



**Nottingham and  
Nottinghamshire**  
Integrated Care Board

# **Personal Health Budgets and Integrated Personal Budgets Guidance**

**August 2023 - April 2024**

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## 1. Introduction

This guidance applies to NHS Nottingham and Nottinghamshire Integrated Care Board (ICB); hereafter referred to as 'the ICB' and outlines the guidance to be followed, where people have a legal right to have a Personal Health Budget, or health and social care are working together to provide an Integrated Personal Budget or where a Personal Health Budget is being offered as part of the NHS local offer.

The NHS exists to serve the needs of all but also has a statutory duty to financially break even (National Health Service Act 2006). ICBs have a responsibility to provide health benefits for the whole of their population, whilst commissioning appropriate care to meet the clinical needs of individual patients.

The ICB has established this commissioning guidance to ensure the best use of NHS resources, providing a level of service that is sustainable and equitable (fair) to the health and well-being of the people within the ICB footprint.

The ICB have a legal duty to offer or provide personal health budgets for those people who are assessed as eligible for any of the following:

- Adult NHS Continuing Healthcare (NHS CHC)
- After-care services under section 117 of the Mental Health Act (1983)
- Personal wheelchair budgets
- Children and Young Person's Continuing Care.

## 2. Purpose

The guidance provides detailed information on different elements of personal health budgets: care and support planning, direct payments, employing personal assistants, direct payment financial monitoring, training for personal assistants and the delegation of healthcare tasks.

This guidance must be used alongside the ICB Personal Health Budget Policy and where appropriate the ICB Continuing Healthcare (Adults and Children) Policy [COM-005-Continuing-Healthcare-Adults-and-Children-Commissioning-Policy-v1.1.pdf \(icb.nhs.uk\)](#), ICB Childrens Continuing Care Policy [COM-006-Children-and-Young-Peoples-Continuing-Care-Policy-v1.1.pdf \(icb.nhs.uk\)](#) or any ICB personal health budget standard operating procedures and processes.

### **3. Scope**

This guidance applies to all employees of the ICB including any individuals working within the ICB in a temporary capacity, NHS Continuing Care delivery teams, other health and social care teams and any individual who is eligible for a personal health budget which is funded by the ICB.

### **4. What is a Personal health budget?**

A personal health budget is an amount of money to support a person's identified health and wellbeing needs, which is planned and agreed between the person, their representative, or, in the case of children, their families or carers and the local NHS team. It is not new money, but money that would normally have been spent by the NHS on a person's care being spent in a more flexible way to meet their identified needs. The use of personal health budgets is one way of providing more personalised care and means tailoring services and support for people to enable them to have choice, control, and flexibility over their care. Personal wheelchair budgets are another form of personal health budget.

Personal health budgets are flexible. They can be used to meet a variety of needs:

- for ongoing care and support to meet people's assessed health and wellbeing needs, e.g. NHS Continuing Healthcare, children and young people's continuing care, aftercare services under section 117 of the Mental Health Act
- for one-off budgets to support people to achieve specific goals or outcomes enabling supported self-management e.g. hospital discharge, mental health recovery
- to support children and young people with education, health and care plans aligned to expectations in the SEND Code of Practice.

And they can be:

- pooled to support several individuals to come together to achieve a common health and wellbeing goal, e.g. a group health weight management programme for people with a learning disability and/or autism
- integrated with social care and/or education personal budgets
- used to target and address wider system priorities such as identified health inequalities.

## 5. What is an Integrated personal budget?

An integrated personal budget is where the budget includes funding from both the local authority and the NHS. This could be for health and social care needs and where appropriate, includes education funding. Integrated personal budgets aim to put in place a seamless approach to care, so that people and their families have the same experience of care and support, regardless of whether their care is funded by the local authority or the NHS.

The joint funded packages of care and S117 aftercare are provided to people as integrated personal budgets.

## 6. What is a Personal Wheelchair budget

A personal wheelchair budget is a resource available to support people's choice of wheelchair, either within NHS commissioned services or outside NHS commissioned services. Personal wheelchair budgets enable postural and mobility needs to be included in wider care planning and can support people to access a wider choice of wheelchair.

## 7. Different ways in which people can have a personal health budget

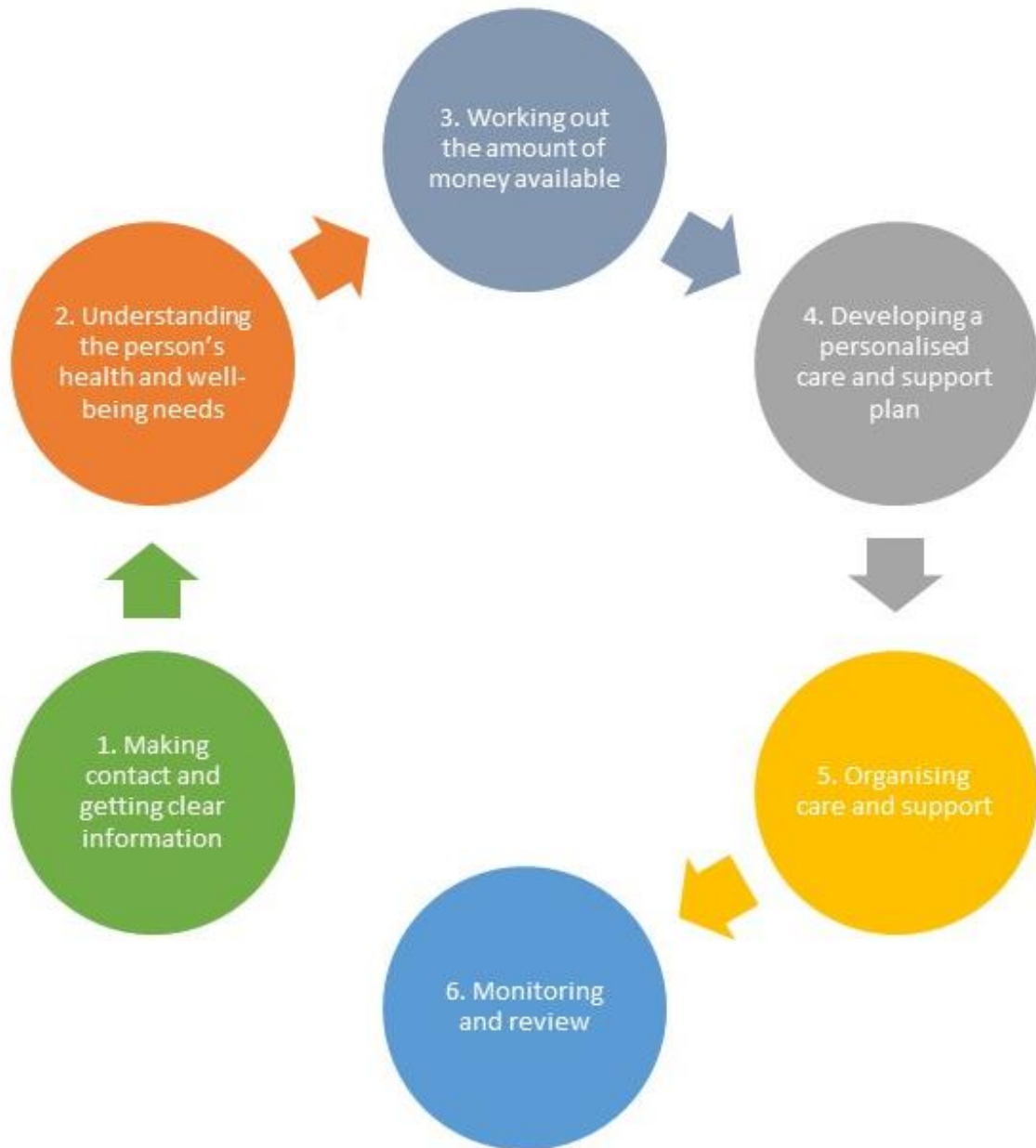
Term	Definition
<b>Notional</b>	The money is held by the NHS and services are commissioned by the NHS according to the agreed personalised care and support plan.
<b>Direct payment</b>	A monetary payment to a person (or their representative or nominee) funded by the NHS, to allow them to purchase the services that are agreed in the personalised care and support plan. A person may wish to employ their own personal assistant
<b>Direct payment 'Managed Account'</b>	'Managed account' is the term used when a direct payment is held in a bank account on behalf of the person (or their representative), 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 retains responsibility for decisions about how the budget is spent, and in most instances is also the registered employer for any personal assistants.
<b>Third Party</b>	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

	<p>the person and their family to ensure the agreed outcomes can be achieved. They are particularly helpful when a person or their representative would like to employ personal assistants:</p> <ul style="list-style-type: none"> <li>• but does not wish to take on the responsibilities of being an employer, or</li> <li>• Lacks capacity or is otherwise not in a position to manage their own budget or be an employer</li> </ul>
<b>'One off'</b>	One off personal health budgets are provided for a specific need which cannot be met through existing commissioned services or unpaid care.
<b>'Mixed'</b>	Someone may wish to have a combination of any of the above such as a notional element and a direct payment element to their personal health budget.

## 8. The process of setting up a personal health budget

There are six steps to the personal health budget process. Regardless of the way someone wishes to have a personal health budget, these steps should always be followed.

## Six steps of the personal health budget process





Step	Process	What should happen
1	Making Contact and getting clear information	A person (or their representative) should be provided with up to date, clear and accessible information about the assessment process and personal health budgets
2	Understanding the health and wellbeing needs of the person	A person (or their representative) should be prepared for their assessment. The assessment should be personalised to them and they should be able to involve family or friends in the assessment.
3	Working out the money available	Following an assessment and if eligible for a personal health budget an indicative budget should be set and the person should be told how much their indicative budget will be.
4	Making a personalised care and support plan	<p>The person with a personal health budget (or their representative) should be central in developing their personalised care and care and support plan and agree who is involved.</p> <p>The person should be able to agree the health and wellbeing outcomes* they want to achieve, together with relevant health, education and social care professionals.</p> <p>Once complete and agreed by the person (or their representative and the NHS team, the care and support plan will need to be approved by the ICB.</p>
5	Organising the care and support	<p>The person should have the option to manage the money as a direct payment, a notional budget, a third-party budget or a mix of these approaches.</p> <p>The person should be able to use the money to meet their outcomes in ways and at times that make sense to them, as agreed in their personalised care and care and support plan.</p>
6	Monitoring and review	The person should have their personalised care and support plan reviewed at least every 12 months. Where a direct payment is in place, this will also be monitored.

\*And learning outcomes for children and young people with education, health and care plans.

## **9. How a personal health budget can be used**

A personal health budget can potentially be spent on a broader range of care and support than would routinely be commissioned by the NHS, if it is agreed as being appropriate to meet someone's identified needs. This could include funding for a personal assistant to help with personal care at home, and equipment such as a wheelchair. The ICBs will not exclude unusual requests without examining the proposal on a case- by- case basis as these may have significant benefits for people's health and wellbeing. Anything agreed in a personalised care and care and support plan which will meet the persons identified health and wellbeing outcomes, for example:

- equipment.
- personal care.
- physiotherapy.
- complementary therapies.
- Assistive and supportive technology (e.g., computers, iPads, Kindles).
- Memberships and subscriptions - will be considered, if evidence is provided in how the membership will support them to achieve their needs and achieve outcomes. However, it will only be approved on a yearly basis and renewal of the membership or subscription will be considered as part of the annual review.

## **10. What a personal health budget cannot be used for**

There are several exclusions that are outlined in National Health Service (Direct Payment) regulations 2013.

The personal health budget cannot be used for or to buy:

- Alcohol, tobacco, gambling or debt repayment, or anything that is illegal.
- Emergency care – for example if someone in receipt of a personal health budget had an accident, they would go to A&E like everyone else.
- Primary care services such as seeing a GP services (GP contract).
- Acute unplanned care (including A&E).
- Surgical procedures.
- Medication.
- NHS charges e.g., prescription charges.
- Vaccination/immunisation.
- Screening.
- In patient care
- Disposables which are provided through an NHS contract (such as continence products) unless the service is unable to supply to meet needs and is in the best interest of the patient.

- Long term residential or nursing care (personal health budgets are not currently available to people who are in a residential or nursing care home)

In addition to the above, a PHB should not be used for:

### **Adaptations**

PHB's cannot be used to fund an adaptation of a person's property. The pathway for an adaptation would be firstly through social care via an application to the Disabled Facilities Grant. Where this has not been successful, the person should look at charitable/ grant giving organisations. If after this the person still requires an adaptation, then the ICBs will examine the proposal on a case- by- case basis as these may have significant benefits for people's health and wellbeing.

### **Equipment**

The pathway for standard equipment requests should be made through the Integrated Community Equipment Lending Service (ICELES). All equipment requests are made following an Occupational Therapy assessment. The ICB panel will approve the request, and this is then ordered and delivered via ICELES. Where a specialist piece of equipment that is not available through ICLES but is still required to meet a person's health need then a request should be made via the CHC team to the ICBs. The ICBs will not exclude unusual requests without examining the proposal on a case- by- case basis as these may have significant benefits for people's health and wellbeing, improve outcomes and increase their independence.

### **Holidays**

Budgets cannot be used to fund a person and/or their family's holiday. Where a person wishes to go on holiday and take their employed PA's or staff from a commissioned provider, they must formally request this through the CHC Team to the ICBs. The ICBs would only normally agree to pay for the staff for the current hours of support that were already agreed in the care and care and support plan. The PHB will not cover the following costs:

- Holidays outside the UK
- flights for the person, their family, or staff.
- hire vehicles.
- food and beverages for the person, their family or staff.
- any other request which is not directly related to a person's health and well-being.

The budget can:

- cover the additional cost of carer accommodation.
- Cover fuel costs where a carer is expected to use their own vehicle to provide care and support to a person on their holiday. This excludes fuel costs outside of the U.K.

Funding for holiday support may be requested for up to a maximum of 3 weeks per financial year.

## **Transport and Mobility Vehicles**

The ICB would expect that where a person has access to their own mobility vehicle that this is used to access day provisions, community activities etc. Where a budget includes paid support from a commissioned care provider and/or employed personal assistant(s), the ICB would expect the mobility vehicle to be used to drive the person to day provision or an activity. Fuel costs incurred by transporting a person to and from a day provision or any other activity should be paid for using their benefits. However, the ICB understand that depending on the location of provision that their benefits may not be adequate to cover the transport costs. In these circumstances and with the evidence of it representing value for money, the ICB will consider paying for taxi's, the mileage and/or petrol costs.

The budget cannot be used to contribute towards the purchase of a mobility vehicle unless there are exceptional circumstances that can be evidenced, where this would achieve a person's outcomes and evidence value for money.

It should be noted that this list is not exhaustive. The ICB is responsible for agreeing that all intended expenditure is legal as part of the Personal Health Budget governance.

## **11. Developing a personalised care and support plan**

A care and support plan is an essential requirement for any personal health budget and is a way of capturing and recording conversations, decisions and agreed outcomes or goals in a way that makes sense to the person. The plan should be proportionate, flexible, coordinated and adaptable to a person's health condition, situation and care and support needs.

Every person's care and support plan should identify:

- Who they are.
- What they would like to achieve.
- What things they would like to change or keep the same.
- Their support needs and priorities.
- How they intend to meet their assessed needs and support goals using their PHB.
- Are there any risks and how will these be minimised? What support they need to keep healthy and safe?

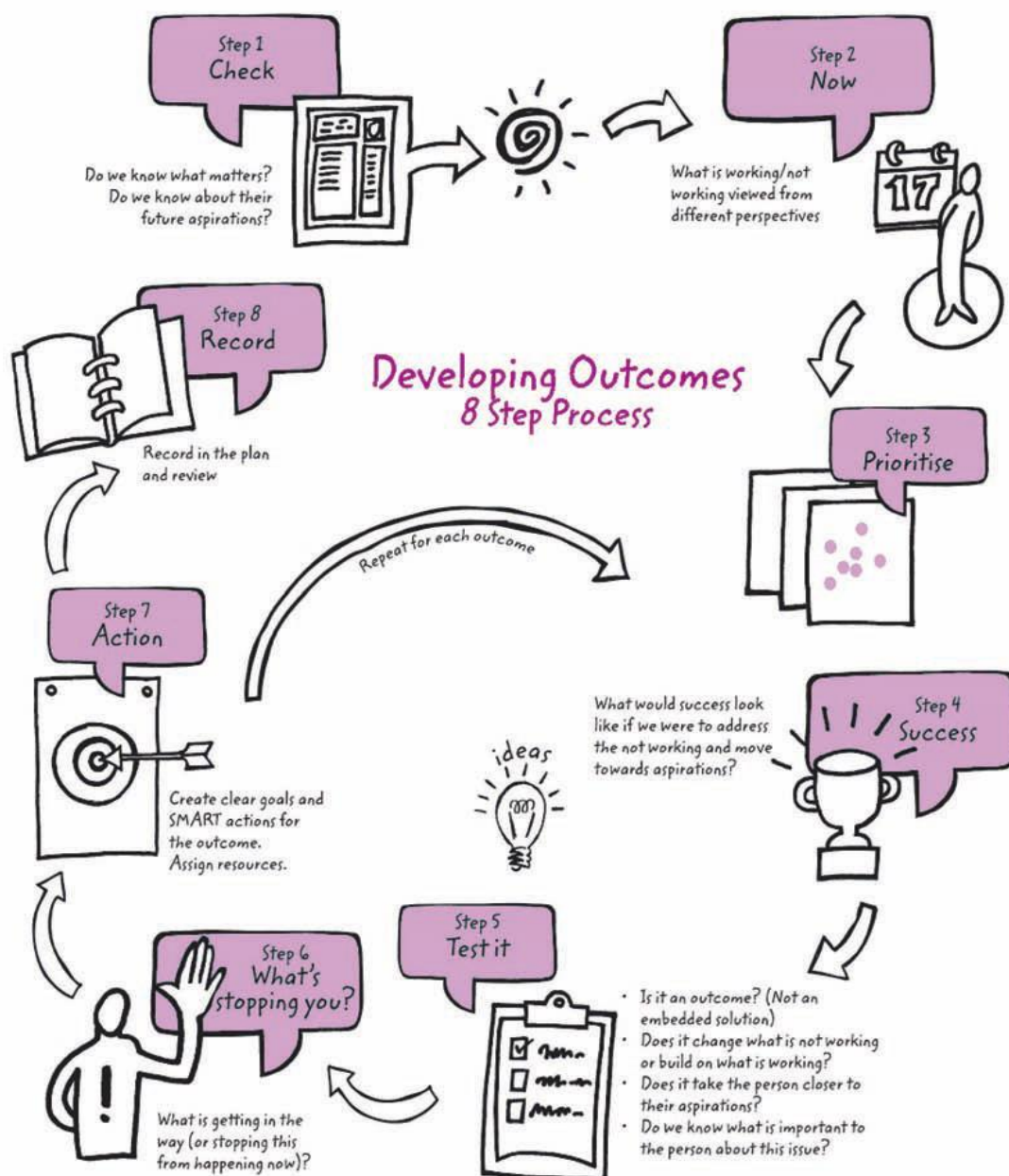
- If Personal assistants are employed – What training is required for a Personal assistant/carer and where appropriate any training required for a Delegated healthcare task.
- How they will spend the budget.
- If there needs to be any contingency plans, in case something goes wrong.
- How the budget will be managed.
- What actions need to happen to implement the plan and who will do them.

Each care and support plan will have the following essential features:

- is proportionate to the level of need of the person.
- outlines the assessed needs, goals and priorities of the person.
- Clearly identifies the outcomes the person wants to achieve.
- the plan is well balanced with the highest needs receiving priority.
- details the combination of formal and informal support that will meet the assessed needs of the person and help achieve their outcomes.
- shows that universal services, assistive technology and ‘free’ community resources have been utilised where appropriate.
- where applicable other relevant public funding sources including Local Authority provision have been accessed in conjunction with the budget.
- takes account of the views and needs of carers.
- is adaptable and flexible, so persons can revise their plans as they learn what works best for them or as their circumstances change.

## **12. How to develop outcomes - the 8-step process**

A straightforward explanation of an outcome is that it is an ‘result’ or ‘end effect’ (concrete or abstract). At an individual level, a good outcome means the benefit or positive difference (end result/end effect) that support can bring to the quality of someone’s life, as defined by the individual. For example, as a result of a carer providing a person, they are able to wash. The outcome is that the person can have a wash. The graphic below provides a useful guide to the process to follow to develop outcomes.



### 13. Approval of the care and support plan and budget

Once a care and support plan has been completed and agreed by the person and the NHS team, it must be sent to the relevant ICB manager or Personal health budget panel to be approved. The ICB will approve, partially approve or not approve the care and support plan.

PHB approval routes can be found in the ICB PHB policy.

In order for the ICB to approve, it will need to meet the care and support plan criteria as set out in section 10.

During the care and support planning stage, the person should be supported to undertake a risk assessment to identify how any risks arising from their needs or proposed support will

be addressed. Provided the risks are clearly identified and addressed in the care and support plan, the plan will be considered. If, following the care and support planning process any risks remain unresolved, attempts should be made to resolve these as part of the approval process.

A person who has the mental capacity to make a decision and chooses voluntarily to live with a level of risk, is entitled to do so.

However, the ICBs remain accountable for the proper use of public funds and whilst the person is entitled to accept a degree of risk, the NHS is not obliged to fund it. As a commissioner of services, the ICB could be liable if it places people in a position in which they are exposed to risk. There is an important distinction between enabling people to choose to take a reasonable risk and putting people at risk. In such cases, the approval process will provide the means to consider the issue and find the correct balance.

### **Exceptional Circumstances**

The ICB may receive an approval request which is considered to be an exceptional circumstance, which means that:

1. all alternative options have been exhausted; and
2. this is the only way support can be provided; and
3. the circumstances are significantly different from other individuals receiving a similar level of support.

The ICB will consider all exceptional circumstances on a case-by-case basis.

### **Appealing the care and support plan and budget approval decision**

Where an individual or representative is not satisfied with the Personal Health Budget panel decision, they can provide additional evidence or relevant information and ask the ICB to reconsider its decision. The ICB must reconsider their decision in the light of the new evidence, and then notify and explain the outcome of their deliberation in writing.

### **Escalation of decisions**

If the care and support plan cannot be agreed, it should be returned to the person or their case management team with details of what further development is needed before the care and support plan can be re-submitted for approval.

If the issue cannot be resolved, the care and support plan will be considered by a senior manager in the ICB or it will be taken to the ICB Complex Care and Quality Assurance panel for a decision.

The care and support plan will be sent to Complex Care and Quality Assurance panel if:

- There are issues that cannot be agreed or resolved by the relevant ICB manager.
- any decisions in the plan are being requested under exceptional circumstances.

- all decisions that incur a cost of over £5000 per week.

Circumstances where the budget is less than £5000, but may need to be escalated are:

- The care and support plan is likely to be ineffective.
- There are unmet assessed eligible needs.
- There are unmet carer's needs.
- The proposals do not represent best value.
- The person may lack capacity and there is cause to doubt that this has been properly addressed in the care and support plan and/or concern that the person does not have the capacity to consent to decisions regarding the potential risk.
- The care and support plan or the risk assessment identifies a risk to the NHS.
- The risks to the person are such that they cannot be resolved through care and support planning.
- The plan has risks that could endanger third parties.
- There is a risk of political or reputational damage to the NHS.
- There is reason to suspect actual or potential fraud.
- There are risks relating to the availability or suitability of services or facilities.
- There are risks relating to wider Organisational issues (i.e., not specific to the person or their care and support plan), including potential service failure, financial or budgetary risks that cannot be resolved through the normal approval process.

### **Organising the support**

The case management team will provide advice and guidance to help the person secure the support required to deliver the care outlined within the approved care and support plan.

***Partial Approval:*** If only one element of a care and support plan cannot be approved, the ICB will approve the care and support plan with that specific exception, which will then be explored separately with the person. In the interim, the budget will be set at a level to meet the approved part of the plan.

### **Reviewing the plan and budget**

The care and support plan must be reviewed at three months from approval and then at least annually.

Any variations to the care and support plan or PHB, either during the year or at review, or if there is a change in circumstances must be reported and checked with the ICB.

In the case of minor changes, the ICBs may agree to a variation without a review being required. The ICBs may also agree to add to or amend a care and support plan and/or PHB that have previously been partially approved, once agreement has been reached on any outstanding elements. A variation may also be made following the outcome of an appeal. Irrespective of whether the change involved is major or minor, the care and support plan



must be looked at as a whole in order to assess the full effect of the change and identify any changes in need. If any change is agreed, the care and support plan must be updated to reflect the current circumstances, outcomes and how they are going to be met.

At the 3 month and annual reviews, any changes must be reflected, and the care and support plan updated with the date of review.

The review should include, where appropriate:

- What's working or not working for the person?
- Have the outcomes been achieved?
- Has anything changed significantly since the last review?
- Is the PHB enabling the person to meet the needs and outcomes identified in the plan?
- Have the personal assistants/carers had the required training to perform any delegated healthcare tasks?
- Is the care agency providing the care that the ICB originally commissioned? Quality assurance
- Ensure that the person understands and is provided with information on their options in how they use the budget to achieve their outcomes; notional; third party or a direct payment.

In addition, in the case of a direct payment it should include:

- How has the direct payment been spent?
- Are there any concerns from the financial monitoring and auditing?

If any changes are to be made to an approved PHB, firstly this must be agreed by the ICB personal health budget panel and then once approved, a change in package letter will be sent to the person.

## **14. Direct payments**

### **What is a direct payment?**

Direct payments are monetary payments from the ICB that are available to individuals who are eligible for a personal health budget, to meet some or all of their health and support needs. People who take a direct payment choose to pay for their care and support services themselves. Direct payments offer an alternative to notional personal health budgets, which involve the NHS arranging and paying for the care and support services that are needed.

### **The requirements of having a direct payment**

The requirements to have a direct payment are clearly set out in the [The National Health Service \(Direct Payments\) Regulations 2013 \(legislation.gov.uk\)](#)

The regulations must be referred to and followed. To have a direct payment, the person must understand the responsibilities and requirements of having a direct payment, which are outlined in the Direct Payment Agreement. Key points are:

- The person has responsibility for arranging care and support in line with the agreed personalised care and care and support plan.
- The budget holder will be accountable for ensuring that the budget is spent in line with the personalised care and care and support plan.
- If a person does not wish to manage the direct payment, they may nominate another person to receive the direct payment on their behalf. In these situations, the nominee becomes the budget holder and is accountable for all contractual and financial aspects of managing a direct payment.
- If a person chooses to use their direct payment to directly employ personal assistants, they will become the employer and take on all the responsibilities that this entails.

### **The Direct payment agreement**

To receive a direct payment, individuals must sign a direct payment agreement with the ICBs. This agreement sets out the conditions under which direct payments can be made by the ICBs and includes details of what the person and the ICBs must do. The agreement reflects the ICB's guidance and requires that, although people will use the direct payment to purchase and contract services, they will do so within parameters set by the ICBs to ensure that arrangements are legal and safe, and that public money is properly accounted for.

If a person aged 16 or over who is receiving care has capacity but does not wish (for whatever reason) to receive direct payments themselves, they may nominate someone else to receive them on their behalf. A representative (for a person aged 16 or over who does not have capacity or for a child) may also choose to nominate someone (a nominee) to hold and manage the direct payment on their behalf.

The Direct payment Agreement will be signed by the individual where they have capacity to manage the direct payment themselves or their representative and where appropriate the nominee. By signing the direct payment agreement, the parties agree to take on the responsibilities set out within the direct payment Agreement.

In circumstances where the terms and conditions of the direct payment agreement are not met, the ICBs will take reasonable steps to address the situation. If the situation remains unresolved the ICBs will consider whether the direct payment is still an appropriate way to meet the individuals' assessed needs. Please refer to section 18 within this guidance for further information.

### **A Direct payment Nominee**

An individual with capacity can choose to have a Nominee to assist them in managing the direct payment. This person would sign the agreement as a Nominated Person, but the individual would still maintain responsibility for ensuring that all the conditions of the direct payment are met.

### **A Direct payment Representative**

If a person does not have capacity and so may not receive direct payments personally, the ICB should establish whether someone could act as that person's representative. In some cases, someone may already be acting as a representative in another capacity. In others it may be appropriate for the ICB to appoint someone to act as a representative. This should

occur if the person receiving care would benefit from direct payments, and there is no-one else who is able to act as a representative.

A representative is someone who agrees to act on behalf of someone who is otherwise eligible to receive direct payments but cannot do so because they do not have the capacity to consent to receiving one, or because they are a child. Representatives are responsible for consenting to a direct payment and fulfilling all the responsibilities of someone receiving direct payments. This is like the appointment of an 'Authorised person' in social care.

A representative is responsible for managing direct payments on behalf of the person receiving care. They, or their nominee, must: act on behalf of the person, e.g. to help develop care and support plans and to hold the direct payment; act in the best interests of the person when securing the provision of services; be the principal person for all contracts and agreements, e.g. as an employer; use the direct payment in line with the agreed care and support plan; comply with any other requirement that would normally be undertaken by the person as set out in this guidance (e.g. review, providing information). If a representative believes that the person for whom they are acting has regained capacity, they should notify the ICB as soon as possible.

If a representative is not a close family member of the person living in the same household as the person, or a friend involved in the person's care, then the ICB will require the representative to apply for an enhanced Disclosure and Barring Service (DBS) certificate (formally a CRB check) with a check of the adults' barred list and consider the information before giving their consent. If a proposed representative in respect of a patient aged 18 or over is barred the ICB must not give their consent. This is because the Safeguarding Vulnerable Groups Act 2006 prohibits a barred person from engaging in the activities of managing the person's cash or paying the person's bills. Refer to [National Health Service \(Direct payments\) Regulations 2013 \(as amended\)](#) for further clarification.

## **Direct payment Representatives for patients who lack capacity**

Representatives can be:

- A person with parental responsibility for a child under 16 or a child over 16 who lacks mental capacity.
- Someone with Power of Attorney (POA) or a deputy by a court to make decisions in specified areas on the person's behalf.

Not all attorneys and deputies will have suitable powers and these individuals cannot act as Representatives. Evidence of POA will be required. If there are no representatives or nominees, it will be difficult for the ICB to support a direct payment PHB therefore other payment options will need to be applied either via third party or notional.

### **Preparation for adulthood**

A child who has a PHB in place will need to be given the opportunity to decide whether they would like to manage the PHB themselves or they would like a parent or someone else to manage on their behalf, they should be supported to make the decision themselves of how they wish the PHB to be managed in the future.

## **Receiving the direct payment into a bank account**

The ICB's preference is for all direct payments to be set up using a pre-paid card account unless the person chooses to use a direct payment support service (see section 11) to manage the direct payment on their behalf. A pre-paid card account enables the ICB to be assured that NHS public funds are spent and used appropriately, in accordance with the agreed care and care and support plan. It provides a portal mechanism to upload receipts, invoices and any other relevant documents to evidence what has been paid for, meaning all documentation is in one place. The pre-paid card cannot be used to withdraw cash.

The pre-paid card offers choice and control as:

- Users have flexibility over how and when they pay for their support.
- It's an easy way for people to arrange and pay for their support, especially if they are house bound.
- It's a secure way for people to pay for care.
- The card balance can be checked online or via the telephone with the ability to make online payments, set up direct debits and standing orders.

All payments for approved services or expenditure can be made using the card through the following methods and will be identified on the bank statements:

- BACS
- Telephone banking
- Direct Debit

Where it is not possible for a person to manage a pre-paid card account then the ICB will allow the direct payment to be paid into a nominated bank account. The nominated bank account must only be used for the health direct payment and must be in the name of the individual or their representative or nominee.

## **How much money can be retained in the direct payment account**

The amount of money in a direct payment must be sufficient to meet the assessed needs that the ICB has a duty to meet. This may include an amount that is not needed on a week-by-week basis but is required to meet additional costs that arise periodically, for example to employ alternative staff, to cover for periods when regular staff are using their statutory leave entitlements. People who receive direct payments may accrue money in their direct payment accounts up to an amount that will be agreed as part of the care and care and support planning process. As standard, this will usually be a maximum of 4 weeks direct payment surplus monies. The ICB will recoup any funds that are in addition to this amount and are not required to meet assessed needs, in line with the care and care and support plan.

Any legitimate costs that cannot be paid for from the amount held in the direct payment account will normally be met through the provision of a one-off payment. Such one-off payments must be recorded in the care and care and support plan, which is approved by the ICB.

## **Using a direct payment to pay for a homecare agency and or other services**

PHBs enable people to have more choice and control over the care and support they receive and there may be occasions when an individual or their representative choose to commission a service provider, such as homecare agency that is not part of the ICB's approved provider framework. In these cases it is the responsibility of the individual or their representative to ensure that they only pay the hourly rate that has been approved in their care and support plan. If the service being commissioned via a direct payment, request an increase to their hourly rate, then the individual or their representative must discuss this with the ICB for approval. The ICB will provide the individual or representative with a maximum percentage increase allowance, in line with the ICB's executive board yearly percentage increase rate. It is then the responsibility of the individual or their representative to negotiate directly with their service provider to agree a new hourly rate within the agreed budget.

## **Using a direct payment to employ someone**

PHBs enable people to have more choice and control over the care and support they receive and the ability for individuals to employ their own personal assistant is one of the biggest opportunities they present. To employ staff directly, the person will need to take the option of a direct payment. If they want the flexibility and greater control, but don't want to be an employer, they can have a third party organise this on their behalf, in which case, the organisation acting as the third party is the employer.

Employing personal assistants (PA) brings with it responsibilities, as the person must follow Employment Law, such as recruitment, tax, National Insurance, paying wages and holidays, sick pay and redundancy. However, there is support available from direct payment support services and this must be included in the care and support plan.

A person needs to be supported to consider the options of employing their own staff with a direct payment, using a third party, or using a care agency with a notional budget. People need to weigh up the pros and cons, based on their individual circumstances. It is like balancing a pair of scales, will the benefits of employment, such as greater flexibility and control outweigh the responsibilities that come with being an employer and recruiting their own staff. This is up to each budget holder, and they may change their mind over time.

## **What is a personal assistant (PA)?**

PAs provide care and support to people, as defined in a person's care and care and support plan. A PA can either be employed by the person who needs care and support or by their representative, or a third party. A PA's role will vary according on the needs and choices of each person they support, examples of what they may do are:

- Personal care, such as helping someone get washed and dressed
- Cleaning and housework
- Shopping
- Preparing meals
- Leisure and recreation activities

- Helping someone to get involved in the local community
- Delegated healthcare tasks (see delegation of healthcare tasks in section 8)

### **Employing a close family relative to provide care and support (as a personal assistant)**

A direct payment can only be used to pay an individual living in the same household, a close family member (see 8.12 for definition of a 'close family member') or a friend **if** the ICB is satisfied that to secure a service from that person is necessary in order to satisfactorily meet the person receiving care's need for that service; or to promote the welfare of a child for whom direct payments are being made. The ICB will make these judgments based on exceptional circumstances and on a case-by-case basis.

4. all alternative options have been exhausted; and
5. this is the only way support can be provided; and
6. the circumstances are significantly different from other families receiving a similar level of support; and
7. if all the above are met, that it is clear that the tasks a family member will be paid to provide are over and above those of a parenting or caring role as a result of the child or adult's condition.

Each request for exceptional circumstances will be considered on its own merits and individual circumstances. If it is agreed that a close family member can be employed, it is on the condition that a third party is used as the employer as it represents a conflict of interest.

Family members can only be employed to meet the assessed needs for the supported person. In other words, the decision to employ a family member relates to the specific provision of "statutory" or ICB funded support. The paid employment arrangement would relate only to the overall support that would otherwise be arranged by the ICB. Alternatively, it could relate to:

- the relevant portion of the assessed needs in terms of support over particular time periods that would otherwise be arranged/provided by the ICB.
- particular types of support that would otherwise be arranged/provided by the ICB.

The key factor is that in all cases the ICB can only fund the formal support arrangement up to the level that they would ordinarily support as per the assessed needs for the supported person.

The ICB should approach each request to employ a family member on a case by case basis. If the ICB does not agree with the employment of a family member it should explain its reasoning to both the supported person and the prospective personal assistant employee. It should inform both parties of the additional support and information services. It should give the supported person an opportunity to query their decision with reference to the circumstances set out in the Direct Payment 2014 Regulations.

If family members are hired the supported person must follow Employment Law and government guidance:

- avoid special treatment in terms of pay, promotion and working conditions
- make sure tax and National Insurance contributions are still paid

- follow working time regulations for [younger family members](#)
- have employer's liability insurance that covers any young family members
- check if you need to provide them with a [workplace pension scheme](#)

A family member is not permitted to provide support if the ICB determines that either the family member of supported person is under undue pressure to agree to the arrangement or the family member is a guardian, continuing attorney or welfare attorney for the supported person. These two inappropriate circumstances can apply - and can thus prevent an employment arrangement - regardless of whether any or all of the appropriate circumstances apply.

### **Defining a close family member**

A person's close family members are described in the direct payment regulations as: a) the spouse or civil partner of the person receiving care; b) someone who lives with the person as if their spouse or civil partner; c) their parent or parent-in-law; d) their son or daughter; e) son-in-law or daughter-in-law; f) stepson or stepdaughter; g) brother or sister; h) aunt or uncle; i) grandparent; or j) the spouse or civil partners of (c)- (i), or someone who lives with them as if their spouse or civil partner.

### **A family member managing or administering the direct payment**

If the person has capacity but wants to pay close family members living in the same household to provide support to manage and/or administer the direct payment, then the ICB will consider this request on a case-by-case basis. It is not the usual accepted good practice.

This is intended to reflect the fact that in some cases, especially where there are multiple complex needs, the direct payment amount may be substantial. The ICB will not allow a direct payment if there was evidence of a manifest conflict of interest. If it is agreed, it will require a higher than usual level of monitoring.

### **The Representative/ or person managing the direct payment being employed**

Best practice guidance is that a representative cannot be employed as a personal assistant. It is a conflict of interest for the person managing the direct payment to pay themselves.

Where it has been determined by the ICB that an exceptional circumstance means a representative can also be paid to provide support to an individual, it is very important that this is done in line with the conditions of the direct payment agreement. The representative managing the finances would need to provide full receipts and invoices for any money paid to them when requested or during the financial audit. The representative managing the direct payment should only make a payment to themselves and for any other expenditure in line with the approved care and support plan.

Where a Personal Assistant is acting in the role of a representative, the ICB may carry out additional financial auditing.

## 15. The agreed rates of pay for personal assistants

To ensure consistency and transparency in the allocation of budgets, the ICB has agreed three levels of personal assistant pay rates. They are based on the health and social care needs of an individual and use the current NHS Agenda for Change bandings as a proxy.

The ICB will review personal assistant hourly rates annually.

The table below should be used for setting and agreeing hourly rates for employed personal assistants.

Level of need	Examples of relevant health and social care need	ICB Hourly rates
1) Low care and health needs  <i>(Equivalent to NHS Band 2)</i>	<ul style="list-style-type: none"> <li>• Personal care</li> <li>• Moving and Handling</li> <li>• Administration of medication</li> <li>• Oral Suction</li> <li>• Gastrostomy feeding</li> <li>• Therapies</li> <li>• Seizure management</li> <li>• Psychological and emotional support</li> <li>• Social/leisure support</li> <li>• Able to recognise changes in condition</li> <li>• Working with indirect supervision</li> </ul>	Min - £10.42 Max £11.45
2) Moderate care and health needs  <i>(Equivalent to NHS Band 3)</i>	In addition to level 1, support with: Oxygen, Oxygen monitoring, Oral, nasal, tracheostomy suction, non-invasive ventilation, routine tracheostomy care, enteral feeding (nasogastric, jejunostomy) use of feed pumps, Able to work without direct supervision.	Min - £11.67 Max £12.45
3) Complex care and high level health needs  <i>(Equivalent to NHS Band 4)</i>	In addition to levels 1 and 2: Full ventilation, humidification equipment, dialysis, complex medication, complex/extensive dressings/skin care. Multiple complex health needs/interventions. May support junior team members.	Min - £12.86 Max £14.11



When reviewing a care and support plan, personal assistant hourly rates should be considered. It is important to ensure that the hourly rate does not fall below the National Living/Minimum Wage.

Any request to increase a personal assistant hourly rate must not exceed the ICB's agreed annual uplift percentage, (5.5% as of financial year 23/24).

The ICB will not back date any increase to personal assistant hourly rates unless there is an exceptional circumstance.

### **Other Personal Assistant payments**

**Sleep in:** Where a sleeping night is required then this will be calculated by the number of hours at the National living/minimum wage. If the PA is woken more than 3 times in the night and for longer than 30mins then they will have to be paid at their normal contracted hourly rate.

**Waking night:** Where a waking night is required this is to be paid at the normal contracted hourly rate.

**Enhanced evening and weekend payments:** The ICB will not consider any request for enhanced payments for evening or weekend hours.

**Bank holiday payments:** If requested, the ICB will only approve national bank holiday payments at the rate of no more than 1.5 times the regular hourly rate

**Personal assistant back dated pay:** Personal assistants should not receive payment for their employment until all of their pre-employment checks are carried out and they have a contract of employment in place. The ICB will not back date payment for any work carried out by a personal assistant, prior to pre-employment checks and a contract of employment being in place.

**Bonus payments:** The ICB will not consider any request for salary bonus payments to personal assistants, therefore no bonus payments should be included in any care and support plan or paid from a direct payment.

**Hospital stays:** The ICB will continue to pay for the personal assistant if the person receiving the care has a hospital admission. The personal assistant should either be available to provide any support within the hospital setting where safe and appropriate to do so, take annual leave or update their training. Where a hospital admission results in a prolonged stay then a review of the care will be required.

### **16. Self Employed Personal assistants**

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

The NHS will not make direct payments available in cases where the prospective recipient proposes to employ an individual who claims to be self-employed without evidence being

supplied to demonstrate that the self-employed status is authentic in relation to the specific job role in question.

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

If the case manager or social care worker is confident that the tasks are such that the personal assistant would be considered self-employed after checking the HMRC status indicator tool as above.

The ICB will also require the following assurances from the case management team:

- The carer provides a copy of the HMRC letter confirming the Unique Tax reference number.
- The carer has up to date and relevant training certificates.
- The carer has up to date public liability insurance which covers personal care/healthcare activity.

The ICB will only agree to self-employed personal assistants in exceptional circumstances, for example, where a person has been fast tracked for an urgent package of NHS Continuing healthcare.

Where a direct payment has been agreed by the ICB to pay for self-employed carers, it will be based on the following conditions:

- All self-employed carers should produce an invoice for care provided to the direct payment recipient or their nominee/representative as identified in the direct payment agreement.
- Invoices must include (as per HMRC guidance):
  - a unique identification number (UTR).
  - your company name, address and contact information.
  - the name and address of the customer you're invoicing.
  - a clear description of what you're charging for.
  - the date the goods or service were provided (supply date).
  - the date of the invoice.
  - the amount(s) being charged.
  - VAT amount if applicable.
  - the total amount owed.
  - Payment details – Bank details.

- Invoices are paid via a bank transfer or cheque from the nominated direct payment bank account.
- As per the direct payment agreement, all copies of paid invoices are provided to the ICB as part of the financial monitoring requirements.

## 17. Working out the employment status for an employee

This is defined on the Gov.uk website <https://www.gov.uk/employment-status/employee>. Someone who works for a business is probably an employee if most of the following are true:

- they're required to work regularly unless they're on leave, for example [holiday](#), [sick leave](#) or [maternity leave](#);
- they're required to do a minimum number of hours and expect to be paid for time worked;
- a manager or supervisor is responsible for their workload, saying when a piece of work should be finished and how it should be done;
- they can't send someone else to do their work;
- the business deducts tax and National Insurance contributions from their wages;
- they get paid holiday;
- they're entitled to contractual or [Statutory Sick Pay](#), and [maternity](#) or [paternity](#) pay;
- they can join the business's pension scheme;
- the business's disciplinary and grievance procedures apply to them;
- they work at the business's premises or at an address specified by the business;
- their contract sets out redundancy procedures;
- the business provides the materials, tools and equipment for their work;
- they only work for the business or if they do have another job, it's completely different from their work for the business;
- their contract, statement of terms and conditions or offer letter (which can be described as an ['employment contract'](#)) uses terms like 'employer' and 'employee'.

## 18. Direct payment support services

Direct Payments Support Services (DPSS) are organisations that are commissioned by the ICB and offer the following services:

- Receive and manage a direct payment on the behalf of an individual or their representative.
- Provide payroll support – HMRC, pay slips, pension

- Carry out DBS checks for personal assistants
- Employment support, such as contracts of employment
- Recruitment support

The ICB commission the following DPSS's under our direct payment framework:

- Penderels Trust
- SOLO Support
- People Plus Group
- Purple Zest
- Rosekel

Individuals should be supported to choose a DPSS. Any such support will need to be included in the care and support plan and where necessary the associated costs (for example for payroll support) will need to be incorporated into the budget.

Where someone is becoming an employer the ICB strongly recommend that they use a DPSS to undertake payroll support to ensure that appropriate HMRC and payroll costs are calculated effectively along with ongoing telephone support.

If there is any reason to believe that the person may lack the capacity to be an employer, the appropriate mental capacity tests should be carried out to establish capacity and the results recorded. (see guidance below)

<https://empowermentmattersweb.files.wordpress.com/2014/09/assessing-capacity-financial-decisions-guidance-final.pdf>

Detailed information for direct payment recipients wishing to take on employment responsibilities without using a DPSS is available from the Disability and Tax website, who offer a [Disability Tax Guide](#).

## **19. Employers Liability Insurance**

The ICB require any employer to purchase the relevant level of cover of Employers Liability Insurance. The cost of the insurance will be included as part of the personal health budget. The worker must ensure that this is in place and is the right level of cover. The insurance includes advice on employment issues as part of their standard employer's liability guidance (for example a 24-hour specialist HR line is offered by Fish Insurance and Mark Bates Ltd, formerly known as Premier Care).

## **20. Using Disclosure and Barring Service (DBS) Checks**

To determine the responsibilities and requirements for an enhanced DBS and barred list check to be undertaken for PAs being employed using direct payments, two pieces of legislation need to be looked at together. These are the Safeguarding Vulnerable Groups Act 2006 and the National Health Service (Direct payments) Regulations.

The Safeguarding Vulnerable Groups Act 2006 (Section 9) states that a person commits an offence if they permit an employed individual to engage in regulated activity from which they are barred. The generic role of a Personal Assistant includes tasks that fall within the definition of regulated activity. This means that the recipient of a direct payment risks committing an offence if the Personal Assistant they intend to employ is barred.

The most straightforward way to establish whether someone is barred is to obtain a check from the Disclosure and Barring Service Section 9 of the Safeguarding Vulnerable Groups Act states that a person commits an offence if:

- (a) he permits an individual (B) to engage in regulated activity from which B is barred,
- (b) he knows or has reason to believe that B is barred from that activity, and
- (c) B engages in the activity.

The ICB expects all direct payment recipients to ensure that an Enhanced DBS and Barred List check is undertaken for each PA they employ. For completeness the ICBs would also expect a direct payment recipient to carry out a right to work in the UK check. This would require the direct payment recipient to check that the PA has documentary proof of their entitlement to work in the UK. As with vetting and barring, there are possible criminal sanctions. Section 21 of the Immigration, Asylum and Nationality Act 2006 creates the offence of employing a worker knowing they do not have the right to work in the UK or having reasonable cause to suspect that they do not have this right. The costs of a DBS check will be included in the budget.

In cases where a check reveals that a prospective PA is on the Barred List the individual should not be employed as that would constitute an offence under section 9 of the Safeguarding Vulnerable Groups Act 2006 and alternative support arrangements would need to be sourced by the direct payment recipient.

In cases where a DBS and Barred List check reveals information recorded but the individual is not barred, a "suitability decision" will be required to determine whether it is safe and appropriate to employ the person.

To use a direct payment to employ people to provide their care and support, prospective recipients must sign a direct payment agreement with the ICB which includes details of the NHS requirements in relation to DBS and "right to work" checks.

The ICB requires a direct payment recipient to carry out DBS and Barring List checks on PAs every three years. Where a Direct payment recipient is already employing a PA, the ICB expect that the status of any DBS check will be checked at the annual review of the care and care and support plan. Direct payment recipients will be required to sign the Direct payment agreement which covers a DP recipient's responsibilities in relation to DBS checks.

An existing Direct payment recipient whose personal assistants do not have a relevant DBS certificate or whose certificate is more than 3 years old will be requested to undertake DBS checks for these PAs.

The definition of regulated activity does not cover activity carried out during family relationships, or personal non-commercial relationships. However, if the personal assistant receives payment in return for services, that takes the relationship outside the course of family relationships, and makes it a commercial one, even if the PA is related to the Direct payment recipient. In these circumstances, a DBS check should be requested when the prospective PA is a family member or has a close personal relationship with the direct payment recipient.

If a Direct payment recipient refuses to undertake an Enhanced DBS and Barred List check for the PA they are intending to employ, a decision will need to be made by an Associate Director in the ICB, as to whether conditions are satisfied. If they are not satisfied, the direct payment cannot be used to employ the person.

## **21. Modern Day Slavery**

To minimise the risk of Modern-Day Slavery occurring, where a personal assistant is employed using a direct payment, the ICB recommends that the direct payment recipient checks that the bank details they are paying the Personal Assistant's wages into matches that of the Personal Assistant providing support. The ICB would recommend that where a direct payment recipient employs multiple Personal Assistants that each individual Personal Assistant's wages are paid into separate bank accounts. This would only apply where the direct payment recipient is employing their own staff and not in relation to any agency staff or self-employed Personal Assistants they may use. It is advised that the direct payment recipients ask to see a bank statement for each Personal Assistant they are employing to ensure that the bank account they are paying into is that of their Personal Assistant. The Council strongly recommends that where Personal Assistants are employed by a Direct payment recipient that they are not paid in cash.

If a Direct payment recipient has any concerns regarding the bank account details, they are requested to pay a Personal Assistant's wages into, they should raise this with the Multi Agency Safeguarding Hub (MASH) at the earliest opportunity by calling 0300 500 8080.

## **22. Redundancy**

The ICB will only consider a redundancy payment to personal assistant's employed through a direct payment or third-party budget. Personal assistants will only be entitled to statutory redundancy pay if they have been an employee and working for the current employer for 2 years or more. Self-employed personal assistant(s) or care agency staff will not be entitled to any redundancy payments from the ICB. Redundancy payments will only be payable if:

- The person has given notice to their employed personal assistant's.
- The person dies.

In both cases the ICB will only be responsible for making the statutory redundancy payment and notice pay if the Employers Eligibility insurance will not cover the full costs. The ICB will follow Employment Law, as outlined in HMRC guidance.

For detailed guidance refer to <https://www.gov.uk/redundancy-your-rights/redundancy-pay>.

## **23. Financial Monitoring and Auditing Review**

Personal health budgets are public money and commissioning organisations have a responsibility to ensure that they are used to meet the health needs and the broader health and wellbeing outcomes of those who receive them. Commissioning organisations also have

a responsibility to effectively manage the risks associated with people taking their PHB as a direct payment, including ensuring that the agreed health and wellbeing needs are being met, minimizing the risk of fraud and the risk of money being used in ways that are either illegal or otherwise prohibited or do not work towards meeting people’s health outcomes.

In managing financial risks, it is important that people are given genuine scope for choice and control. In practice, this means that the uses of budget are not overly prescribed and that the person has appropriate flexibility about how the budgets can be spent, as set out in their approved personalised care and care and support plan.

### **Statutory requirements**

The Direct payments guidance<sup>1</sup> requires an initial review of the direct payment at least once within the first 3 months of the direct payment being made and thereafter at intervals not exceeding 12 months.

### **Role of the budget holder in the financial and auditing review process**

Reviews should be carried out at agreed times and the budget holder should know in advance when a financial review will be undertaken and what will be involved. This should be detailed in the signed PHB agreement, ensuring that flexibility is permitted if the perceived risk level varies. Financial details should not be accessed at other times unless a concern has been raised. If this concern leads to an additional PHB review, the budget holder should be notified prior to this being carried out.

### **Assessing financial risk**

The level of monitoring and review carried out should be proportionate to the risk factor of the PHB under consideration. The risk factor of a PHB considers three elements:

- Value
- Method of payment
- Personal circumstances of the budget holder.

<b>Value of PHB per week (£)</b>	<b>Risk score</b>
< £1000	2
> £1000 and < £2,000	3
> £2,000 and < £3000	4
>£3000	5

### **Method of payment scale**

<b>Method of payment</b>	<b>Risk score</b>
DPSS framework managed budget	1
Third party managed budget	2
Prepaid card	3
Direct payment to separate bank account	4

<sup>1</sup> [The National Health Service \(Direct Payments\) Regulations 2013 \(legislation.gov.uk\)](http://legislation.gov.uk)

### Individual circumstances scale

Financial auditing history	Risk score
Held budget for more than 12 months with no financial audit concerns within the current financial year	1
Held budget for more than 12 months and had financial audit concerns in no more than one quarter within the current financial year	2
Held budget for more than 12 months and had financial audit concerns in two or more quarters within the current financial year	3
New budget holder - PHB held for less than 12 months	4

Financial risk to ICB	Risk score	Frequency of financial audits required
LOW	1 - 15	Yearly
MEDIUM	16 - 40	Every 6 months
HIGH	41+	Every 3 months

Monitoring is carried out in accordance with the perceived risk level, with the following exceptions:

- Notional budgets are not reviewed as part of the PHB financial process. Care and support plan reviews are carried out as normal. Financial monitoring is as part of the standard finance and contract monitoring carried out within the ICB
- All new budget holders are treated as if they were high risk for the first three months. After that point they revert to the appropriate banding.
- Budget holders with significant PHB financial management problems will not be eligible for a direct payment to their bank account. Only if the risk can be managed through a managed third-party account, this will be considered and offered.

### Financial Monitoring and Auditing Process

The ICB Personalised Care Team will carry out appropriate financial monitoring of direct payments. Each financial audit will consider the following items, as appropriate for the payment delivery method:

- Bank statements.
- Receipts.
- Online account usage.
- PA payslips, HMRC payments, Nest payments etc.
- Invoices.



- Statement from 3<sup>rd</sup> party management organisation.

All staff carrying out financial monitoring will adhere to the following guidance:

<https://nottsICBintranet.notts-his.nhs.uk/media/3044/nn-gov-007-fraud-bribery-and-corruption-guidance.pdf>

If there is a failure to provide copies of financial monitoring documentation within 4 weeks of being requested, a letter will be sent by the ICB Personalised Care Team, giving 2 weeks to return the information. If the financial monitoring documentation is still not provided a final letter will go out giving 1 final week to return the information. It will also advise that failure to do so could lead to the direct payment being ended. An alert will be sent to the relevant case management team to make contact to arrange a review within 2 weeks of receiving the alert.

### **Undertaking the financial monitoring review**

The ICB Personalised Care Team will undertake financial audits and in accordance with the ICB financial risk profile of the budget holder and will monitor the following:

- That the money is being used appropriately and in accordance with the agreed care and care and support plan.
- That the funds remain sufficient to meet the needs detailed in the care and care and support plan.
- Whether a large surplus, or under spend, is being built up.

Queries relating to the spending patterns in the PHB should first be raised with the case management team to understand whether the variance is known and agreed. This may be an indicator that a person's needs have changed.

### **Resultant actions**

If the financial monitoring and auditing highlights any spend that does not correspond with the agreed care and care and support plan, the ICB will send a direct payment alert to the relevant case management team using the ICB Direct Payment Alert form.

The case management team will then confirm and action one of the following:

- **Where the spend has been approved** - Provide the personalised care team with the most up to date CASP
- **Where spend has not been approved** - Make contact with the PHB recipient, their representative or DPSS managed account provider to review the care and support plan. They should also discuss the mis-spend and remind the person of their contractual obligations as per the ICB direct agreement and that any further mis-spend could result in their direct payment being stopped. In all cases, the person should receive written notification of the outcome of the review and any actions to be taken.

- The case management team should forward a copy of the written notification to the ICB personalised care team, to be referred to when carrying out future financial monitoring.

Following any future financial auditing and where there is evidence of further misspending then the ICB will send a stage 1- Non approved expenditure letter, to the direct payment recipient or their representative. If further non-approved spend is found on the next financial audit, then a stage 2 – non approved expenditure letter will be sent.

During any financial monitoring auditing where there is a concern of any fraudulent use of a direct payment then in the first instance the personalised care team will contact the ICB's Counter Fraud Team (CFT) for advice.

Where there is clear evidence of any repeated misuse or following seeking advice from the CFT there is evidence of fraudulent activity then the ICB will present their findings to the ICB Complex Care and Quality Assurance (CCQA) panel who will agree on what action is required. The CCQA panel will also decide on the seriousness of the findings and where appropriate request that a referral is made to the ICB counter fraud team or other agencies such as the police.

- Under the National Health Service (Direct Payments) Regulations 2013, the ICB must give reasonable notice to the DP recipient or representative if they decide to stop and/or move the direct payment to a managed account. A final notice letter will be sent to the DP recipient or representative giving 4 weeks' notice and where required a final request for any financial evidence.

For the purposes of Personal health budgets:

By Misuse of funds, we mean:

- that a person has used funding provided by the ICB for specific purposes (such as meeting their health needs) on an item that is not permitted by law (such as illegal drugs and alcohol), or on a purchase, that is not included in an approved budget or individual CASP.

By Fraud we mean:

- Wrongful deception with the intent to gain personally or financially
- Intentional deception in order to persuade another person to part with something of value
- A person who pretends to be something or someone they are not

### **Direct payment surplus funds**

The PHB is in surplus if it holds more than 4 weeks of funding at any given time. This surplus may be a necessary to pay employment costs or may be held for a specific purpose agreed with the case management team. If the surplus cannot be explained the ICB will ensure the appropriate action can be taken, such as reclaiming the surplus funds, reducing payments, or suspending payments until the surplus has been spent. It should be noted that a surplus may also be indicative of a care and care and support plan that is not working as expected and may require review.

In all cases, the person should be given reasonable notice in writing, of the required action that will need to take place. 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 PHB 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 care and support plan. This will help to ensure PHBs are being used as effectively as possible.

### **Retention of financial monitoring records**

Records of the financial review, and the documents supplied, should be retained in accordance with the Records Management Code of Practice for Health and Social Care 2016<sup>2</sup>.

## **24. Training for Personal Assistants – Guide for personal health budget employers**

Personal Assistants (PAs) should be provided with learning and development opportunities to ensure they are suitably trained to provide the care and support you require.

Those working in care should complete the Care Certificate, this can be done through a mixture of e-learning and face to face training. The 15 standards covered are:

- 1. Understand Your Role
- 2. Your Personal Development
- 3. Duty of Care
- 4. Equality and Diversity
- 5. Work in a Person-Centred Way
- 6. Communication
- 7. Privacy and Dignity
- 8. Fluids and Nutrition
- 9. Awareness of Mental Health, Dementia and Learning Disability
- 10. Safeguarding Adults
- 11. Safeguarding Children
- 12. Basic Life Support
- 13. Health and Safety
- 14. Handling Information
- 15. Infection Prevention and Control

If a PA has undertaken training before in a previous role they should provide their employer with copies of the certificates.

The ICB recommend the following mandatory training topics should be completed by PAs. If you employ PA's then it is the employers responsibility to arrange the training, but you will have support from your case management team. You must also keep a record of when training was completed.

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<sup>2</sup> <https://digital.nhs.uk/article/1202/Records-Management-Code-of-Practice-for-Health-and-Social-Care-2016>

Basic Life Support/First Aid  
Moving & Handling  
Falls Prevention  
Infection Control  
Oliver McGowan Training

Health & Safety / Risk Management  
Fire Safety  
Medication Management  
Safeguarding Adults/Children  
Mental Capacity Act

Where an employer or their family member are qualified to carry out inhouse training for their team of PA's, this must be clearly identified and recorded in the care and support plan before being approved. In these cases, the ICB will need to be assured that it is appropriate for the training to be delivered in this way.

It may be necessary for PAs to support individuals with delegated healthcare tasks. Training and competency assessment for these tasks should be detailed within the care and support plan.

If the employee has completed any of the training in the last 12 months they will not need to carry it out again as long as they can provide certificates as evidence. N.B If the training relates to a delegated healthcare task the employee will need to seek training on how to perform the task in a new setting.

If their training was longer ago than 12 months then refresher training must be undertaken within the first 3 months from the start of employment/start of the budget.

If the employee has had no training or previous experience they cannot begin employment until all training has been completed. However the PA could complete the online training courses and shadow other PA's to gain training evidence.

#### Training for personal health budget employers

As an employer you may also have some learning and development needs, particularly if you are new to employing staff. Training topics might include:

- Recruitment and selection
- Being a good boss
- Employment law
- Managing and supervising
- Record keeping.

You can ask your case manager about any available training. Resources to support individuals as an employer are available via the Skills for Care website

<https://www.skillsforcare.org.uk/Recruitment-support/Support-individual-employers-PAs/Individual-employers/Employing-a-PA-Toolkit/Employing-a-PA-Toolkit.aspx>

### **25. Delegation of healthcare tasks to personal assistants**

#### **Introduction**

For many people, employing a personal assistant (PA) or a team of PA's is a central part of creating care and support arrangements that are personalised and responsive to their individual needs and circumstances as an adult or child and as a family. PAs, chosen by the individual and where appropriate their carers, or in the case of children their parents, can help support people living in the community to achieve their personal goals and to have the opportunity to lead their lives and have a family life on their own terms.

Delegation is defined as the transfer to a competent individual, of the authority to perform a specific task in a specified situation. Any PA who working with an individual who requires the completion of a delegated healthcare tasks.

A PAs role will vary according to the needs, lifestyle requirements and choices of each person they support. 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 care and support planning process and delegated to the PA by a registered practitioner who has the relevant occupational competence.

This section identifies the elements required to support appropriate delegation of a healthcare task from a registered practitioner to a PA, and the responsibilities of all concerned.

It is important to note that registered practitioners are professionals who are regulated by statute and or are specifically accountable to their regulatory body as well as to their employer. This guidance doesn't circumvent any standards for delegation set by registered practitioner's regulatory body, which they are required to meet (e.g., the Nursing and Midwifery council for nurses, midwives and health visitors, and the Health and Care Professions Council (HCPC) for physiotherapists, occupational therapists, dieticians, and speech and language therapists).

Delegation needs to be recognised as something that is a considered process and properly supported. This will ensure that the best interests of the person are always paramount, that tasks taken on by PAs are appropriate and that PAs are provided with relevant training and assessed as competent to perform particular tasks.

### **The case for delegating healthcare tasks to PA's**

The ability for individuals to employ their own PA or carer is one of the biggest opportunities presented by PHBs. Enabling PAs to undertake routine healthcare tasks is key to the sustainability of PHBs for those with complex needs and some long term conditions. The benefits for the Service Users, PAs and health and social care staff include:

- Providing a seamless service to service users and their families
- Supporting choice and control for individual regarding who delivers their care
- Providing continuity of care for individuals when it is delivered by their usual care workers
- Releasing limited nursing resources to be used for higher level needs
- Supporting service users to manage their own conditions where appropriate
- Making best use of staff skills and avoiding duplication of effort

- Supporting PAs to develop their careers which will also facilitate the recruitment and retention of the workforce
- Encouraging accountability and delegation of the health and social care workforce
- Providing learning and development which will ensure that PAs have the knowledge and skills to undertake healthcare tasks
- Providing tools to measure the competence of staff to undertake the tasks
- Encouraging formal, safer working practices
- Promoting service redesign and transformation of services
- Promoting co-operation and integration across health and social care (Care Act 2014)

### **Governance and assurance arrangements**

Delegation occurs throughout the NHS on a daily basis, but as PA's are new to the NHS there is often less understanding of how and when to delegate them. PA's are either employed directly by the person requiring care and support or indirectly by a third party organisation on their behalf, and therefore lines of accountability can appear less clear to NHS practitioners.

It is important that ICBs, as the responsible body for planning and commissioning have a clinical governance framework in place for delegation to PA's. The need for a robust governance framework to underpin delegation is made clear in the Royal College of Nursing's principles of delegation:

*“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.”*

PHBs do not release the NHS from their duty of care to people within their care. They increase the level of choice and control that people have but they do not change the statutory duty of care that the NHS has to all individuals.

A registered practitioner who delegates a task remains accountable for the appropriateness of the delegation and ensuring that the person who does the work is able to do it. They cannot delegate that accountability. However, provided the decision to delegate is made appropriately they are not accountable for the decisions and actions of the PA to whom they delegate. The PA is accountable for accepting the delegated task and responsible for their actions in carrying it out.

### **Acting as an employer**

Employers are 'vicariously liable' for their employees. This means that provided that the PA is working within their sphere of competence and in connection with their employment, the employer is also accountable for their actions. It is therefore important that the employer is involved, advised and supported appropriately in understanding and meeting their responsibilities.

In relation to delegated healthcare tasks, the PA's employer should:

1. Check that the job description and person specification reflect requirements in relation to delegated healthcare tasks.
2. When recruiting, have due regard to the candidate's ability to learn the required skill and to seek advice and support in this regard as required.
3. Check that each PA has received training and both the trainer and PA have signed to say they are satisfied that the PA has the competence and confidence to deliver the delegated healthcare task and the training is current and up to date.
4. Not ask the PA to go outside the scope of their training.
5. Not ask the PA to deliver complex care tasks without training and assessment of competencies.
6. Check records to see that the PA has up-to-date competencies and contact their care coordinator or registered practitioner responsible for the delegation if they have concerns.
7. Check that the care plan includes risk assessments and escalation plans for all the delegated tasks, and that these are up to date and relevant. Consult with their care coordinator if they have concerns.
8. Support the PA to undertake regular clinical supervision and help ensure they are undertaking delegation in the manner they were trained.
9. Ensure the PA maintains appropriate records of the tasks they have undertaken.
10. Seek advice from the care coordinator or relevant practitioner if concerned about a PA's ability to deliver the delegated healthcare tasks.
11. Check that insurance is in place in relation to the PA carrying out delegated healthcare tasks and consult with the care coordinator or support organisation if there are concerns.
12. Raise any concerns with the care coordinator or commissioners.

It is good practice for the employer of the PA to sign a document alongside the PA and person assessing competence to show their satisfaction with the PA's competency and confidence to carry out the delegated task.

### **The personal assistant**

Although PAs are not currently regulated by statute, they remain accountable for their actions in the following ways:

- To the personal health budget holder – the PA has a duty of care and is accountable for their actions and omissions when they can reasonably foresee that they would be likely to injure people or cause further discomfort or harm (e.g., if a PA failed to report that a person had fallen out of bed). The PA could also be dismissed for being in breach of their contract of employment.
- To the public – if a PA were to harm a person in a negligent or deliberate way, they could be held accountable and could be prosecuted under criminal law.

The PA's responsibilities include:

1. Taking part in competency training and signing to acknowledge readiness, competence and confidence to accept the delegated tasks.
2. Undertaking delegated healthcare tasks within the training given and the care plan and escalation plans that have been provided.
3. Recording delegated healthcare provided/undertaken in a clear and contemporaneous manner (i.e., recording at the time, or as soon after the event as practicable).
4. Seeking advice and support from the employer and delegator if concerns arise or they come across something not covered in training.
5. Taking part in clinical supervision as required.
6. Ceasing to undertake tasks and seeking retraining if unclear about any aspect of the delegated task.
7. Not undertaking tasks that they have not been trained for or exceeding the limits specified in the delegation of the task.
8. Not using the training received for other people with similar needs without specific training and consent of the delegator.
9. Keeping copies of records of training and expiry dates.
10. Seeking retraining for delegated tasks within a reasonable timescale prior to expiry.
11. Raising any concerns about delegation training and on-going support with the employer.

The ICB is working in partnership with colleagues across the ICS to develop a sound governance framework for delegation. This will help ensure that roles and responsibilities are understood and that systems are in place to support delegation.

### **Process for delegation**

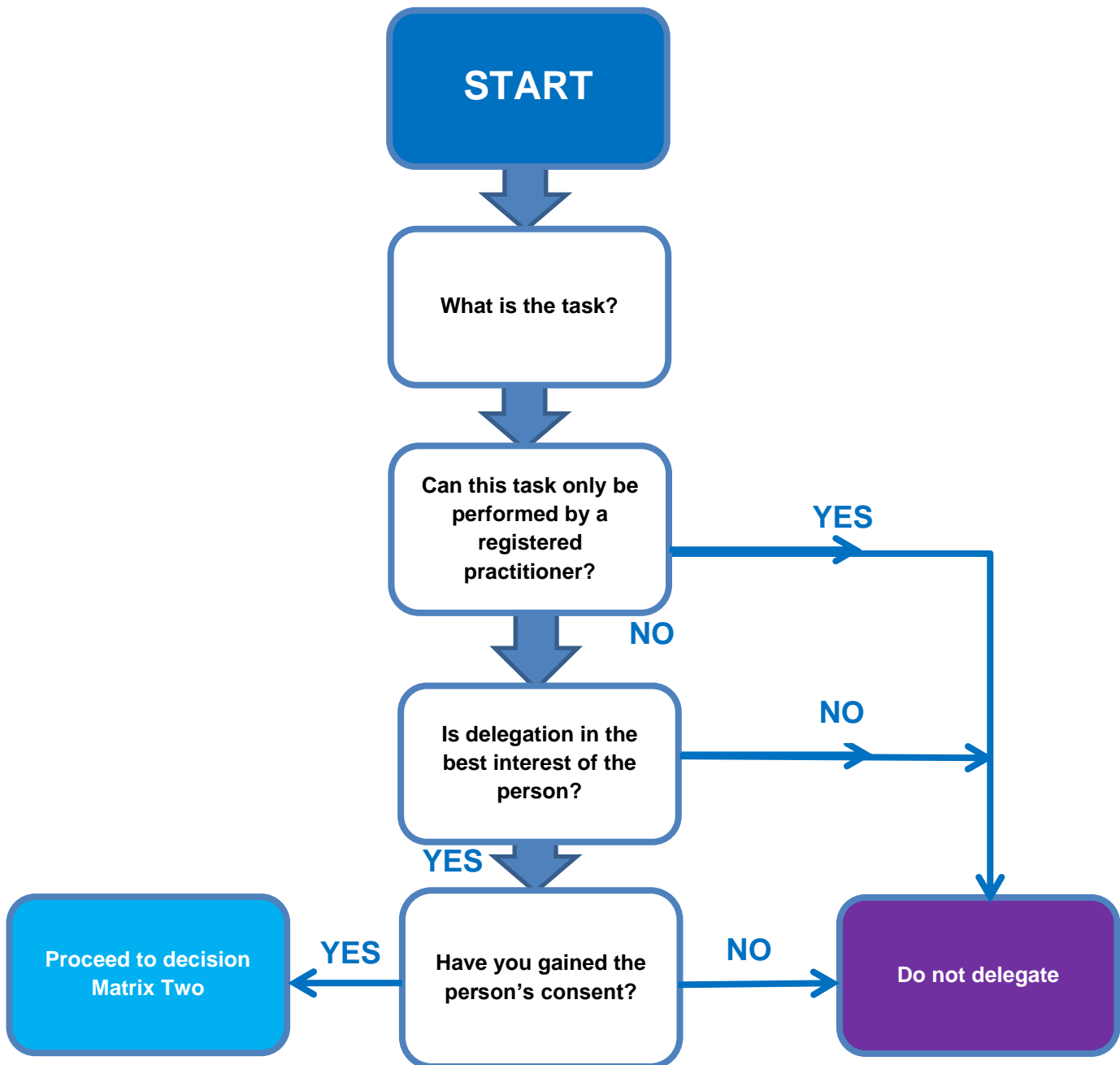
The ICBs local governance framework for delegating healthcare tasks to PAs includes:

- principles of delegation and clarification of roles, responsibilities, and accountability
- the process to be followed in considering delegating tasks to PAs and how decisions should be made.
- an indicative list of healthcare tasks that might commonly be considered for delegation to PAs (it must be made clear that this is indicative only and that each decision must be made in relation to individual needs and circumstances)
- identification of the model of training and monitoring of PAs who carry out delegated health tasks.
- any generic training that will be provided to PAs in core competencies.
- identification of the related training required for each healthcare task and
- how competency will be assessed and signed off
- how on-going support and advice will be provided to PAs.



- the process for review and reassessment of competence.

## Delegation of a task to a personal assistant



## Indicative List of Delegated Healthcare Tasks

Indicative List of Delegated Health Care Tasks
Administration of enema
Administration of epipens, as part of a care plan
Administration of insulin
Administration of rectal medication
Administration/measuring liquid medication
Ambu-bag training
Application of medication patches, with appropriate documentation
Application of Ted( Thrombo-Emboloc Deterrent) stockings alongside a risk assessment
Apply male sheath drainage/alternative drainage systems as per care plan
Assisted intermittent catheterisation
Assisting with putting on appliances (e.g. leg callipers, surgical stockings, artificial limbs, special boots)
Autonomic dysreflexia care
Changing leg bags and night bags on catheters (not inserting catheters)
Chest physio
Colostomy/ileostomy care (change and empty bag)
Complex moving and handling
Compromised swallow
Conditions that require management by a non-invasive device both stimulate and maintain breathing, e.g. bi-level positive airway pressure, or non-invasive ventilation
Cough assist
Dialysis
Emergency medication
Expansion of use of inhalers to include new inhalers
Expansion on the use and documentation of creams etc. used as part of personal
Frequent episodes of altered states of consciousness that require skilled intervention to reduce the risk of harm
General observation of users physical and mental well-being
General Wound care
Hickman lines
Intermittent self-catheterisation
Laryngectomy care
Limb physio
Managing pressure sores
Nebulisers

Nebulisers
Oral suction
Oxygen at home
PEG (Continuous and bolus feeds)
Post op nasal spray
Postural Management training
Prescribed ointments
Put in post op ear drops
Put in post op eye drops
Skin care
Stoma care
Sublingual spray
Supporting with the administration of buccal midazolam
Suprubic/urethral catheter care
Tracheostomy and oral suctioning (not changing inner tube)
Tracheostomy care requiring regular suctioning
Trans anal irrigation
Urostomy care

Delegation of specific healthcare tasks should be considered within the care and support planning process, which is central to the delivery of personal health budgets. It is at this stage of the process, after gathering information and understanding the person's health and wellbeing needs those detailed plans are made. It uses a partnership approach between the healthcare practitioner and the person, along with their family and carers as appropriate.

If the plan includes the employment of a PA, this is the time to consider what tasks the PA will carry out, the competencies required, and any training needed. Some tasks may be considered unsuitable for delegation to a PA, and consideration can be given to the best way to deliver these, which may be through existing NHS services or separately purchased care or support.

The plan should make clear the task that is to be delegated, the limits of the delegation and how risks will be managed. It will also need to identify contingency arrangements should there be a gap in service, for example when the PA is on leave or off sick.

The budget must be sufficient to meet all the costs for delivering the care plan, including any training costs necessary for delivery. In some cases, there will be more than one PA requiring training and all costs should be met within the budget.

The ICB have a locally agreed indicative list of tasks that are commonly delegated to PAs (see point 17.8 Indicative List of Delegated Healthcare Tasks). This list should not be used indiscriminately or used as a barrier to making decisions in relation to other tasks not listed. In every situation the individual context must be considered before making a decision to delegate and any list is only a guideline.

The decision-making flowchart in point 17.7 provide the process that needs to be followed.

### **Identify how training and assessment of competence will be provided**

For tasks that can be delegated, the action plan needs to identify how the associated training will be provided and who will be responsible for assessment of competence, on-going support to the PA, and clinical review of the person's needs.

While the knowledge component of learning a task can be provided through use of web-based learning tools or group approaches, the individual skills required will need to be taught and competence assessed in the person's home.

In relation to delegated healthcare tasks, the care coordinator is responsible for ensuring that:

- A registered practitioner with relevant occupational competence in relation to the specific area of clinical care for the person (in some instances this may be the care coordinator) makes a more detailed assessment of suitability to delegate the identified task and it is the registered practitioner who makes the decision to delegate or not.
- Arrangements for training and assessment of competence necessary to delegate are clearly specified in the care plan.
- The person requiring the care, or their representative has been consulted as to whether they are happy in principle with the task being delegated to their PA. Where the person lacks capacity to make decisions as to how their care needs shall be met, a formal best interests' decision should be made as to whether in this case it is appropriate for the healthcare task/s to be delegated.
- Funding is included in the plan to cover any cost of training and assessment of competence necessary to delegate, on-going support and related insurance.

## **Sign-off and review**

The final decision to delegate a healthcare task to a personal assistant should be made by a registered practitioner who is occupationally competent in the task and is accountable in relation to that aspect of clinical care of the client and will follow on from training and assessment of competence. Delegation must first and foremost be in the best interest of the person for whom the care and support are being provided and it is important that they, or their representative, have been consulted and agree with the arrangements.

It is also important that the PA feels both competent and confident to carry out the task and that the task/function/health intervention is within the remit of their job description.

A written agreement needs to be in place about the extent and limits of the delegation, how support will be provided, and competency maintained, and when and how to seek help.

Frequency of review should be documented in the care plan and should consider the person's clinical needs and changing requirements in relation to healthcare tasks. Review should also include a review of the tasks currently delegated to a PA and a review of training and competency. If a person's condition is unstable or fluctuating, or there is a significant deterioration in their physical condition, cognition or personal circumstances, the nature of the tasks may change, and this will require review of the decision to delegate healthcare tasks. At review, if refresher training for the delegated task or training in new tasks to be delegated is required, then the budget allocation may need adjusting to allow for this.

## **26. Patient Experience**

The ICB is committed to ensuring everyone who is eligible for a personal health budget experiences a personalised care approach throughout the process. If anyone is unhappy with their NHS services in relation to their personal health budget, as with any other NHS service they can make a complaint, comment or suggestion. This can be made directly to the provider of the service, following their own complaints procedure.

If the person wants to provide feedback to the ICB, rather than directly to the provider or service they can do this by contacting the ICBs Patient Experience Team.

Telephone: 0115 8839570

Email: [nnicb-nn.patientexperience@nhs.net](mailto:nnicb-nn.patientexperience@nhs.net)

[Patient Experience and Complaints - NHS Nottingham and Nottinghamshire ICB](#)