

# NHS CONTINUING HEALTHCARE COMPLEX CASES TEAM

## PERSONAL HEALTH BUDGETS POLICY

**Ratification Process:**

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<b>Approved by:</b>	Integrated Performance and Assurance Committee – 28.07.20
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**Document Control Sheet:**

<b>Development and Consultation:</b>	This policy was developed by Cambridgeshire & Peterborough Clinical Commissioning Group.
<b>Implementation:</b>	This policy will be implemented by Cambridgeshire & Peterborough Clinical Commissioning Group through Team training workshops and staff development days. It applies to all staff including those on temporary contracts, secondments, pool staff, contractors, students, apprentices; and any other organisation contracted to deliver NHS Continuing Healthcare arrangements on behalf of either organisation; and must be adhered to.
<b>Audit:</b>	A record of relevant policies is maintained by the Corporate Governance Team and the Complex Cases Team, including details of when a policy is due for renewal. The Group approving each policy will use the checklist to ensure the policy meets the requirements of this policy.
<b>Review</b>	This policy will be reviewed 12 months post implementation and annually thereafter, unless there is a change in legislation or policy that affects the content of this policy.
<b>Links with other Documents:</b>	<p>This Policy should not replace legislation of organisational policies. It should be used in conjunction with:</p> <p><b>Legislation:</b></p> <ul style="list-style-type: none"> <li>• The Care Act 2014</li> <li>• NHS Act 2006/12</li> <li>• The Mental Capacity Act 2005</li> </ul> <p><b>Frameworks, Policies and Guidance:</b></p> <ul style="list-style-type: none"> <li>• The National Framework for NHS Continuing Healthcare and NHS-Funded Nursing Care – 2018</li> <li>• Cambridgeshire and Peterborough Clinical Commissioning Group's Operational Policy for NHS Continuing Healthcare and NHS-funded Nursing Care</li> <li>• Department of Health Personal Health Budget Guidance</li> <li>• NHS England Personal Health Budget Guidance</li> </ul>
<b>Equality and Diversity:</b>	An Equality and Impact Assessment relating this Policy has been undertaken. Copy attached, Appendix 2.

**Revisions:**

Version	Page/ Para No	Description of change	Date approved

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## **1 Introduction:**

This policy was written and agreed by NHS Cambridgeshire and Peterborough Clinical Commissioning Group. It covers Personal Health Budgets (PHB).

It does not replace the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care (2018), Legislation, Statutory or Organisational Guidance.

This policy specifically applies to individuals aged 18 and above who have been assessed for NHS Continuing Healthcare eligibility where NHS Cambridgeshire and Peterborough Clinical Commissioning Group has made a decision on their eligibility for NHS Continuing Healthcare.

### **1.1 Background:**

A Personal Health Budget (PHB) 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 Cambridgeshire and Peterborough Clinical Commissioning Group<sup>1</sup>. It is not new money, but money that would normally have been spent by the National Health Service (NHS) on a person's care being spent in a more flexible way to meet their identified needs. The use of PHBs 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.

From October 2014, people eligible for NHS Continuing Healthcare and Children and Young People's Continuing Care have had the right to have a PHB. The right to have a PHB was extended to people eligible for Section 117 after-care in Mental Health and people eligible for wheelchair services in December 2019<sup>1</sup>. The right to have will be applied unless there are clinical, financial or other grounds, which make having a PHB unviable or unsafe for an individual.

From April 2019, PHBs are the default-commissioning route for individuals eligible for CHC that are in receipt of domiciliary care. Ensuring more people can benefit from personalised care is one of the key aims of the NHS Long Term Plan<sup>2</sup> and this includes the ambition to increase the uptake of PHB's to 200,000 people by 2023/2024 which is outlined further in Universal Personalised Care<sup>3</sup>.

This PHB policy sets out Cambridgeshire & Peterborough Clinical Commissioning Group's offer for who can receive a PHB in line with national legislation and guidance. It describes the criteria under which the Cambridgeshire and Peterborough Clinical Commissioning Group will authorise a PHB through existing NHS funded services, Third Party arrangements or Direct Payments, on an individual basis, by balancing choice, risk, rights and responsibilities. The processes and policies described here, will further evolve as learning is embedded from the experiences of individuals and their families. The aim must always be that the least restrictive approaches are adopted and that individuals are given maximum choice, flexibility and control.

Within this context, Cambridgeshire and Peterborough Clinical Commissioning Group is legally obligated and accountable for meeting their own statutory duties; in relation to quality, financial resources, equality, health inequalities and public participation.

## 2 Purpose and Scope:

Cambridgeshire and Peterborough Clinical Commissioning Group is committed to promoting individual choice where available, while supporting individuals to manage risk positively, proportionately and realistically whilst working in partnership with professionals, making shared decisions and actively co-designing services and support. PHBs offer individuals more choice and control over how money is spent on meeting their health and wellbeing needs.

The purpose of PHBs is to enable individuals to exercise choice and control over their lives through the allocation of a PHB; as well as to promote independence, wellbeing and choice which will enable individuals to manage identified risks, achieve their potential and live their lives in ways which best suits them.

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

- **Outcome 1** - Improved health and emotional wellbeing to stay healthy and recover quickly from illness;
- **Outcome 2** - Improved quality of life to have the best possible quality of life, including life with other family members supported in a caring role;
- **Outcome 3** - Making a positive contribution and to participate as an active citizen, increasing independence where possible;
- **Outcome 4** - To have maximum choice and control;
- **Outcome 5** - Freedom to live free from discrimination, harassment and victimisation;
- **Outcome 6** - To achieve economic wellbeing and have access to work and / or benefits as appropriate;
- **Outcome 7** - To keep your personal dignity and be respected by others.

### 2.1 Scope

This policy applies to all PHB allocations made by or on behalf of Cambridgeshire and Peterborough Clinical Commissioning Group. In line with current NHS Guidance, NHS Cambridgeshire and Peterborough Clinical Commissioning Group recognises the legal right to have a PHB in the following areas:

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

However, the capacity, resources and skills to meet all requests is likely to result in the need to prioritise and take a stepped approach to the roll out of PHB's all areas. Whilst Personal wheelchair budgets are currently offered within Cambridgeshire and Peterborough Clinical Commissioning Group, this policy specifically relates to the delivery of PHB's within Adult NHS Continuing Healthcare. Cambridgeshire and Peterborough Clinical Commissioning Group is developing processes and procedures to extend PHBs to all groups throughout 2020/2021.

The policy must be followed by all staff employed by Cambridgeshire and Peterborough Clinical Commissioning Group on a permanent or temporary contract. The policy must be followed by any organisation authorised to act on behalf of Cambridgeshire and Peterborough Clinical Commissioning Group in the delivery of its duties.

### **3 Duties, Accountability and Responsibilities:**

The Integrated Performance and Assurance Committee is accountable to the Governing Body for assurance and ensures that policies and procedures are in place for the delivery of PHBs. The Integrated Performance and Assurance Committee will monitor the implementation of the policy and procedure, receive and review quarterly feedback regarding PHBs and ensure that appropriate actions are taken, lessons are learned and making recommendations to the Governing Body as necessary.

The Head of Clinical Services (Complex Cases) is the person responsible for day-to-day management of PHBs and takes responsibility for ensuring effective implementation of this policy.

All members of the Complex Cases Team are responsible for acquainting themselves with the PHB policy.

### **4 Legislation and Guidance:**

In making PHB arrangements, Cambridgeshire and Peterborough Clinical Commissioning Group have had regard to relevant law and guidance, including their duties under the National Health Service Act 2006, the Health and Social Care Act 2012, the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012; and the National Health Service (Direct Payments) Regulations 2013 (as amended) and relevant guidance issued by NHS England.

This policy should be read in conjunction with the following legislation and associated guidance:

- The National Framework for NHS Continuing Healthcare (2018)
- Personalised Health and Care Framework (2017)
- The Health Act (2009)
- National Health Service Direct Payments Regulations (2013)
- The National Health Service Commissioning Board and Clinical Commissioning Groups Regulations (2013) / Amendment (2014)
- Delivering the Forward View (2016/2017 – 2020/2021)
- Universal Personalised Care: Implementing the Comprehensive Model (2019)
- Mental Capacity Act (2005)
- The NHS Long Term Plan (2019)
- The NHS Direct Payments Regulations (2013)
- Guidance on Direct Payments for Healthcare: Understanding the Regulations (NHS England March 2014)

- Guidance on the ‘right to have’ a Personal Health Budget in Adult NHS Continuing Healthcare and Children and Young People’s Continuing Care (NHS England September 2014)

Other relevant legislation includes:

- Human Rights Act (1998): including Article 8 Right to respect for private and family life, and Article 14 Prohibition of discrimination.
- The Data Protection Act (2003)
- The Carers (Equal Opportunities) Act (2005)
- The Equality Act (2010)
- The Children and Families Act (2014): This introduces Education, Health and Care Plans for children and young people with special educational needs and disabilities
- The Fraud Act 2006: This sets out the general offence of fraud and is relevant to investigation of suspected fraudulent activities relating to the provision of PHBs
- The Care Act (2014): This is aimed at reshaping the system around prevention and promoting individual wellbeing, with personalisation as a key feature

#### **4.1 Principles**

The Department of Health set out six key principles for PHBs and personalisation in health. These principles apply to any PHBs implemented by Cambridgeshire and Peterborough Clinical Commissioning Group.

**Upholding NHS principles and values** – The personalised approach must support the principles and values of the NHS constitution, free at the point of use, and should remain consistent with existing NHS policy:

- There should be clear accountability for the choices made.
- No one will ever be denied essential treatment as a result of having a PHB.
- Having a PHB does not entitle someone to additional or more expensive services, or to preferential access to NHS services
- There should be good and appropriate use of current NHS resources.

**Quality – safety, effectiveness and experience should be central** – the wellbeing of the individual is paramount. Individuals will agree their care and support plan with a professional to ensure that it is safe and meets agreed health and wellbeing outcomes. Transparent arrangements should be in place for continued clinical oversight, proportionate to the needs of the individual and the risks associated with the care package.

**Tackling inequalities and protecting equality** – PHBs and the overall movement to personalise services are a powerful tool to address inequalities in the health service. Implementation of PHBs must not exacerbate inequalities or endanger equality; the decision to set up a PHB for an individual must be based on their needs, irrespective of race, age, gender, disability, sexual orientation, marital or civil partnership status, transgender, religion or beliefs.

**Personal health budgets are voluntary** – no-one will ever be forced to take more control than they want.



**Making decisions as close to the individual as possible** – appropriate support should be available to help all who might benefit from a more personalised approach, particularly those least well served by existing services or access, and who might benefit from managing their own budget.

**Partnership** – personalisation of healthcare embodies co-production. This means individuals working in partnership with their family, carers and professionals to plan, develop and procure the services and support that are appropriate for them. It also means CCGs, local authorities and healthcare providers working together to ensure effective and efficient delivery of care and use of PHBs.

In developing PHBs, Cambridgeshire and Peterborough Clinical Commissioning Group will ensure that the following characteristics of a PHB are met, to ensure people experience the best outcomes possible. A person should:

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

## **5 Delivery of Personal Health Budgets:**

### **5.1 Management of Personal Health Budgets**

A PHB is based upon a personalised care and support plan. This plan sets out an individual's health and wellbeing needs, the outcomes they wish to achieve, the amount of money available and how it will be spent. Once the plan and budget has been agreed, the money in a PHB can be managed in three ways, or a combination of these:

- **A notional budget:** where the commissioner (for example NHS Cambridgeshire and Peterborough Clinical Commissioning Group) holds the budget and utilises it to secure services based on the outcome of discussions with the person, their representative, or, in the case of children, their families or carers.
- **A third-party budget:** where an organisation independent of the person and the NHS commissioner manages the budget on the person's behalf and arranges support by purchasing services in line with the agreed care plan.

- **A direct payment:** where money is transferred to the person, their representative or nominee, or, in the case of children, their families or carers, who contracts for the necessary services.

Cambridgeshire and Peterborough Clinical Commissioning Group will ensure all three options are available to enable people to make a choice about the level of control they feel comfortable with. The most appropriate way to manage a personal health budget should be discussed and agreed with the person and/or their representative as part of the personalised care and support planning process.

## 5.2 What can a Personal Health Budget be spent on?

A Personal Health Budget can be utilised for any product or service that supports individuals identified health and wellbeing needs. This includes items that are not necessarily offered by the NHS. The delivery of direct benefit to the individual in meeting their health and wellbeing needs must be demonstrated and this must be in line with their care and support plan. PHBs can be combined with funding from social care and/or education to create a single integrated budget to purchase items and/or services that will effectively meet the persons overall care and support needs.

The following costs are paid as part of a Personal Health Budget for existing service users of Continuing Healthcare (Adults) where the service involves providing a Personal Assistant/Carer:

- The direct cost of providing the service, including support service costs
- Start-up costs such as initial staff training
- Employers Liability Insurance
- Payroll
- Managed Account (where applicable)
- Equipment contingency, for life essential equipment (e.g. hire fee to cover breakdown not covered by insurance or by the organisation's community equipment contract)

It may be required to fund additional elements within the Personal Health Budget such as the following (unplanned contingencies):

- Redundancy costs (should be covered by the insurance policy) when a service provided by personal assistant/carer ceases, if the personal assistant/carer is entitled
- Maternity pay, if the Personal Assistant/Carer is entitled
- Long term sickness
- Training to support newly employed staff

Funding for personal assistant/carer pensions: the organisation is responsible for helping to ensure that good practice is followed in personal assistant/carer employment, including providing a pension.

## 5.2 Services that a Personal Health Budget cannot be used for:

Although a PHB is not new or additional money it can potentially be spent on a broader range of care and support than would be routinely commissioned by the NHS if it is

agreed by Cambridgeshire and Peterborough Clinical Commissioning Group as being appropriate to meet an individual's assessed needs. This could include funding for a personal assistant to help with personal care at home, and equipment such as a wheelchair.

What a personal budget will be spent on must be outlined in their personalised care and support plan and agreed between the person (or their representative/nominee) and the Cambridgeshire and Peterborough Clinical Commissioning Group. There are a number of **exclusions** that are outlined in regulations and include the following:

- Alcohol, tobacco, gambling
- Debt repayment (other than for a service specified in the support plan)
- Core GP services
- Planned surgical interventions
- NHS prescriptions/medications
- Services provided through vaccination or immunisation programmes
- Any service provided under the NHS Health Check Programme
- NHS dentist and opticians.
- Emergency or acute hospital services, such as unplanned admissions to hospital
- Primary medical services provided by GPs, such as diagnostic tests, basic medical treatment or vaccinations
- To pay a close family carer living in the same household unless agreed by Cambridgeshire and Peterborough Clinical Commissioning Group as an exception
- The employment of people in ways, which breach national employment regulations
- Anything not identified within the care and support plan

In addition to the above, Cambridgeshire and Peterborough Clinical Group's policy is that PHBs cannot be used to fund the following:

- Any activity, which is against the law. This includes not paying people a minimum wage, not registering an employee with Revenue and Customs, giving someone 'cash in hand' and not following other legal employment regulations.
- Funding items/bills which other sources of income would normally pay for, such as day to day food bills, rent, mortgage payments or utility bills (unless these are costs arising from live in carers).
- Any treatment which Cambridgeshire and Peterborough Clinical Commissioning Group has a policy not to fund or which NICE recommends not to fund due to it being proven ineffective
- Anything that could potentially bring the NHS into disrepute
- Equipment and/or services already funded by Cambridgeshire and Peterborough Clinical Commissioning Group
- Equipment that does not meet required standards or equipment that untrained people are required to use
- Anything that could place people at risk of serious harm

This list is not exhaustive and if unsure, the individual should seek advice before any expenses are incurred.

Cambridgeshire and Peterborough Clinical Commissioning Group provides PHBs so that individuals may use them to meet their holistic and identified evidenced based outcomes, including health and wellbeing needs. The use of such funding does not, at this time, extend to delivery of goods or services that would normally be the responsibility of other bodies (e.g. local authority housing services) or are covered by other existing contracts or mechanisms e.g. community equipment accessed via prescription).

Cambridgeshire and Peterborough Clinical Commissioning Group have overall responsibility for ensuring that all intended expenditure is lawful as part of the governance arrangement for PHBs. Cambridgeshire and Peterborough Clinical Commissioning Group may also choose not to agree the funding of certain goods or services, where it has already reached a decision that these will not normally be commissioned for the general population based on available evidence. Any such instances will be considered on an individual basis taking into account the specific circumstances and needs of the individual concerned.

### **5.3 Top Ups**

PHBs cannot be topped up, the PHB must meet the full cost of assessed health and care needs. The law on this is clear. An individual cannot fund any aspect of NHS care unless the individual chooses to 'opt out' of NHS care and fund the care privately. This is in line with the fundamental principle, enshrined in the NHS Constitution, that NHS care is based on clinical need, and not the ability to pay, and that the NHS provides free comprehensive care at the point of delivery. NHS services must be provided free of charge unless there is explicit legislation in place requiring charging (e.g. as for prescription or dentistry charges) The PHB must be sufficient to meet the assessed health needs identified and agreed in the care plan without requiring any contribution from the individual.

Individuals are free to use their own money to buy additional private care if they wish, but this should take place separately, with clear accountability. The only exception to this rule is when a client is entitled to an NHS funded wheelchair; they may request a notional budget with contribution to upgrade to a higher specification of chair or for additional extras.

### **5.4 Staff**

A PHB cannot be used for support or care provided by an individual living in the same household, a close family member or a friend of the budget holder without the prior agreement of Cambridgeshire and Peterborough Clinical Commissioning Group<sup>1</sup>. Agreement from the Cambridgeshire and Peterborough Clinical Commissioning Group may be obtained if they consider it necessary to satisfactorily meet the individual's needs or to promote the welfare of a child with a PHB.

Cambridgeshire and Peterborough Clinical Commissioning Group will make these judgements on a case-by-case basis, and will consider:

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<sup>1</sup> NHS England, 2014, Guidance on Direct Payment for Healthcare: Understanding the Regulations, <https://www.england.nhs.uk/wp-content/uploads/2017/06/guid-direct-paymnt.pdf>

- The benefits that the individual with the PHB and the proposed individual of the same household may already be in receipt of and
- The care that should naturally be expected from that of a family member/individual living in the same household.

For individuals that are using a direct payment to employ personal assistants it is a requirement to have a contract of employment in place, including terms and conditions related to potential redundancy, liability insurance and training and development requirements.

There is no formal entitlement to holiday funding within a PHB, but for those individuals where an agreed health and wellbeing outcome is respite provision it must be ensured that the PHB holder, representative or nominated person are insured to travel (whether in the UK or abroad). The PHB cannot be used to pay for any form of travel insurance; it is the responsibility of the PHB holder to fund this.

If an increase in personal assistants or service provider staff/hours is required, this must be discussed with Cambridgeshire and Peterborough Clinical Commissioning Group in advance. The client/PHB holder is responsible for funding the insurance, travel and accommodation costs of accompanying personal assistants or service provider staff. The PHB holder, their representative or their nominated person must sign a disclaimer confirming that they have been informed, understand and accept the risks involved in receiving care outside of their normal setting.

### **5.5 Proposed Providers**

Provider organisations must be registered with a relevant regulatory body, where one exists (e.g. Care Quality Commission, Health Professions Council, Nursing and Midwifery Council).

Any staff employed by the PHB provider:

- must be appropriately trained
- have ongoing competency checks of any healthcare tasks they are employed to undertake
- have relevant certification (including dates of training undertaken) including annual updates as appropriate
- have an enhanced Disclosure and Barring Service (DBS) check

### **5.6 Use of Community Services**

PHBs should not be used to purchase services that Cambridgeshire and Peterborough Clinical Commissioning Group already commissions, including community health services and equipment.

During the care and support planning process the individual (or their representative) will be informed of existing NHS services including any equipment services. Items such as disposables which are provided through an NHS contract (such as continence products) are not funded through a PHB in order to avoid double funding. However, if the local service is unable to meet particular needs, then a PHB may be considered in the best interest of the client in-line with care and support planning.

If equipment purchased through a PHB is no longer required, if it no longer meets assessed needs or the client dies, the organisation reserves the right to request that the item is returned.

If an individual does want to purchase commissioned services with their PHB then they will need to make a case for this, to be considered by the Cambridgeshire and Peterborough Clinical Commissioning Group.

## **5.7 Budget Holders**

Individuals with capacity to understand and manage the PHB themselves can be the PHB holder themselves or they can nominate a friend, relative or third-party organisation to act as their representative. For individuals who lack the capacity to understand or manage the PHB themselves a best interest's assessment can be undertaken, and the budget can be managed on their behalf by either a nominated person or an authority<sup>2</sup>.

## **6 End to End Process:**

### **6.1 Information and choice given about PHBs**

Cambridgeshire and Peterborough Clinical Commissioning Group is required to publicise and promote the availability of PHBs to persons eligible for NHS Continuing Healthcare. Individuals must be advised of their right to have a PHB in their offer letter; the letter must include the types of PHB available. The right to have a PHB must also be discussed during annual reviews of care and support plans.

### **6.1 Assessment**

Prior to a PHB being set up a visit will be undertaken by a relevant healthcare professional.

The assessment meeting will cover the following:

- Clinical assessment of need
- What type of PHB the individual wishes to consider
- If the individual wants to employ their own carers or if they have existing carers that they wish to consider
- What support services are available to the individual in the management and setting up of their PHB
- Information to assist them to make an informed decision regarding their care
- The legal requirements and responsibilities in managing a PHB

### **6.2 Local Authority Direct Payment transition to Personal Budget Health Budget**

If an adult is currently in receipt of a Local Authority funded Direct Payment (Personal Budget) and becomes eligible for NHS Continuing Healthcare funding, Cambridgeshire and Peterborough Clinical Commissioning Group will honour the direct payment until

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<sup>2</sup> If someone lacks capacity and there is a court registered LPA deputy, they have to have both LPA for welfare and finance to be a budget holder

a PHB, or directly commissioned care can be arranged to ensure consistency and continuity of care.

Cambridgeshire and Peterborough Clinical Commissioning Group will not guarantee an automatic transfer of Local Authority Direct Payment to Personal Health Budget, and it should be expected that there will be a different outcome/ budget allocation to the Local Authority funded Direct Payment.

### **6.3 Care and Support Planning**

Following an assessment, the individual will be given an indicative budget, a personalised care and support plan will be produced in collaboration with the individual and/or their representative (including their representative where the individual lacks the mental capacity), and the Appropriate professional. The personalised care and support plan outlines, how the PHB will be used to achieve the individual's identified health and care outcomes.

This includes:

- who will be providing each element of support
- who will be managing the budget
- contingency planning.

A risk assessment will be completed during this visit; individuals are informed of any potential risks and the mitigating actions that can be taken to reduce risks to an acceptable level. During the risk assessment, the following is considered:

- Whether there are any sanctions in place for any for the care providers, such as non-compliance with Care Quality Commission standards
- Whether there are restrictions or embargos in place for agencies or care homes
- Whether an enhanced Disclosure and Barring Service (DBS) check has been completed and whether it has highlighted any issues
- What safeguards are in place to protect clients that lack mental capacity

Personalised care and support plans should be developed with all individuals irrespective of the personal health budget management option they choose. Cambridgeshire and Peterborough Clinical Commissioning Group has a checklist to ensure that personalised care and support plans are developed in line with National Guidance.

### **6.4 Budget Setting**

Once the needs of the individual have been assessed and an indicative budget is set, the final budget is identified and the recommendations are then considered for approval by Cambridgeshire and Peterborough Clinical Commissioning Group.

It will be considered whether:

- The individual meets the personal health budget criteria (as set out in the NHS personal health budgets toolkit)
- Adequate care planning has been carried out
- The care plan reflects the views of the individual
- The individual or their representative and the lead care co-ordinator have signed the care plan

- The value of the final budget is appropriate (review of the outcomes, planned activities and other purchases and spending, as set out in the support plan)
- The agreed outcomes will meet the needs identified in the assessment
- The care plan will deliver the agreed outcomes
- Contingency plans are in place
- The final budget is the right amount to deliver the care plan and if needed, suggest adjustments
- Direct payments have been requested and whether it is appropriate to give the PHB as a direct payment
- The plans for the direct payments are in line with the NHS Direct Payments regulations
- There is a review date in the care and support plan, and it meets the requirements of the PHB process

The proposals for meeting an individual's assessed eligible needs, as set out in the care plan must be:

**Lawful** – the proposals should be legitimately within the scope of the funds and resources that will be used. The proposals must be lawful and regulatory requirements relating to specific measures proposed must be addressed. In deciding whether the care plan meets with legal requirements it must show that:

- The care plan will fulfil Cambridgeshire and Peterborough Clinical Commissioning Group's statutory duty to meet the eligible individual's assessed needs
- The measures proposed in the care plan must in all cases be lawful
- It is in line with the Mental Capacity Act (2005)
- If the individual appears to lack capacity, the care plan must make clear how their wishes have been ascertained and incorporated into the care plan
- The individual has been made aware of any legal responsibilities they will incur as a result of measures proposed in the care plan (e.g. employment law, health and safety requirements)
- Contracts of employment are, or will be, in place if necessary
- If they are self-employed that their status has been checked
- Any service providers identified in the plan must meet applicable regulatory requirements.
- Enhanced Disclosure and Barring Service (DBS) checks have been carried out on individuals unless they are a close family member of the individual, or a friend involved in the individual's care also living in the same household as the individual
- The individual and carer(s) have received guidance on any health and safety issues or regulatory requirements in relation to any equipment or any adaptations to their home

**Effective** – the proposals must meet the individual's assessed needs and support the individual's independence, health and wellbeing. A risk assessment must be carried out and any risks identified that might jeopardise the effectiveness of the plan or threaten the safety or wellbeing of any individual must be addressed. The proposals must make effective use of the funds and resources available in accordance with the principle of best value. In deciding whether the care plan is effective it must show that:



- The personalised care and support plan meets all the assessed needs
- The proposed measures will be effective in supporting the client's independence, health and wellbeing
- Where there is a carer, the carer's needs have been assessed (it remains the responsibility of social care to complete a carer assessment) and that the proposal takes account of their needs
- The proposals represent the most effective use of the resources and funds available
- A risk assessment has been carried out and any risks identified in the plan have been addressed
- The care plan includes measures to address outcomes that will help the individual develop their independence or independent living skills and will enhance their health and wellbeing
- The care plan demonstrates due regard to the need to safeguard the individual and their carer(s)
- Individuals have a completed the Disclosure and Barring Service check (where appropriate)
- Any clinical tasks have been appropriately delegated and all identified training needs have been addressed
- Competencies checked and certified

**Affordable** – All costs have been identified and can realistically be met within the budget. In deciding whether the care plan is affordable it must show that:

- The care plan is within the indicative budget or if the indicative budget is exceeded a clear and reasoned explanation is provided to justify the additional spend
- The use of universal services, community resources, informal support and assistive technology have been explored
- All relevant sources of funding have been identified and utilised
- The personalised care and support plan does not include anything for which the individual is already receiving benefits or that an alternative agency would traditionally fund or is already funding
- In the case of care plans that exceed the indicative budget, the personalised care and support plan is reviewed to ensure best value.
- A suitable contingency amount is included within the personalised care and support plan
- Appropriate insurances have been included and proposed providers/employed carers have the appropriate indemnity cover
- The proposals represent the most effective use of the resources and funds available
- The support plan meets the assessed, eligible needs in the most cost-effective way possible
- Where the support plan requires a budget that is lower than the indicative budget, the lower budget will be approved
- The personalised care and support plan's cost is not substantially disproportionate to the potential benefit.

**Appropriate** – the care plan should not detail the purchase of items or services that are inappropriate to fund or that would bring the NHS into disrepute. The personalised care and support plan must have clear and strong links to a healthcare outcome.

## **6.5 Payment**

Once agreement is reached, there is a process in place to gain consent from the client or their representative to set up payments either as a direct payment or a holding account for a third party that will make payments on behalf of the individual.

Please refer to the PHB Agreement for further detail (see Appendix 1).

## **6.6 Review and Monitoring**

The NHS Continuing Healthcare Teams are responsible for ensuring that all care and support plans are clinically appropriate and reviewed. Reviews will be at a frequency and intensity which is proportionate to vulnerability, risk and needs of individuals. The first review must take place 12 weeks after the PHB has been in place and a face-to-face review must take place at least once a year thereafter.

The personalised care and support plans will be reviewed against the following criteria:

- Whether the personalised care and support plan is meeting health and well-being outcomes
- Whether the personalised care and support plan adequately addresses the individual's health and wellbeing needs
- Whether the individual's health and wellbeing needs have changed
- Whether the individual's risks have changed, and to what extent
- Whether the budget is sufficient to meet the assessed needs and agreed outcomes
- Whether contingencies have been used
- Quality of support and services

Financial review of direct payment and third party PHBs will take place monthly following the PHB being in place. Throughout the year there will be regular audits of all PHBs to ensure compliance and will focus on the legal, financial and administrative elements of a PHB.

Financial PHB review will include checking that:

- Spend correlates with the care and support plan
- Employers and public liability insurance is being paid for
- Contracts are in place for all personal assistants and services purchased through the PHB
- There are no significant over or underspent funds

## **7 Support for Individuals:**

### **7.1 Responsible Clinician**

The responsible clinician will discuss the opportunities afforded by PHBs with individuals. The responsible clinician will be responsible for supporting and empowering individuals to use a PHB appropriately and to ensure that all care planning

documentation is completed and as far as possible risks are identified and mitigated. The responsible clinician will retain responsibility for ensuring health and social care needs are addressed by the individual's personal support plan.

## **7.2 Managed Accounts Service**

The individual (or their representative) may request support from a Managed Accounts Service to help them plan their care and provide a payroll and accounts payable service for budget holders. The cost of using a managed account service will be deducted from the individual's PHB.

## **8 Safeguarding and Mental Capacity:**

Current legislation and statutory frameworks in relation to Safeguarding and the Mental Capacity Act (2005) must be adhered to at all times. All staff involved in the PHB offer and assessment must be up to date with training for Safeguarding and the Mental Capacity Act. They should also be in receipt of safeguarding supervision either as a standalone or within their clinical supervision.

A duty of care is a requirement placed on an individual to exercise a reasonable standard of care while undertaking activities (or omissions) that could foreseeably harm others. Duty of care can be said to have reasonably been met where an objective group of professionals considers<sup>3</sup>:

- All reasonable steps have been taken
- Reliable assessment methods have been used
- Information has been collated and thoroughly evaluated
- Decisions are recorded, communicated and thoroughly evaluated
- Policies and procedures have been followed
- Practitioners and their managers adopt an investigative approach and are proactive.

## **9 Risk Management:**

### **9.1 Clinical Risk**

Cambridgeshire and Peterborough Clinical Commissioning Group is committed to promoting choice, whilst supporting individuals to manage risk and make informed decisions. It is therefore essential that individuals are fully involved in the assessment and review process in order to understand any potential risks and steps that can be taken to manage them.

The organisation requires that the multi-disciplinary teams clearly document any evidence of decision-making and rationale in relation to the management and reduction of risk where appropriate or necessary. This will be considered as part of the budget and direct payment approval process by the Cambridgeshire and Peterborough Clinical Commissioning Group.

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<sup>3</sup> Department of Health, 2011, *Safeguarding Adults: The Role of Health Service Practitioners*  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/215714/dh\\_125233.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/215714/dh_125233.pdf)

An individual who has the mental capacity to make a decision and chooses voluntarily to live with a level of risk, is entitled to do so. Any evidence of decision making and rationale in relation to the management and reduction of risk will be documented where appropriate or necessary.

## **9.2 Financial Risk**

PHBs must be affordable within Cambridgeshire and Peterborough Clinical Commissioning Group's overall budgetary allocation and must be able to demonstrate value for money. An individual's budget must be sufficient to meet both the outcomes identified in the care plan and to allow for planned contingencies.

When considering a request for a PHB, the method of payment must also be considered. Those individuals deemed unsuitable for a direct payment or choosing not to have a direct payment should be offered a budget held by a third-party organisation, or a notional budget. Where a direct payment is to be made, the financial arrangements and requirements are contained within a Direct Payment Agreement between Cambridgeshire and Peterborough Clinical Commissioning Group and PHB holder, which will be signed by both parties.

The following costs will normally be paid as part of the PHB:

- The direct cost of providing the service, including support service costs
- Start-up costs such as initial staff training
- Refresher training
- Supervision
- Funding to cover the contingency plan

Additional elements may be required to be funded within the PHB such as the following (unplanned contingencies):

- Redundancy costs when a service provided by a personal assistant ceases
- Maternity pay for personal assistant
- Long term sickness for personal assistant
- Training to support newly employed staff
- Recruitment costs following previously unsuccessful attempts or high staff turnover

Cambridgeshire and Peterborough Clinical Commissioning Group will hold the funding for the above additional elements until required by an actual liability. Should an additional element arise it will be necessary to discuss this with the delegated authority figure as set out in the high/exceptional care package costs procedure for NHS Continuing Healthcare.

All new PHBs will be reviewed within the first 12 weeks to ensure that budget estimates are accurate. Any revisions to the budget will be agreed with the individual.

PHBs will also be monitored to identify significant variations or trends, irregularities and issues that may require further investigation, such as misuse of money. Any unusual occurrences will be investigated immediately, and action taken where necessary. Cambridgeshire and Peterborough's Clinical Commissioning Group's nominated local counter fraud specialist may be involved in financial audit.

It is the responsibility of the individual (or their representative) to inform Cambridgeshire and Peterborough Clinical Commissioning Group as soon as they become aware of factors which may affect the cost of their PHB. Cambridgeshire and Peterborough Clinical Commissioning Group will not automatically fund increased costs which have not been pre-approved through the care plan or financial review process. Other benefits should also be taken into account to ensure that the PHB does not duplicate other sources of funding (e.g. winter fuel allowance, Motability allowance). Any requested variation over the initial approved budget will need to be considered by exception.

If there is an identified misspend within a budget, consideration will be given to a referral to statutory organisations such as the police and the NHS counter fraud team to investigate.

Cambridgeshire and Peterborough Clinical Commissioning Group reserves the right to remove a direct payment from an individual and replace it with a notional budget if misspend is identified.

## **10 Governance:**

### **10.1 Appeals Process**

Eligible individuals who request a PHB may appeal a decision by Cambridgeshire and Peterborough Clinical Commissioning Group to refuse to grant them a PHB or to refuse to grant them a particular type of PHB. If a PHB is refused in full or in part, then Cambridgeshire and Peterborough Clinical Commissioning Group must provide the person who requested the PHB or their representatives with the reasons for that decision in writing (the first decision).

On receipt of the first decision, or on receipt of the decision about which type of PHB is most appropriate (PHB Decision), the eligible individual or their representative may require Cambridgeshire and Peterborough Clinical Commissioning Group to undertake a review of the first decision or the PHB decision. The client or their representative may provide evidence of information for Cambridgeshire and Peterborough Clinical Commissioning Group to consider as part of that review.

Following the review, the Cambridgeshire and Peterborough Clinical Commissioning Group must inform the eligible individual or their representatives in writing of the decision following a review and state the reasons for the decision. Cambridgeshire and Peterborough Clinical Commissioning Group may not be required to undertake more than one review of their first decision in any six-month period.

### **10.2 Stopping or Reclaiming Payments**

Individuals will be free to opt out of a direct payment or third party PHB at any time and to have their needs reassessed for a notional budget. Individuals should discuss this with their identified responsible clinician and give formal notification of their intention to change their PHB to a notional one. Individuals will be required to give 2 months' notice to allow time for directly commissioned and self-directed support to be wound down unless there is a crisis which prevents such notice.

Cambridgeshire and Peterborough Clinical Commissioning Group reserves the right to stop direct payments where money is being spent inappropriately, where there may have been theft or fraud, or if the individual's assessed needs are not being met. A notional PHB will then be put in place to ensure that there is no gap in the individual's care provision. Additionally, if the balance of funds held in the PHB account represent more than what would represent a typical safety net balance, then Cambridgeshire and Peterborough Clinical Commissioning Group reserves the right to pause payments until the balance reduces to below an acceptable level, typically equivalent to eight weeks of expenditure.

Before direct payments are ceased, Cambridgeshire and Peterborough Clinical Commissioning Group will give notice to the individual or their representative in writing. There is no fixed notice period for stopping direct payments. The time taken before stopping direct payments will depend on any contractual obligations the direct payment user may have entered into.

Direct payments are not a welfare benefit and do not represent an entitlement to a fixed amount of money. These payments are paid to meet assessed health and care needs. Where individuals' needs change this will be reflected in the value of the direct payments.

In the event of the patient dying, or no longer eligible for NHS Continuing Healthcare or if their needs have changed so that a Personal Health Budget is no longer suitable for commissioning the care needed, any funds remaining unspent in the Personal Health Budget account are required to be returned to Cambridgeshire and Peterborough Clinical Commissioning Group.

## **11 Equality Impact Assessment:**

An Equality Impact Assessment has been completed for this policy has been completed and agreed by the Human Resource Advisor (Equality & Diversity). A copy is attached – Appendix 2.

## Appendix 1 Personal Health Budget Agreement

### PERSONAL HEALTH BUDGET AGREEMENT

Agreement in relation to direct payments for health care made to or in respect  
of *Insert Patient name*

This is an agreement between NHS Cambridgeshire and Peterborough Clinical Commissioning Group and either the Patient named above or their Representative or Nominee relating to direct payments for health care. If you have any concerns about its content, or any other queries, you are advised to seek assistance from your Nurse. NHS Cambridgeshire and Peterborough Clinical Commissioning Group encourages you to take independent legal advice before signing this agreement.

#### Parties

This Agreement is made on [*insert date*] between:

**NHS Cambridgeshire and Peterborough Commissioning Group (CCG)** (referred to as “us” or the “CCG”)

AND

(2) **[Insert Representative name, address]** (referred to as “the Representative”)

Or

**[Insert Patient Name, address]** (referred to as “you”)

#### 1. The Agreement:

- 1.1 This is an Agreement between the CCG and the Patient or their Representative which is made pursuant to Section 12A of the National Health Service Act 2006 and the National Health Service (Direct Payments) Regulations 2013.
- 1.2 Defined terms have the meaning given in Clause 1.6 of this Agreement.
- 1.3 The CCG has assessed your need for Support and is satisfied that you are capable of managing by yourself or with such assistance as may be available to you to receive your Personal Health Budget as a Direct Payment from the

CCG to your Bank Account. The Direct Payment will be made by the CCG itself and/or Cambridgeshire County Council and Peterborough City Council on behalf of the CCG in accordance with this Agreement and any other agreement and terms and conditions referred to in this Agreement.

1.4 Your Bank Account into which Direct Payments under this Agreement are paid by the CCG will be used by you or your Representative only for the purposes of securing Support as agreed with the CCG in your Personalised Care and Support Plan by means of Direct Payments and for no other purpose.

1.5 This Agreement will come to an end with immediate effect upon any change in the law which will make it unlawful for you and the CCG to carry out your and our obligations under this Agreement. Upon termination of this Agreement under this Clause 1.5 all monies held by you or your Representative shall be repaid to us immediately or as directed by us.

1.6 Definitions:

**Agreement** means this agreement between you or your Representative and the CCG to use your Bank Account to receive your Personal Health Budget as a Direct Payment from the CCG and incorporates the terms and conditions referred to in Schedule 1.

**Bank Account** means the bank account held by you or your Representative with your nominated bank and approved by the CCG into which Direct Payments are paid under the terms of this Agreement and which may also include, subject to approval by the CCG, any existing bank account you or your Representative may solely hold for the purpose of receiving direct payments for health and social care needs from Cambridgeshire County Council and Peterborough City Council.

**Clinical Commissioning Group (CCG)** commissions the provision of healthcare services in a specific area and will work with local authorities and other agencies that provide health and social care locally to make sure that the local community's needs are being met.

**Council** means Cambridgeshire County Council and/or Peterborough City Council

**DBS** means Disclosure and Barring Service or any replacement or successor organisation to it.

**Direct Payments** means the payments made to you in accordance with clause 3 of this Agreement and paid into the Bank Account by the CCG itself and/or Cambridgeshire and Peterborough Council on behalf of the CCG.

**DPSO** means a direct payment support organisation approved by the CCG and appointed by the Patient or Representative to manage and assist the Patient or their Representative with the Direct Payment, as per paragraph 1.25 of Schedule 1. The CCG agrees that, as per paragraph 3.1 of Schedule 1, any



approved direct payment support organisation will have access to the Bank Account.

**Employment Costs** means costs associated with the employment of staff by you or your Representative for the purpose of this Agreement including (but not limited to) wages, DBS checks, national insurance, training, payroll, insurance and emergency cover, tax and any other costs.

**Guidance** means the Department of Health's Direct Payments for health care – Information for pilot sites (15 July 2010) guidance as amended or replaced from time to time.

**Personal Health Budget** means the budget for provision of health care services to you made by way of Direct Payments in accordance with this Agreement.

**Personalised Care & Support Plan** means the plan you develop with appropriate personalised assistance, which describes the health outcomes you want to achieve and the services to be secured by means of Direct Payments to achieve the health outcomes. This plan is agreed by you or your Representative and the CCG.

**Regulations** means the National Health Service (Direct Payments) Regulations 2010 as amended or replaced by subsequent legislation.

**Representative** means a deputy, attorney, person with parental responsibility and any other person, which the CCG may consider appropriate to receive and manage Direct Payments on your behalf and named at Clause 2.5 of this Agreement.

**Support** means the arrangements made to meet your health care needs as specified in your Personal Health Budget Plan.

References to "you", "your" and "yourself" are references to the person first named below as a signatory to this Agreement and references to "we", "us" and "our" are references to the CCG.

## **2 Representative:**

2.1 This Clause 2 applies where the CCG has entered into this Agreement with a Representative. Any Representative to whom the CCG is to make Direct Payments under the terms of this Agreement will:

- a) be considered appropriate by the CCG
- b) agree to act on your behalf in relation to the Direct Payments;
- c) act in your best interest when securing the provision of services in respect of which Direct Payments are made;

- d) be responsible as a principal for all contractual arrangements entered into for your benefit and secured by means of Direct Payments;
- e) use the Direct Payments in accordance with the Personalised Care and Support Plan and the terms of this Agreement and the Regulations;
- f) cannot be receiving payment through the PHB for any respect, including to help manage or administer the PHB, or to provide services funded by the PHB
- g) inform us immediately if you regain mental capacity and can manage the Direct Payments.
- h) where required agrees to have a DBS check.

2.2 We will agree to the making of Direct Payments to the representative on your behalf subject to being satisfied that the representative is capable of managing the Direct Payments by themselves or with such assistance as may be available to them. If the Representative is not one of your close family members or a friend involved in your care, then we will require the representative to apply for an enhanced DBS check certificate before giving our consent to making the Direct Payments to the representative.

2.3 You agree to notify the CCG if you wish to change or withdraw your Representative. Following such a notification we may stop the making of Direct Payments, consider paying the Direct Payments to you directly or to a different representative and as soon as reasonably possible review the Personal Health Budget and Personalised Care and Support Plan in accordance with the Regulations.

2.4 If Direct Payments to you are stopped under Clause 2.3, it will be you or your Representative's responsibility to ensure that any surplus monies held by you or your Representative under this Agreement are repaid to us.

2.5 Details of the Representative are:

**Name of Representative:**

**[insert details]**

**Relationship to the Patient:**

**[insert details]**

**Address:**

**[insert details]**

### **3 Payments:**

3.1 All Direct Payments as agreed by you or your Representative in the Personal Health Budget Plan will be made by the CCG itself and/or Cambridgeshire

County Council and Peterborough City Council on behalf of the CCG to you or your Representative as follows:

3.2 Single payments

You or your Representative will receive in your Bank Account a one-off payment of £xxx

3.3 Regular Payments

a) Your first payment may cover more than 4 weeks and may be after the commencement of the service

b) Every 4 weeks, in advance, you or your Representative, will receive in your Bank Account £xxx as your Direct Payment.

c) This is equivalent to £xxx per week and equivalent to £xxx per annum.

**4. General Provisions:**

4.1 All amendments and variations of this Agreement must be agreed between you or your Representative and us and confirmed in writing, signed and dated by you or your Representative and us and attached to this Agreement. You or your Representative will receive not less than 4 week's notice of any proposed review, monitoring or changes to your Personal Health Budget leading to any such amendments and variation to this Agreement.

4.2 Any notice to be given in connection with this Agreement will be in writing and may be delivered by hand or post addressed to the recipient at the address set out or any other address notified to the other party in writing in accordance with this clause as the address to which notices and other documents may be sent:

**CCG Address**

NHS Cambridgeshire and Peterborough Clinical Commissioning Group  
Lockton House, Clarendon Road, Cambridge, CB2 8FH

**The Patient's/Representative's Address:**

[Insert address]

4.3 The notice, demand or communication will be deemed to have been duly served:

- a) if delivered by hand, at the time of delivery;
- b) if delivered by post, forty eight (48) hours after being posted (excluding Saturdays, Sundays and public holidays);

- 4.4 This Agreement will be a legally binding contract made in England and Wales and will be subject to the laws of England and Wales.
- 4.5 This Agreement together with Schedule 1 constitutes the whole agreement between you or your Representative and the CCG and supersedes any previous arrangement, understanding or agreement between you and the CCG relating to the subject matter of this Agreement.
- 4.6 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision will, to the extent required, be deemed not to form part of the Agreement, and the validity and enforceability of the other provisions of the Agreement will not be affected.
- 4.7 You confirm that you have read and understood this Agreement including the terms and conditions set out in Schedule 1.

**The CCG and you or your Representative agree to be bound by and to comply with the terms and conditions set out in Schedule 1 to this Agreement and any other applicable terms and conditions as referred to in this Agreement or as notified to you or your Representative by the CCG.**

Signed by the **Patient / Representative (please delete as appropriate)**

Signature .....

Name .....

Address .....

.....

.....

Date .....

Signed on behalf of **NHS Cambridgeshire and Peterborough Clinical Commissioning Group**

Signature: .....

Name: .....

Designation: .....

Date: .....

Address: NHS Cambridgeshire & Peterborough Clinical Commissioning Group  
Lockton House, 4th Floor, Clarendon Road, Cambridge, CB2 8FH

Email: [capccg.complexcases-chc@nhs.net](mailto:capccg.complexcases-chc@nhs.net)

## SCHEDULE 1

### YOU AND NHS CAMBRIDGESHIRE AND PETERBOROUGH CLINICAL COMMISSIONING GROUP (CCG) - RIGHTS AND RESPONSIBILITIES

This document sets out the rights and responsibilities of the Agreement between you or your Representative and the CCG

#### 1. Your Rights and Responsibilities

- 1.1 You or your Representative agree that your health needs can be met by provision of the Support as identified in the Personal Health Budget Plan, as updated from time to time in accordance with this Agreement or as required by any relevant law or guidance (including the Department of Health's "*Guidance on Direct Payments for Healthcare: Understanding the Regulations*" (March 2014) as amended or replaced from time to time) and that the amount of the Direct Payments is sufficient to provide for the full cost of the Support identified in your Personal Health Budget Plan. You or your Representative agree to use your Personal Health Budget made available to you as Direct Payments for the purpose of securing services needed to help deliver your agreed health outcomes as agreed by you in your Personal Health Budget Plan from any service provider who meets the conditions set out at paragraph 1.9 of this Schedule and does not fall under paragraph 2.5 of this Schedule.
- 1.2 You agree that your Direct Payments cannot be used for the purchase of the following:
- a) Supply or procurement of alcohol or tobacco; or
  - b) Provision of gambling services or facilities; or
  - c) Repay a debt otherwise than in respect of a service specified in your Personal Health Budget Plan; or
  - d) Primary medical services provided by general practitioners as indicated in the Personal Health Budget Plan; or
  - e) Urgent or emergency treatment services (including any unplanned hospital admissions) as indicated in the Personal Health Budget Plan, or
  - f) Support for social care (in the event direct payments for social care are paid into your Bank Account by Cambridgeshire and Peterborough County Council).
  - g) Anything illegal, unlawful or harmful to yourself or others

- 1.3 You or your Representative must use Direct Payments to cover the cost of your Support and for no other purpose.
- 1.4 You or your Representative agree to provide us every month a list detailing how you or your Representative intend to spend your Personal Health Budget and upon our request provide information or evidence relating to:
- a) your state of health or any health condition and any changes relating to your health in respect of which Direct Payments are made;
  - b) the health outcomes expected from the provisions of any service;
  - c) any other information as we may consider necessary.
- 1.5 You or your Representative must let us examine, and where appropriate, take copies or make extracts of all information and documentation relating to your Personal Health Budget and the provision of the Support within 30 days of the end of each monitoring periods from the date you first receive the Personal Health Budget as set out in paragraphs 1.11 and 1.12, or whenever the CCG requests you or your Representative to do so. This information includes:
- a) all financial records (that is of income received and payments made through your Bank Account which show clearly the Direct Payments received from us and details of how you or your Representative have used the Direct Payments as agreed in the Personal Health Budget Plan;
  - b) Your Bank Account bank statements;
  - c) Receipts for payment made;
  - d) Agency invoices and receipts (if applicable); and
  - e) Any other information as we may consider necessary.

Where you or your Representative are to provide us with information under this Agreement, such information shall be provided in a legible format, accompanied by authorisation for us to take copies or extracts of the information, with an explanation of the information provided to us or a statement to the best of you or your Representative's knowledge and belief of where any information not provided to us is held.

- 1.6 You or your Representative must keep all supporting documents relating to your Personal Health Budget and the provision of the care for at least six complete financial years from the date of the payment, even if the payments have stopped. You or your Representative agree to provide us, upon our request, with an explanation of the information you provide to us or a statement to the best of your knowledge and belief of where any information you fail to provide to us is held.
- 1.7 You must keep a Financial Record which shows clearly:

- a) payments you have received to meet your assessed needs; and
  - b) details of how you have used Direct Payments made into your Bank Account, as agreed with your Care Coordinator.
- 1.8 You or your Representative must ensure that provisions are put in place for cover in emergency situations to ensure that you have care when you need it.
- 1.9 You or your Representative must ensure that the organisation providing the Support:
- a) is reputable and can meet the standards of quality expected by us;
  - b) has complied with all its registration obligations including with the Care Quality Commission if carrying out regulated activities;
  - c) has adequate insurance and indemnity cover for the services to be provided to you, if it is ascertained that the provider must operate under insurance or indemnity cover;
  - d) has the right skills and resources in place to provide the type of services you require under the Personalised Care and Support Plan;
  - e) has adequate complaints procedures in place; and
  - f) where applicable, is a registered member of a professional body affiliated with the Council of Healthcare Regulatory Excellence.
- 1.10 You or your Representative, may request us to carry out on your behalf the enquiries under paragraph 1.9(b) and (c) in respect of any particular service provider organisation.
- 1.11 No later than three months from the date you first receive your Personal Health Budget in your Bank Account there will be an initial review of the management of the Personal Health Budget and a review and re-assessment of your care needs (including a review of the quality of the Support arrangements you have made). Any proposed changes to the Personal Health Budget and / or the support arrangements will be the subject of discussions between you and us.
- 1.12 There will be subsequent financial monitoring of your Personal Health Budget at months 3 and 9 in year one after the date you first receive the Personal Health Budget and subsequently every 6 months and more frequently if there is a change in circumstances, or where we become aware that the Direct Payment(s) have not been sufficient to secure your Support, there will be a review of the management of the Personal Health Budget and a review and re-assessment of your Support needs (including a review of the quality of the Support you are receiving). Any proposed changes to the Personal Health Budget and / or the Support will be notified to you or your Representative in



accordance with Clause 4.1 of the Agreement and will be the subject of discussions between you, your Representative and the CCG.

- 1.13 If following a review of your Personal Health Budget under paragraphs 1.11 and 1.12 we decide to reduce the amount or stop the making of Direct Payments we will give you or your Representative 4 weeks minimum notice in writing stating the reasons for the decision. Upon receipt of such notice you or your Representative may require us to undertake one further review and provide any relevant evidence or information to consider as part of this further review. We will notify you or your Representative in writing of our decision and the reasons for it.
- 1.14 You or your Representative, agree to notify us immediately of any substantial change of your health conditions or the Personal Health Budget Plan or other relevant circumstances (including: where you are admitted to hospital, move away from Cambridgeshire and Peterborough, move to a different address in Cambridgeshire and Peterborough, leave the country for more than four weeks, no longer wish to receive the Direct Payment, or need help to comply with these terms and conditions).
- 1.15 Where we are satisfied that the whole or any part of a Personal Health Budget has not been used to secure the Support to which it relates, the CCG reserves the right to:
  - a) demand repayment of the whole or part of the Direct Payment; or
  - b) withdraw your Direct Payment and transfer it onto a notional budget managed directly by us; or
  - c) arrange for a third party or accountancy service approved by us to take over the management of your Direct Payment.
- 1.16 Subject to paragraph 2.7 of this Schedule, where we are satisfied that you, your Representative or Nominee have not complied with any term or condition of this Agreement then you or your Representative must repay the whole or part of the Personal Health Budget if we so request.
- 1.17 You or your Representative (if so directed by you) have the right to bring this Agreement to an end at any time by giving four weeks written notice (or less by agreement) to your Care Coordinator.
- 1.18 If this Agreement is brought to an end by you or your Representative or by us, we will be responsible for settling any outstanding payments due to a provider organisation whom you or your Representative have made arrangements to provide Support. If there is a surplus Personal Health Budget held by you in a Bank Account under this Agreement it must be repaid to us in accordance with our instructions.
- 1.19 Any repayment of the Direct Payments, in part or in whole, to the CCG under the terms of this Agreement shall be made in accordance with our other instructions.

- 1.20 No transfer of Direct Payments monies to any bank account (other than the Bank Account) held by you or your Representatives is permitted under the terms of this Agreement.
- 1.21 You or your Representative may at any time during the term of this Agreement request us to undertake a review of the Personal Health Budget. Upon receipt of such a request we shall decide whether to undertake such a review and will notify you or your Representative of our decision and the reasons for it.
- 1.22 When you intend to employ staff directly, you or your Representative must request these staff to undertake DBS checks. When you intend to employ or contract with persons known to you (such as a member of your family or friends) you will have discretion as to whether to request them to undertake an enhanced DBS check to ensure that person has no relevant criminal convictions which would preclude them from being employed in such a role. If you intend to employ a person unknown to you but known to your Representative, you shall require such person to undertake an enhanced DBS check.
- 1.23 If you directly employ staff you are required to have in force employer's liability insurance which includes public liability insurance. This is to be with reputable insurers or underwriters with a minimum limit for any one claim (the limit to be increased from time to time as reasonably required by us). The relevant insurance policy and the premium receipts must be produced as and when required by us. An allowance for these insurance policies is included within the Personal Health Budget.
- 1.24 You or your Representative (if so authorised by you) agree to notify in writing your next of kin and/or or personal representative and your bank and/or building society that the Bank Account does not form part of your estate and does not form part of your personal income. A copy of such notification shall be provided to the CCG within 30 days of being served on the relevant persons in accordance with this paragraph 1.24. In the event of your death we will assess the outstanding contractual responsibilities incurred by you or your Representative in respect of the use of the Direct Payments for the purpose of determining whether any amount shall be repaid to the CCG.
- 1.25 You must use an accredited/reputable payroll services to pay your personal assistants or employees, if any.
- 1.26 Anyone employed by you using the Personal Health Budget will not be considered as one of the CCG's employees or agents.
- 1.27 All Employment Costs associated with the employment of any staff by you under this Agreement shall be included within the Personal Health Budget as indicated in the Personalised Care and Support Plan.
- 1.28 You or your representative agree that the purchase of equipment with your Personal Health Budget will be discussed with the CCG in regard of any costs

of repairs, insurance or replacement and will be clearly outlined in your Personal Health Budget Plan.

## **2. Our Rights and Responsibilities**

- 2.1 We will agree with you and advise you or your Representative of significant potential risks arising in relation to the making of Direct Payments and the means of mitigating those risks.
- 2.2 We retain responsibility to review your health care needs and will therefore appoint or identify the Care Coordinator to assess that your needs as agreed in the Personalised Care and Support Plan are being met. The Care Co-ordinator will be responsible for reviewing the Personalised Care and Support Plan and:
  - a) Monitoring your health needs and the making of Direct Payments to you or your Representative;
  - b) Arranging for the review of Direct Payments under the terms of this Agreement;
  - c) Liaising between you or your Representative and us.
- 2.3 The sum of the Personal Health Budget we have agreed we will pay you for 'start up' costs for the regular provision of Support will be paid by us into your Bank Account.
- 2.4 The Personal Health Budget in the form of Direct Payments will be paid by the CCG itself and/or Cambridgeshire and Peterborough County Council on behalf of the CCG into your Bank Account for the purpose of you receiving payments for the cost of the Support which we have assessed is needed by you in accordance with clause 3 of this Agreement.
- 2.5 We reserve the right to require that you or your Representative do not secure Support from a particular service provider as indicated by us in this Agreement or otherwise notified to you or your Representative by us. You or your Representative agree not to use the Direct Payment to purchase the Support from a close family member if they are living in the same household as you without our express written consent to be granted only where it is necessary to meet satisfactorily your need for the Support.
- 2.6 We may suspend or discontinue making payments to you or your Representative if we become aware or are notified that the Personal Health Budget is not needed for a period exceeding 28 days but before doing so we will discuss the matter with you or your Representative and take into account any contractual agreements and continuing needs you may have.

- 2.7 Where we are satisfied that the whole or any part of the Personal Health Budget has not been used to secure the provision of the care to which it relates or your Personalised Care and Support Plan changed substantially then we may suspend, discontinue or reduce the amount of Direct Payments but before doing so we will discuss the matter with you and take into account any contractual agreements and continuing needs you may have. If no contact can be made with you for a period of 4 weeks we reserve the right to suspend or withdraw your Direct Payment.
- 2.8 Where we are satisfied that you or your Representative have not complied with any term or condition of this Agreement then we may require you or your Representative to repay us the whole or part of the Personal Health Budget we have made to you.
- 2.9 If we are satisfied that theft, fraud or another offence has occurred in connection with the Direct Payments we may terminate this Agreement with immediate effect and require you or your Representative to repay us the whole or part of the payment.
- 2.10 If we decide that a sum must be reduced or repaid under paragraphs 1.15, 1.16, 2.7, 2.8 and 2.9 we will notify you or your Representative within 4 weeks of making the decision providing our reasons for making the decision and specifying the amount to be reduced or repaid.
- 2.11 Upon receipt of a notice to repay the whole or part of the Direct Payments served under paragraph 2.10 you or your Representative may require us to re-consider the decision and provide evidence or information for us to consider as part of the deliberation. We will notify you or your Representative in writing of our decision and the reasons for it.
- 2.12 We have the right to bring this Agreement to an end by giving you or your Representative 4 week notice in writing stating the reasons for the decision if it appears to us that you are no longer capable of managing a Personal Health Budget by yourself or with such assistance as may be available to you or you are a person whose ability to arrange your Support is restricted by certain mental health or criminal justice legislation (details of which we will give to you).
- 2.13 Even if you appear to us no longer to be capable of managing a Personal Health Budget by yourself we may continue to make such payments if we are reasonably satisfied that your inability will be temporary and a Representative is prepared to accept and manage the Direct Payments on your behalf and your Representative allows you to manage Direct Payments by yourself for any period for which we are satisfied that you have capacity to do so.
- 2.14 We may bring this Agreement to an end by giving you or your Representative 4 week notice in writing stating the reasons for the decision if it appears to us that your needs for care can no longer be met by means of a Personal Health Budget or if you are no longer registered with a GP practice covered by NHS Cambridgeshire and Peterborough.

- 2.15 We may bring this Agreement to an end by giving you or your Representative 4 week notice in writing stating the reasons for the decision if you or your Representative have not complied with any term or condition of this Agreement.
- 2.16 We may bring this Agreement to an end with immediate effect and arrange appropriate services if:
- a) Your Representative refuses to receive Direct Payments; or
  - b) We consider that your Representative is no longer suitable to receive Direct Payments.
- 2.17 Upon receipt of a notice served under paragraph 2.16 you may require us to re-consider the decision and provide evidence or information for us to consider as part of the deliberation. We will notify you or your Representative in writing of our decision and the reasons for it.
- 2.18 Any right or liability of you or your Representative (or personal representatives in case of your death) to a third party acquired or incurred in respect of a Support secured by means of a Direct Payment shall transfer to the CCG when the CCG stops making Direct Payments to you or your Representative pursuant to termination of this Agreement for whatever reason.
- 2.19 Throughout the duration of this Agreement we will provide information, advice and support to you or your Representative as may be necessary.
- 2.20 We will ensure, where applicable, that any person involved in the management or delivery of the Support has undertaken an enhanced DBS check. We will inform you or your Representative of the results of any such checks.
- 2.21 The NHS complaints procedure will apply to any decision by us in relation to a complaint brought by you or your Representative. We will ensure that you or your Representative are aware of the process for accessing that procedure. We will also ensure that you are aware of the procedure for escalating a complaint to the Health Service Ombudsman should you or your Representative feel that it is necessary to do so.

### **3 Your Bank Account**

- 3.1 Your Bank Account will be held by you or your Representative and, subject to approval by the CCG, be accessible by your Representative for the purpose of using the Direct Payments under the terms of this Agreement and the Regulations.
- 3.2 In the event that direct payments for social care are paid into your Bank Account by Cambridgeshire County Council or Peterborough City Council, you or your Representative will ensure that no monies paid under this Agreement as Direct Payments are used for the purchase of social care support.

## Appendix 2 - Equality Impact Assessment Form

### Initial Screening

<b>Name of Proposal (policy/strategy/function/service being assessed)</b>	Complex Cases Team – Personal Health Budget Policy
Those involved in assessment:	Soomitra Kawal - OD & HR Advisor (Equality and Diversity)  Cathy Barresi - Operational Manager, Complex Cases Team  Ian Daborn – Senior Project Support Office, Complex Cases Team
Is this a new proposal?	Yes
Date of Initial Screening:	February 2020

<p>1. What are the aims, objectives?</p>	<p>To offer the option of a personal health budget (PHB) to all NHS Continuing Healthcare eligible patients who are the responsibility of NHS Cambridgeshire and Peterborough Clinical Commissioning Group (C&amp;PCCG).</p> <p>A Personal Health Budget (PHB) 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 C&amp;PCCG. 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 PHBs 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.</p> <p>From April 2019, PHBs are the default-commissioning route for individuals eligible for NHS Continuing Healthcare that are in receipt of domiciliary care. Ensuring more people can benefit from personalised care is one of the key aims of the NHS Long Term Plan and this includes the ambition to increase the uptake of PHBs to 200,000 by 2023/2024.</p>
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2. Who will benefit?	Individuals eligible for NHS Continuing Healthcare who make the decision to have a Personal Health Budget.
3. Who are the main stakeholders?	NHS Cambridgeshire and Peterborough Clinical Commissioning Group
4. What are the desired outcomes?	<ul style="list-style-type: none"> <li>Improved health and emotional wellbeing to stay healthy and recover quickly from illness. Improved quality of life to have the best possible quality of life, including life with other family members supported in a caring role</li> <li>Making a positive contribution and to participate as an active citizen, increasing independence where possible.</li> <li>To have maximum choice and control.</li> <li>Freedom to live free from discrimination, harassment and victimisation.</li> <li>To achieve economic wellbeing and have access to work and / or benefits as appropriate.</li> <li>To keep personal dignity and be respected by others.</li> </ul>
5. What factors could detract from the desired outcomes?	<ul style="list-style-type: none"> <li>Failure to make patients aware of their option to utilise a PHB.</li> <li>Some patients may not wish to have their package of care delivered via a PHB.</li> <li>Some patients may not have the mental capacity to manage a PHB.</li> <li>Inappropriate use of a PHB.</li> <li>Interruption to a patient's care due to a delay when moving from current funding arrangements to a PHB.</li> </ul>
6. What factors could contribute to the desired outcomes?	<ul style="list-style-type: none"> <li>Increased patient choice.</li> <li>Greater flexibility of care options.</li> <li>PHB provides more patient centred care.</li> <li>Funding channelled to the most beneficial care package based on a patient's knowledge and understanding of their condition.</li> </ul>
7. Who is responsible?	NHS Cambridgeshire and Peterborough Clinical Commissioning Group
8. Have you consulted on the proposal? If so with whom? If not why not?	<p>No consultation has taken place on the policy.</p> <p>The policy has been developed to ensure the Complex Cases Team has a robust PHB policy based on the National Framework for NHS Continuing Healthcare – 2018 and NHSE directive and guidance relating to PHBs.</p>

<b>9. Which protected characteristics could be affected and be disadvantaged by this proposal (Please tick )</b>	Yes	No
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Age	<u>Consider:</u> Elderly, or young people		No
Disability	<u>Consider:</u> Physical, visual, aural impairment, Mental or learning difficulties		No
Gender Reassignment	<u>Consider:</u> Transsexual people who propose to, are doing or have undergone a process of having their sex reassigned		No
Marriage and Civil Partnership	<u>Consider:</u> Impact relevant to employment and /or_training		No
Pregnancy and maternity	<u>Consider:</u> Pregnancy related matter/illness or maternity leave related mater		No
Race	<u>Consider:</u> Language and cultural factors, include Gypsy and Travellers group		No
Religion and Belief	<u>Consider:</u> Practices of worship, religious or cultural observance, include non-belief		No
Sex /Gender	<u>Consider:</u> Male and Female		No
Sexual Orientation	<u>Consider:</u> Know or perceived orientation		No

**10. What information and evidence do you have about the groups that you have selected above?**

C&PCCG's adoption of PHBs aligns to the national policy and directive from NHS England. The Policy is supported by substantial national research which shows that PHBs and the overall movement to personalise services are a powerful tool to address inequalities in the health service. Implementation of PHBs must not exacerbate inequalities or endanger equality; the decision to set up a PHB for an individual must be based on their needs, irrespective of race, age, gender, disability, sexual orientation, marital or civil partnership status, transgender, religion or beliefs.

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

Personalisation of healthcare embodies co-production. This means individuals working in partnership with their family, carers and professionals to plan, develop and procure the services and support that are appropriate for them. It also means CCGs, local authorities and healthcare providers working together to ensure effective and efficient delivery of care and use of PHBs.

Consider: Demographic data, performance information, recommendations of internal and external inspections and audits, complaints information, JNSA, ethnicity data, audits, service user data, GP registrations, CHD, Diabetes registers and public engagement/consultation results etc.



**How might your proposal impact on the groups identified? For example, you may wish to consider what impact it may have on our stated goals: Improving Access, Promoting Healthy Lifestyles, Reducing Health Inequalities, Supporting Vulnerable People**

Examples of impact re given below:

- a) Moving a GP practice, which may have an impact on people with limited mobility/access to transport etc
- b) Planning to extend access to contraceptive services in primary care without considering how their services may be accessed by lesbian, gay, bi-sexual and transgender people.
- c) Closure or redesign of a service that is used by people who may not have English as a first language and may be excluded from normal communication routes.

Please list the positive and negative impacts you have identified in the summary table on the following page.

<b>Summary</b>	
Positive impacts (note the groups affected) The Policy will provide clear guidance and clarity to professionals working within C&PCCG on PHBs. The policy will provide an improved experience for patients, their families and carers.	Negative impacts (note the groups affected) None

Summarise the negative impacts for each group:

None

**11. What consultation has taken place or is planned with each of the identified groups?**

None

What was the outcome of the consultation undertaken?

No consultation undertaken

**12. What changes or actions do you propose to make or take as a result of research and/or consultation?**

Briefly describe the actions then please insert actions to be taken on to the given Improvement Plan template provided.  
 N/A

**12.1 Will the planned changes to the proposal?**

Please State  
 Yes or No

a) Lower the negative impact?	Yes
b) Ensure that the negative impact is legal under anti-discriminatory law?	Yes
c) Provide an opportunity to promote equality, equal opportunity and improve relations i.e. a positive impact?	Yes

13. **Considering the views of the groups consulted and the available evidence, please clearly state the risks associated with the proposal, weighed against the benefits.**

None

14. **What monitoring/evaluation/review systems have been put in place?**

Reviews will be at a frequency and intensity which is proportionate to vulnerability, risk and needs of individuals. The first review must take place 12 weeks after the PHB has been in place and a face-to-face review must take place at least once a year thereafter.

Financial review of direct payment and third party PHBs will take place monthly following the PHB being in place. Throughout the year there will be regular audits of all PHBs to ensure compliance and will focus on the legal, financial and administrative elements of a PHB.

15. **When will it be reviewed?**

The Policy will be initially reviewed at three months from inception and thereafter annually.

<b>Date completed:</b>	24.02.2020
<b>Signature:</b>	S Kawal
<b>Approved by:</b>	S Kawal - Equality & Diversity Adviser
<b>Date approved:</b>	28.02.2020