutory parental bereavement leave for a child is paid if the employee qualifies.
    - For other losses, employers may provide paid compassionate leave or unpaid leave, depending on the employment contract.

47.5 *Crisis Leave*

- Definition: Crisis leave covers unforeseen personal emergencies, such as a family member's sudden illness or other urgent situations requiring immediate attention.
- Entitlement: Crisis leave is discretionary and subject to agreement between the employer and the PA.
- Duration and Pay: Short-term unpaid leave is typically provided. Please consult your employer liability insurance provider for guidance and support.

47.6 *General Provisions*

- Leave Records: All leave requests and approvals must be documented for audit and compliance purposes.

- Funding for Cover: The PHB budget can be used to arrange temporary staff to cover absences during periods of leave, provided this is pre-approved and aligns with the care plan.
- Flexibility: Employers are encouraged to work with PAs to accommodate leave needs while ensuring care continuity for the PHB recipient.

# 7. Accountabilities, Duties and Responsibilities

| | |
|---|---|
| **Chief Executive Officer** | The Chief Executive Officer has ultimate accountability for the strategic direction and operational management of NHS Devon, including compliance with all legal, statutory and policy requirements. |
| **Policy Sponsor** | The Policy Sponsor is responsible for:<br>• ensuring that policy is appropriate for consideration for approval.<br>• endorsing this policy ahead of submission for approval.<br>• with the Policy Lead, maintaining and updating procedures/protocols and other supporting documents for this policy. |
| **Policy Lead / Author** | It is the responsibility of the Policy Lead / author to:<br>• ensure as far as possible that the policy is in line with Department of Health and Social Care guidance, legal requirements, and advice from clinical bodies.<br>• to complete a QEIA and Implementation Plan where required<br>• undertake a fair and proportionate consultation period with the relevant stakeholders as part of the document's development.<br>• to ensure that the policy is in alignment with NHS Devon's strategy and values.<br>• ensure that the policy is developed, approved, disseminated, and monitored as set out in the document.<br>with Policy Sponsors, maintaining and updating procedures / protocols and other supporting documents for this policy. |
| **Title of any other relevant Officer** | [Set out the specific responsibility for implementation of any part of the process, clearly stating what that officer's responsibility is, including who is responsible for drafting and updating any part of the document] |
| **Titles of any Committee** | [Set out the specific responsibility for any part of the process, including reviewing the policy and receiving updates on its effectiveness and compliance] |
| **Line Managers** | Line managers have a responsibility to ensure their staff comply with NHS Devon policies and standards within their areas of responsibility. |
| **All Staff** | Employed or engaged staff have a duty to comply with NHS Devon policies and standards as outlined in their contracts of employment and codes of conduct. |

# 8. Implementation

8.1 All staff will be informed of the approval of the Policy via the Staff Bulletin which will provide a link to the document on the NHS Devon Intranet.

8.2 NHS Devon Senior Managers, or their designated representatives, will implement this policy by:

- Notifying all staff of its existence. New staff will be informed of this policy as part of their induction.
- Destroying all superseded paper-based versions of the policy and electronic versions retained in their area.
- Having adequate knowledge of, and / or access to, all relevant legislation in order to ensure that compliance with such legislation is maintained.
- Discussing with staff as part of their regular one-to-ones how they seek to achieve their individual objectives around policy review and maintenance.

An implementation plan should be completed for all new policies. The template can be found here. The completed implementation plan should be submitted with the policy to the Policy Sponsor with the final draft at approval stage.

8.3 If the need for training has been identified for all staff or particular groupings of staff, include an overview here. Reference should be made to who will require the training, the type of training, how it will be delivered and how often it should be undertaken.

# 9. Approval and Review

9.1 This policy will be reviewed annually, or sooner if required, in order to ensure that it is current, relevant and reflects the strategic aims, objectives, organisational structures and responsibilities of NHS Devon.

# 10. Monitoring compliance and effectiveness

10.1 There is ongoing Quarterly PHB data collection by the business intelligence team to evidence number of PHB's within Devon Footprint reported to NHS England. This data should demonstrate NHS Devon's commitment to the NHS England mandate of the national commitment to deliver on the mandate expectation from NHS England for 200,000 people to have a PHB by 2023/24.

10.2 The ICB will monitor transactions on PHB Direct Payment accounts on a regular basis. Where transactions do not meet the agreed and identified outcomes, the ICB will request immediate evidence of spend to assure itself there has not been misspend on the account.

# 11. Quality & Equality Impact Assessment (QEIA)

11.1 A QEIA should be completed for all new policies and where **significant amendments** are made.

# 12. References

## 12.1 Legislation and statutory requirements

- The National Health Service (Direct Payments) Regulations 2013
- The National Health Service (Direct Payments) (Amendment) Regulations 2013
- The National Health Service (Direct Payments) (Amendment) Regulations 2017
- The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 2) Regulations 2019
- Mental Capacity Act 2005 (c.9)
- Mental Health Act 1983 Code of Practice
- Safeguarding Vulnerable Groups Act 2006 (c. 47) as amended by the Protection of Freedoms Act 2012 (c. 9)
- Care Act 2014

## 12.2 Best practice recommendations and other key guidance

- Personal health budgets in NHS Continuing Healthcare (CHC)
- Delegation and Accountability – supplementary information to the NMC code
- Accountability and delegation | Royal College of Nursing (rcn.org.uk)
- Personal Health Budget (PHB) Quality Framework
- Personal Health Budget Framework for Personal Assistants Hourly Rate of Pay
- Personal Health Budget Framework for PHB Funding Categories
- LITRG-factsheet-is-your-PA-employed-or-self-employed_0.pdf
- Training summary - Employer Guidance v2

# APPENDIX A – Glossary of terms

| Terms | Definition |
|---|---|
| PHB | Personal Health Budget |
| ICB | Integrated Commissioning Board |
| CHC | Continuing Health Care |
| PA | Personal Assistant |
| CQC | Care Quality Commission |
| Self-employed Personal Assistant | A self-employed personal assistant (PA) is an individual who provides care or support services to a client under their own business terms, rather than being directly employed by the client. Their self-employed status means they operate as an independent contractor rather than an employee, and they are responsible for managing their own taxes, insurance, and other business-related obligations. |
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