NHS
North Central London
Clinical Commissioning Group

Personal Health Budgets Policy

December 2021

DOCUMENT TRAIL AND VERSION CONTROL SHEET	
Heading	North Central London Clinical Commissioning Group Personal Health Budgets Policy
Project Sponsor	Director of Complex Individualised Commissioning and Director of Continuing Healthcare
Purpose of document	This policy sets out the North Central London Clinical Commissioning Group offer for eligible individuals who can receive a Personal Health Budget in line with national legislation. It sets out the principles for the delivery of Personal Health Budgets for all patient cohorts across the populations of Barnet, Camden, Enfield, Haringey and Islington
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Author	Kim Hine - interim Project Lead, Complex Individualised Commissioning Steven Deller - Personal Health Budget & Caretrack Specialist (Business Transformation), Complex Individualised Commissioning
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1. Introduction

1.1 This policy sets out North Central London Clinical Commissioning Group's (NCL CCG) overarching principles for those individuals eligible to receive a Personal Health Budget (PHB) in line with national legislation and guidance.

1.2 Any relevant, current guidance may be referred to within each section with a fuller summary provided in the appendices.

1.3 National guidance is subject to change at any time. This policy will be reviewed if national guidance effects the principles and pathways within. If no substantial change then the policy will be reviewed 3 months post implementation and annually thereafter, to ensure accuracy.

1.4 A PHB is an amount of money to support the identified health and wellbeing needs of an individual, which is planned and agreed between the individual, or their representative, and the CCG. PHBs are intended to enable people with long term conditions and disabilities to have greater choice, flexibility and control over the health care and support they receive.

1.5 PHB's can be delivered in several different ways and an individual can be in receipt of a single type of PHB or a combination of PHB type's dependant on their assessed needs and wishes.

1.6 NHS England set the expectation that from April 2019, PHBs are the default-commissioning route for individuals eligible for NHS Continuing Healthcare (CHC) and Continuing Care (CC) that are in receipt of domiciliary care. Those eligible for wheelchairs, s117 aftercare, maternity services and individuals with long term conditions also have a legal right to request a PHB. The Government Mandate set expectations of 50,000 -100,000 personal health budgets to be in place nationally by 2020/21, however, at the time of writing this policy, national counting had only just recommenced from suspension due to the pandemic.

1.7 The commissioning of care provision via PHBs is still relatively new to some areas within healthcare and requires a significant culture change from traditional healthcare provision by all involved in supporting individuals with complex care needs, including the individual and their families / representatives.

1.8 This policy and the principles within aims to ensure that the least restrictive approaches are adopted to support individuals to be given maximum choice, flexibility and control of their healthcare provision within the boundaries of safety and viability.

2. Background

2.1 NCL CCG was formally established in April 2020, bringing together five north central London CCGs – Barnet, Camden, Enfield, Haringey and Islington. NCL CCG is a

clinically-led and member-driven CCG with the 201 GP practices across Barnet, Camden, Enfield, Haringey and Islington making up our membership.

2.2 By April 2022, NCL CCG will transition to become an Integrated Care System (ICS) however, this policy will continue to be utilised until further notice, subject to reviews.

2.3 Prior to this policy, within NCL CCG, each of the borough teams had different policies and principals in regards to delivery of PHBs. This policy intends to align overarching processes across NCL CCG to ensure consistency and equality of care provision across the system which is underpinned by a single standardised policy.

3. Scope

3.1 The PHB policy covers all residents for whom NCL CCG is the responsible commissioner and are within the eligibility criteria (see section 7).

3.2 From 1 April 2014 people receiving funding from the NHS for continuing health care (CHC) and continuing care (CC) for children, have had the 'right to request' a PHB. This right was extended to the 'right to have' from 1 October 2014. The "right to have" will be applied unless there are clinical, financial, legal, safeguarding or other grounds, which make having a PHB unviable or unsafe for an individual.

3.3 In February 2019, the legal right to a PHB was extended to people who access wheelchair services whose posture and mobility needs impact their wider health and social care needs. The budget comes in the form of a personal wheelchair budget (PWB).

3.4 Since 2019, individuals in receipt of s117 aftercare services are included in the "right to have" PHB category (see appendix 1 for s117 definition).

4. Responsibilities

4.1 The NCL CCG PHB specialist is responsible for publishing, monitoring the implementation of and reviewing the NCL CCG PHB policy.

4.2 All staff working for or on behalf of NCL CCG including those on permanent or fixed term contracts, interims, self-employed contractors / consultants, Governing Body members and volunteers are responsible for complying with the NCL CCG PHB Policy

4.3 All NCL CCG line managers are responsible for ensuring their teams comply with the NCL CCG PHB Policy.

4.4 The Quality Senior Management Team will recommend approval of the PHB policy, providing operational oversight and scrutiny of any complex care requests and high cost care packages.

4.5 The Quality subcommittee is responsible for the approval of the NCL CCG PHB Policy providing scrutiny and oversight.

4.6 The senior responsible officer / accountable officer is accountable for the NCL CCG PHB Policy and for supporting the implementation thereof.

5. Legislation and Guidance

5.1 NCL CCG will carry out its duties in accordance with PHB legislation/guidance listed below:

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

5.2 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 in respect of these rights and freedoms
- National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care October 2018 (Revised)
- National Framework for Children and Young People's Continuing Care (January 2016)
- The Data Protection Act (2018)
- The Carers (Equal Opportunities) Act (2004)
- The Mental Capacity Act (2005): The need to apply the Mental Capacity Act features strongly in self-directed support where there may be concerns about a service user who lacks the mental capacity to manage their own money and/or who lack the ability to make decisions about their care.
- The Equality Act (2010)
- The Children and Families Act (2014): This introduces Education, Health and Care Plans (EHCP) for children and young people with special educational needs and disabilities (SEND)
- SEND Code of Practice (2014) This requires education, health and social care to work together to meet the needs of children and young people up to the age of 25 and introduces the right to have a personal health budget for individuals with an EHCP
- The Fraud Act 2006: This sets out the general offence of fraud and is relevant to investigation of suspected fraudulent activities relating to the provision of PHBs

- The Care Act (2014): This is aimed at reshaping the system around prevention and promoting individual wellbeing, with personalisation as a key feature
- Personalised Health and Care Framework (2017)
- The Health Act (2009)
- The Mental Health Act (2007)
- The Mandate: A mandate from the Government to NHSE (2014 – 2017)
- Five year forward view (2014)
- The Forward View into Action: Planning for 2015/2016
- Delivering the Forward View (2016/2017 – 2020/2021)

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

6. Principles

6.1 NCL CCG will abide by the Department of Health's six key principles for PHBs and personalisation in health. These principles apply to any PHBs implemented by NCL CCG (see appendix 2 for full descriptions):

- Upholding NHS principles and values
- Quality – safety, effectiveness and experience should be central
- Tackling inequalities and protecting equality
- Personal health budgets are voluntary
- Making decisions as close to the individual as possible
- Partnership

6.2 NCL CCG will abide by the following standards for self-directed support which are followed nationally and articulated as seven outcomes, which will be delivered through the implementation of this policy see (table 1 below)

Table 1 Standard for self-directed support

Outcome	Description
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

6.3 NCL CCG will grant any request made by or on behalf of an individual eligible for Continuing Care (CC), NHS Continuing Healthcare (CHC) or health funded s117 aftercare provision unless it is not appropriate given the circumstances of the individual's case. An individual may be able to secure provision of all or any part of the CC, CHC or health funded s117 care provision using a PHB.

6.4 Any individual that is eligible for an NHS funded wheelchair is entitled to a personal wheelchair budget. NCL CCG commissions external organisations to provide the wheelchair service. The CCG has ensured that the provider is fully compliant in their requirement to advise all patients of their right to a PHB if clinically appropriate to do so.

6.5 Children and young people eligible for CC who have a PHB and transition to adult services will be supported to continue to access their assessed health care needs via a PHB. They will not have the right to have a PHB unless eligible for CHC but NCL CCG will consider whether it would be appropriate, based on assessed clinical need within the content of an education, health and care plan which are for young people up to 25 years of age. The clinical recommendation to continue with a PHB would be determined by borough SEND or continuing care decision making panels across education, health and social care. The final decision for CCG (health) funding would sit with the NCL CCG PHB panel. The details of SEND decision making panels are available on each of the 5 NCL Boroughs' SEND Local Offer websites

6.6 If the individual lacks capacity to manage the PHB then NCL CCG will support a nominated person/third party to manage it on their behalf, if appropriate to do so.

7. Eligibility

7.1 NCL CCG will consider a request for PHB for the following individuals, who have the "right to have" a PHB:

- An individual eligible for CC requiring a package of care at home, school or community
- An individual eligible for CHC requiring a package of care at home
- An individual eligible for an NHS wheelchair
- An individual eligible for s117 after care services
- Other cohorts identified for development by NCL CCG or through a pilot project

7.2 Additionally, NCL CCG will consider a request for PHB for the following individuals, who have the "right to ask" for a PHB:

- Adults aged 18 and over with learning disability and / or autism and / or mental health and / or behaviour that challenges living in a community setting who will benefit from having a PHB.
- Children and young people (birth to 25) who may not be eligible for Continuing Care but have an Education, Health and Care (EHC) plan and could receive a PHB for the health element of their plan

- An individual requiring end of life care services
- An individual whose care is funded jointly by NHS and social care
- An individual with mental health needs.

7.3 If an individual comes within the scope of the "right to have" a PHB, then the expectation is that one will be provided. However, in certain exceptional circumstances NCL CCG may choose not to agree to a PHB in line with the NHS England guidance which states:

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

7.4 The National Direct Payment Regulations outline a series of additional exclusions that NCL CCG will apply specifically to a PHB held as a direct payment. These are set out in Appendix 3 of this policy.

7.5 An individual who, due to the National Direct Payment Regulations, is excluded from a PHB Direct Payment may be considered for a PHB via a notional or Third Party PHB provision.

7.6 If an individual comes within the scope of a 'right to have' a PHB and their request is subsequently declined, NCL CCG will confirm in writing the reasons why the request has been refused. The individual / representative has the right to appeal the decision (see section 15) and NCL CCG will reconsider this decision if appropriate.

8. PHB operational process principals

8.1 The NCL CCG PHB Policy is an overarching policy of the principles behind PHB delivery. For detailed operational processes please refer to other relevant operational policies i.e. CHC Operational Policy, children and young person's policy that are available on the NCL CCG website

8.2 NCL CCG will publicise and promote the availability of PHBs to individuals who are eligible for this provision. This will be both via outcome letters sent to eligible individuals and reviews conducted by clinical teams who will be trained in conversations round PHB provision

8.3 NCL CCG staff, and those within commissioned provider services, will facilitate conversations with PHB eligible individuals / parent / representatives to inform them of the policies and processes around the receipt of PHB for delivery of the health care needs and the flexibility of care provision that it offers.

8.4 PHBs require an agreed personalised care and support plan developed in conjunction with the individual / representative ensuring the outcome focussed support is clearly identified with the eligible individual at the centre of it.

8.5 The essential principles of a PHB will be that the eligible individual, parent or their representative will:

- be able to choose their achievable health outcomes
- be aware of the budget they have for their health care and support
- be empowered to create their own care plan, with support as required
- be able to choose how their budget will be delivered and managed
- be able to spend the budget in a way that they choose, providing it is in line with their agreed care and support plan
- be in receipt of a budget sufficient to meet the identified needs

8.6 Each eligible individual will be invited to take part in a planning meeting to discuss all PHB options, the legal requirements and responsibilities and the support that will be available to assist them. This will be led by the appropriate case management team and / or a NCL CCG commissioned support partner.

8.7 The development of the personalised care and support plan will be completed in collaboration with case management team, NCL CCG commissioned support partner and the individual / representative. The support plan is required irrespective of the PHB management option and signed by both the individual / representative / individual with parental responsibility and an NCL CCG staff member / NCL commissioned provider.

8.8 The support plan must include a risk assessment with the following considerations

- Whether there are any sanctions in place for any of the care providers, such as non-compliance with CQC standards
- Whether there are restrictions or embargos in place for care providers or care homes
- Whether an enhanced Disclosure and Barring Service (DBS) check has been completed and references obtained for personal assistants (PAs) and whether they have highlighted any issues
- That the safeguards are in place to protect individuals that lack mental capacity to manage some or all of their care needs, and best interest decisions have been recorded

8.9 Following the assessment, the individual will be given an indicative budget based upon the assessed clinical needs, which will reflect the requirements to deliver the care needs identified in the care and support plan.

8.10 Case Management teams will review care and support plans at minimum within the first 12 weeks of commencing and every 12 months thereafter, depending on the vulnerability, risk and needs of the individual.

8.11 The clinical reviews will ensure that the personalised care and support plan is:

- meeting the health and well-being outcomes
- adequately addressing the individual's health and wellbeing needs
- reflective of the individual's current health and wellbeing needs
- reflective of any current risks
- demonstrating quality of support and services
- updated to reflect any change in need and / or risk

8.12 Reviews will also consider whether contingencies have been used or required.

8.13 Financial review of direct payment and third party PHBs will take place after 12 weeks of the PHB being in place and quarterly thereafter. This will be completed by the NCL CCG commissioned support partner.

8.14 Throughout the year, NCL CCG require regular / quarterly audits performed by the NCL CCG commissioned support partner of all PHBs to ensure compliance and will focus on the legal, financial and administrative elements of a PHB.

8.15 Financial PHB review will include checking that:

- Spend correlates to identified health outcomes
- Spend correlates with the care and support plan
- Employers & public liability insurance is being paid for
- Contracts are in place for all personal assistants and services purchased through the PHB
- There is no significant over or underspend. Any over or underspend will trigger a care planning review to identify the cause and make any necessary adjustments, as required.

8.16 Internal audits and Local Counter Fraud Specialists may also conduct reviews of PHBs to ensure compliance. This may include:

- Verification of individuals / representatives / person with parental responsibility identity
- Documents retained by NCL CCG
- Evidence of care provision from care providers i.e. timesheets
- Reviews of packages of care being carried out in line with the PHB Policy

8.17 Individuals, parents or representatives will be able to seek support for the management of PHB via direct payment from a NCL CCG commissioned provider. The cost of this provision will be included in the personalised care and support plan and subsequent budget setting (see section 13).

9. Scope of PHB provision

9.1 NCL CCG will provide PHBs so that individuals may use them to meet their holistic health and wellbeing needs based on the identified outcomes.

9.2 NCL CCG will support a PHB being utilised for products or service that supports an individual's identified health and wellbeing needs (exemptions listed below). This includes items that are not necessarily offered by the NHS. It is essential that any product or service purchased using a PHB delivers a direct benefit to the individual by meeting their identified needs in line with the agreed care and support plan.

9.3 NCL CCG will consider a PHB being combined with funding from social care and/or education to create a single integrated budget to purchase items and/or services if it is effective in meeting the individual's assessed needs and identified outcomes.

9.4 Where a PHB is utilised to provide a Personal Assistant/Carer it will cover all costs, both pay and non-pay items, for example:

- The direct cost of providing the service, including support service costs
- Start-up costs such as initial staff training
- Employers Liability Insurance with healthcare tasks
- 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)

9.5 NCL CCG will ensure the agreed budget factors in all legal obligations of employment i.e. National Living Wage and pension contributions are included in the personalised care and support plan

9.6 NCL CCG will also consider additional elements within the PHB such as the following unplanned contingencies. However, the majority of unplanned contingencies should be covered by insurance:

- Redundancy costs for the period of health funding (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

9.7 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). If an increase in personal assistants or service provider staff/hours is required, this must be discussed and agreed with the CCG in advance and included as part of the personalised care and support plan. 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.

9.8 PHBs should not be used to purchase services that NCL CCG 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.

9.9 NCL CCG, in accordance with NHS direct payments regulations, will not allow direct payments to be used to pay for the following:

- Alcohol, tobacco, gambling
- Debt repayment (other than for a service specified in the support plan)
- Core GP services
- Planned surgical interventions
- Treatments (whether experimental or outside of NCL CCG normally commissioned services) that meet the criteria for being considered under the Individual Funding Requests Panel
- 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 the CCG as an exception. Any exceptions agreed will be required to have the PHB via a Third party Budget.
- The employment of people in ways, which breach national employment regulations
- Anything not identified within the care and support plan
- Any “disposables” which are provided through an NHS contract (such as continence products) unless the commissioned service is unable to meet the needs. This will then need to form part of the agreed support plan before funding will be considered.
- Travel insurance or any travel and accommodation costs of accompanying personal assistants.

9.10 In addition to the above, NCL CCG’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 the CCG 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 the CCG
- Equipment that does not meet required standards or equipment that untrained people are required to use
- Anything that could place people at risk of harm

This list is not exhaustive and if unsure, the individual should seek advice before any expenses are incurred. NCL CCG will not accept liability for expenses incurred that have not been agreed as part of the care and support plan and will seek reimbursement of the subsequent costs.

9.11 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).

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

9.13 If it is identified that PHB funds have been used for inappropriate spend or spend outside of the agreed support plan, the matter may be referred to NCL CCG's Local Counter Fraud Specialist (LCFS) for further investigation. This may lead to prosecution or disciplinary action.

10. PHB service provision principles

10.1 NCL CCG requires any provider organisations supplying care services under a PHB to be registered with a relevant regulatory/professional body, where one exists (e.g. Care Quality Commission (CQC), Health and Care Professions Council (HCPC), Nursing and Midwifery Council (NMC)).

10.2 NCL CCG requires any staff employed via a direct payment PHB 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

NCL CCG will work with the PHB support partner to identify the appropriate service(s) to provide the necessary training and competency checks

10.3 NCL CCG will not support a PHB being used to fund support or care being provided by an individual living in the same household, a close family member or a friend of the budget holder unless in exceptional circumstances and then only following a written

agreement provided by the CCG. Agreement from NCL CCG may be obtained if they consider it necessary to satisfactorily meet the individual's needs or to promote the welfare of an individual with a PHB. Any exceptions agreed will be required to have the PHB via a Third party Budget.

10.4 NCL CCG will make these decisions on a case-by-case basis, the CCG will consider:

- 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 would naturally be expected from that of a family member/individual living in the same household.

11. Budget management options

11.1 NCL CCG will consider several types of PHB budget options (see table 2 below). These options can be used singularly or in combination depending on each individual's circumstances, choice and the support planning and how care has been agreed to be delivered.

Table 2 Budget Management options

Option	Description
Notional Budget	NCL CCG commission care on behalf of the individual using a PHB. NCL CCG will enter into a contract with the provider utilising the NHS Standard Contract.
Direct Payment	The individual receives the PHB funds from NCL CCG to procure the care and support that they need, in line with their agreed care and support planning. NCL CCG will enter into a Direct Payment Agreement with the individual / representative which will set out the rights and obligations in relation to the provision of the direct payment by the CCG to the individual. NCL CCG will request evidence around how the budget has been spent and reserves the right to reclaim misspent or unspent funds following a review of the PHB. The individual, or their representative procures and manages the care provision themselves and is required to enter into contracts with organisations or individuals that they pay to provide services funded by their PHB. The contract must include terms and conditions related to potential redundancy, liability insurance and training and development requirements. In this instance, there will be no requirement for the CCG to hold a contract with the service providers. The delivery of direct payments may vary between different boroughs and patient cohorts and may be delivered by Joint and integrated budgets
Third Party Budget	The PHB is being managed by a third party, the individual that is in receipt of the PHB will contract with the third party organisation. The CCG will provide the PHB payment directly to the third party,

	the PHB holder remains responsible for the appropriate use of the PHB (unless it has been identified that a person or organisation will act on their behalf). The third party must provide the CCG with evidence of how the budget has been utilised.
Personal Wheelchair Budget	The commissioned wheelchair providers are responsible for all aspects of Personal Wheelchair Budgets administration.

11.2 NCL CCG will ensure that every eligible individual is made aware of the PHB budget options when informing them of eligibility and also at care reviews.

11.3 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.

11.4 For individuals who lack the capacity to understand or manage the PHB themselves a best interests assessment can be undertaken and the budget can be managed on their behalf by either a nominated person or an authority

12. Top ups

12.1 When an individual has been assessed as eligible for CC or CHC the PHB amount will meet the full cost of assessed and agreed health and care needs as detailed on the personalised care and support plan. A patient cannot financially top-up a personal health budget. However, if they so choose they can purchase care over and above that identified in the personal care and support plan.

12.2 If additional care is purchased, that is above the needs identified and agreed, then this must be separated from the PHB with clear accountability.

12.3 Individuals / parents or those with parental responsibility / representatives are able to utilise the agreed PHB towards the payment of a service which is above the rates NCL CCG believes it is appropriate to fund i.e. if the personal care and support plan identifies that a carer is required to deliver care and the individual / parent / representative wishes for this to be delivered by a trained nurse, NCL CCG will provide funds for a carer's wages, not that of a nurse. No additional budget will be available from the CCG to pay for unnecessary or unwarranted additional cost.

12.4 The only exception to this rule is when a patient is entitled to an NHS funded wheelchair. An assessment will be undertaken to determine the appropriate chair to meet their identified need. The individual / representative / parent or individual with parental responsibility may request a notional budget which is determined by the cost of the wheelchair to meet the need. However they may choose to enhance the chair beyond the specified need and fund this element themselves.

12.5 However, an individual can choose to 'opt out' of NHS care if eligible for CC or CHC and fund the care privately. The process for "opting out" will need to be discussed with the appropriate case management team

12.6 NHS services will continue to be provided free of change unless there is explicit legislation in place requiring charging (e.g. as for prescription or dentistry charges)

13. Budget setting and approval process

13.1 Once the individual has been assessed as eligible for a PHB an indicative budget must be set, based on current care needs / provision.

13.2 The appropriate authorisation form must be completed and sent to the Complex Individualised Commissioning Team as per normal processes and a referral to PHB provider will be completed.

13.3 Unless the individual already has a direct payment or a privately funded PA a notional budget will be agreed and care brokered by the Complex Individualised Commissioning Team to meet the immediate care requirements.

13.4 Individuals / parents / representatives can opt out of interim care arrangements, however NCL CCG is unable to backdate the PHB for this element of care.

13.5 If an adult is currently in receipt of a Local Authority funded Direct Payment (Personal Budget) and becomes eligible for CHC funding, NCL CCG will honour the direct payment until a PHB, or directly commissioned care can be arranged to ensure consistency and continuity of care.

13.6 If the individual is currently receiving care via a PA or longstanding agency which is privately funded, NCL CCG recognises the importance of continuity of care and will, where equitable and appropriate, honour existing arrangements above indicative budget value but not apply annual increases until such time as the indicative budget reaches the package value.

13.7 Once care and support planning has been completed and the final budget been identified, the recommendations will then considered for approval by NCL CCG.

13.8 Consideration will take place at the PHB / integrated panel

13.9 NCL CCG will consider 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 plan and it meets the requirements of the PHB process

13.10 The proposals for meeting an individual's assessed eligible needs, as set out in the care plan must meet the following principals (see appendix 4 for full details):

Table 3: Budget Setting Principals

Principal	Description
Lawful	The proposals should be legitimately within the scope of the funds and resources that will be used. The proposals must be lawful and regulatory requirements relating to specific measures proposed must be addressed.
Effective	The proposals must meet the 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.
Affordable	All costs have been identified and can realistically be met within the budget.
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 care plan must have clear and strong links to a healthcare outcome.

13.11 NCL CCG will not guarantee an automatic transfer of Personal Budget to Personal Health Budget, and it should be expected that there will be a different outcome / budget allocation to the local authority funded personal budgets.

13.12 Budget setting will differ between different cohorts of eligible individuals and is subject to change. (see appendix 5 for current budget setting processes)

13.13 To ensure equity with individuals receiving directly commissioned care and to ensure affordability is maintained annual uplifts to direct payments and third party budgets will be in line with directly commissioned providers.

14. Risk management

14.1 When considering PHBs, NCL CCG will take into consideration the following risks

Clinical risk

- NCL CCG 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.

- NCL CCG 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.

- 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 must be documented where appropriate or necessary.

- An individual who has been assessed as lacking the mental capacity to make a decision in regards to a level of risk will require a clearly recorded best interest decision or someone with parental responsibility or Power of Attorney for Health and Welfare to make the decision on their behalf.

Financial risk

- PHBs must be affordable within NCL CCG'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.

- NCL CCG 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 CHC.

- 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 NCL CCG and PHB holder, which will be signed by both parties.

- Where direct payments are being utilised NCL CCG will request evidence of payment for care delivered e.g. timesheets

- 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. The CCGs nominated Local Counter Fraud Specialist may be involved in financial audit.

- It is the responsibility of the individual (or their representative) to inform NCL CCG as soon as they become aware of factors which may affect the cost of their PHB. NCL CCG 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, the Local Counter Fraud Specialist or the NHS Counter Authority to investigate.

- NCL CCG reserves the right to remove a direct payment from an individual and replace it with a notional budget if misspend is identified, the process by which is identified within the service's operational policies.

15. Governance

15.1 **Appeals process**

- Eligible individuals who request a PHB may appeal the decision of NCL CCG if they are refused a PHB or refused a particular type of PHB. If a PHB is refused in full or in part then NCL CCG will provide the person who requested the PHB or their representatives with the reasons for that decision in writing.

- On receipt of the decision, or on receipt of the decision about which type of PHB is most appropriate, the eligible individual or their representative may request NCL CCG to undertake a review of the either decision. The patient, parent or their representative may provide evidence of information for NCL CCG to consider as part of that review.

- Following the review, NCL CCG will inform the eligible individual or their representatives in writing of the decision following a review, and state the reasons for the decision. NCL CCG are not required to undertake more than one review of their decisions in any six month period.

15.2 **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 case manager 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.

- For an individual in receipt of direct payments or third party budgets who may require admission to an acute hospital or other establishment where PA's are not required will need to have a clear agreed process, detailed within the staff contracts indicating the expectation for that PA when care is not being delivered i.e. is the PA expected to take annual leave or unpaid leave if not working. This will vary according to the needs of the individual and the agreed care and support plans.

- NCL CCG 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.

- When direct payments are ceased, NCL CCG will give notice to the individual, parent 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.

Appendix

1. S117 definition

S117 of the Mental Health Act 1983 ('the MHA 1983') is a free-standing provision which imposes a joint duty upon every CCG and LA to provide or to arrange for the provision of, in co-operation with voluntary agencies, after-care for persons who have been detained under the qualifying provisions.

The Mental Health Act Code of Practice 2015 (Code of Practice) indicates that CCGs and LAs should interpret the definition of aftercare services broadly and that aftercare can encompass healthcare, social care and employment services, supported accommodation and services to meet the person's wider social, cultural and spiritual needs, if these services meet a need that arises directly from or is related to the particular person's mental disorder, and can help to reduce the risk of a deterioration in the person's mental condition.
After-care services have the purposes of meeting a need arising from or related to the patient's mental disorder the provision of which will reduce the risk of a deterioration of the patient's mental condition thereby, reducing the risk of the patient requiring admission to hospital again for treatment for mental disorder. The outcome of aftercare service provision is to maintain patients in the community, with as few restrictions as are necessary, wherever possible.

Services provided may include (This list is not exhaustive):

- Daytime activities / employment
- Accommodation
- Counselling and personal support
- Assistance with welfare rights and finances
- Support with drug, alcohol and/or substance misuse
- Support with needs arising from co-existing learning disability or autistic spectrum disorder as well and those from physical and/or sensory impairments
- Support with enhancing or learning new skills

S117 places no restriction on the type of service that can be provided. All that is required is that the person concerned must need these services and the services provided must meet the statutory definition of S.117 aftercare.

2. Six Key principles of PHB

1.	**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.
2.	**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.
3.	**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.
4.	**Personal health budgets are voluntary**
	No-one will ever be forced to take more control than they want.
5.	**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.
6.	**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.

3. Individuals Not Eligible for a Direct Payment

National Direct Payment Regulations outline that the following people are not eligible for a Direct Payment (although a notional or third party budget may still be appropriate in the opinion of the Clinical Commissioning Group):

- A person who is subject to a drug rehabilitation requirement, as defined by section 209 of the Criminal Justice Act 2003 (drug rehabilitation requirement), imposed by a community order within the meaning of section 177 of that Act (community orders), or by a suspended sentence of imprisonment within the meaning of section 189 of that Act (suspended sentences of imprisonment);
- A person who is subject to an alcohol treatment requirement as defined by section 212 of the Criminal Justice Act 2003 (alcohol treatment requirement), imposed by a community order, within the meaning of section 177 of that Act, or by a suspended sentence of imprisonment, within the meaning of section 189 of that Act;
- A person released on licence under Part 2 of the Criminal Justice Act 1991 (early release of prisoners), Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release, licences and recall) or Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (life sentences) subject to a non-standard licence condition requiring the offender to undertake offending behaviour work to address drug or alcohol related behaviour;
- An individual required to submit to treatment for their drug or alcohol dependency by virtue of a community rehabilitation order within the meaning of section 41 of the Powers of Criminal Courts (Sentencing) Act 2000 (community rehabilitation orders) or a community punishment and rehabilitation order within the meaning of section 51 of that Act (community punishment and rehabilitation orders);
- A person subject to a drug treatment and testing order imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000 (drug treatment and testing orders));
- A person subject to a youth rehabilitation order imposed in accordance with paragraph 22 (drug treatment requirement) of Schedule 1 to the Criminal Justice and Immigration Act 2008 (“the Criminal Justice Act 2008”) which requires the person to submit to treatment pursuant to a drug treatment requirement;
- An individual subject to a youth rehabilitation order imposed in accordance with paragraph 23 of Schedule 1 to the Criminal Justice Act 2008 (drug testing requirement) which includes a drug testing requirement;
- An individual subject to a youth rehabilitation order imposed in accordance with paragraph 24 of Schedule 1 to the Criminal Justice Act 2008 (intoxicating substance treatment requirement) which requires the person to submit to treatment pursuant to an intoxicating substance treatment requirement;
- A person (i) subject to a drug treatment and testing order within the meaning of section 234B of the Criminal Procedure (Scotland) Act 1995 (drug treatment and testing order) or (ii) subject to a community payback order under section 227A of that Act imposing requirements relating to drug or alcohol treatment; or
- A person released on licence under section 22 (release on licence of persons serving determinate sentences) or section 26 of the Prisons (Scotland) Act 1989 (release on licence of persons sentenced to imprisonment for life, etc.) or under section 1 (release of short-term, long term and life prisoners) or section 1AA of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (release of certain sexual offenders) and subject to a condition that they submit to treatment for their drug or alcohol dependency

4. Budget Setting Principles

1.	**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 the CCG'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
2.	**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 care plan meets all the assessed needs • The proposed measures will be effective in supporting the patients' 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 DBS check (where appropriate) • Any clinical tasks have been appropriately delegated and all identified training needs have been addressed • Competencies checked and certified
3.	**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 care 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 plan is reviewed to ensure best value. Where the cost is 10% greater or less than the indicative budget, reasons for the variance must be recorded • A suitable contingency amount is included within the 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 support plans cost is not substantially disproportionate to the potential benefit.
4.	**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 care plan must have clear and strong links to a healthcare outcome

5. Budget setting – by cohort

NCL CCG is currently reviewing the budget setting process across all patient cohorts and considering all options. Therefore this section will be regularly reviewed for accuracy and updated accordingly. The table below reflects current process.

Cohort	Budget setting principle
CHC adults	Hourly rate will be based on current AQP rates from LLP
CC children's	Employed costings are based on day and night hourly rates on current Agenda for Change pay scales for carers or nurses (as appropriate to the child's assessed clinical need). Agency costings are based on the NHS agency cap framework
Children's (excluding CC)	Through local decision making / complex care panels
Wheelchair	The budget is the equivalent value of the recommended wheelchair following a clinical assessment
Mental Health	Via costed care plan
Learning Disabilities	Via costed care plan – usually using 'notional' budget as the indicative budget
Integrated budgets	TBC – to be developed with LA partners
Other	