

Appendix 1

Management of a Personal Health Budget as a Direct Payment

1. Direct Payment Regulation and Guidance

- 1.1 This Appendix of the policy relates specifically to instances where the management of the personal health budget is taken as a Direct Payment.
- 1.2 The CCGs will adhere to The *NHS (Direct Payments) Regulations 2013*, and the NHS England guidance on *Direct Payments for Healthcare: Understanding the Regulations 2014* when implementing and administering Personal Health Budget (PHB) Direct Payments.
- 1.3 This Appendix should also be read in conjunction with the CCG's PHB Direct Payment Agreement attached at Appendix 2 to this policy.

2. Direct Payment PHBs

- 2.1 Direct payments for healthcare are monetary payments made by CCGs to individuals (or their representative or nominee) to allow them to purchase the care and support they need.
- 2.2 Direct payments for healthcare are one of the ways of providing all or part of a PHB

3. Who Can Receive a Direct Payment PHB?

- 3.1 A direct payment can be made to, or in respect of, anyone who is eligible for NHS care [under the National Health Service Act 2006] and any other enactment relevant to a CCG. This includes;
 - A person aged 16 or over, who has the capacity to consent to receiving a PHB by way of a direct payment;
 - A person aged 16 or over who does not have the capacity to consent to receiving a PHB by way of a direct payment but has a suitable representative who consents to it;
 - A child under 16 where they have a suitable representative who consents to a PHB by way of a direct payment;

And where the CCG agrees with the eligible person, their nominee or their representative that;

- A direct payment PHB is appropriate for that individual with regard to any particular condition they may have and the impact of that condition on their life
- A direct payment PHB represents value for money and, where applicable, any additional cost is outweighed by the benefits to the individual;
- The individual is not subject to certain criminal justice orders for alcohol or drug misuse, (However, such a person may be able to use another form of PHB to personalise their care).

- 3.2 People aged 16 or over who have capacity, representatives of people aged 16 or over who lack capacity, and representatives of children can request that the direct payment is received and managed by a 'nominee'
- 3.3 The CCGs will only provide direct payments if it is satisfied that the individual receiving the direct payments (which may be the individual, a nominee or representative) understands what is involved, and has given consent.

4. Considerations when deciding whether to make a direct payment

- 4.1 When deciding whether to make a PHB direct payment the CCGs will contact a range of people for information to help make the decision whether a direct payment may be suitable. Information about you will be requested from and shared with other people, but this will be strictly limited to only (a) information that is relevant and (b) people who need to be involved, as described below.
- 4.2 This range of people will include health or social care professionals involved in the provision of care/treatment to the individual e.g. A GP, occupational therapist, community mental health nurse or social care team.
- 4.3 The CCGs will also consult:
 - Anyone identified by the individual as a person to be consulted for this purpose.
 - If the individual is a person aged 16 or over but under the age of 18, a person with parental responsibility for the individual.
 - The person primarily involved in the care for the individual
 - Any other person who provides care for the patient
 - Any Independent Mental Capacity Advocate (IMCA) or Independent Mental Health Advocate (IMHA) appointed for the individual
- 4.4 The CCGs will consider whether the individual, their nominee or their representative will be able to manage the direct payment including but not limited to ensuring that they:
 - can provide bank statements showing expenditure of the direct payment
 - are fully aware of the requirement to retain ALL expenditure receipts relating to the direct payment
 - have access to online banking for their nominated direct payment account
 - are able to provide statements and accounts, and receipts (where required) when required
 - are fully aware of HMRC regulations with regards to employment of carers and tax implications.

5. Consent and Capacity to Consent

- 5.1 Direct payments can only be made where appropriate consent has been given by:
 - A person aged 16 or over who has the capacity to consent to the making of direct payments to them;
 - The representative of a person aged 16 or over who lacks the relevant the capacity to consent;
 - The representative of a child under 16.

- 5.2 The direct payment can be received and managed by the individual who gives their consent, or that individual can identify a nominee to receive and manage it for them. Where an individual lacks the capacity to consent, direct payments can be given to their authorised representative, if they consent to receiving the payment on the individual's behalf.
- 5.3 In the case of children, direct payments can be received by their parents or those with parental responsibility for that child.
- 5.4 When providing direct payments, the CCGs must be satisfied that the individual receiving the direct payment understands what is involved, and has given informed consent.
- 5.5 People may need additional support to make a decision regarding consent to a direct payment. Support can be provided by the CCGs directly, or by another organisation working in partnership with the CCGs
- 5.6 The CCGs will make it clear that receiving direct payments is voluntary and that it is possible to use another form of PHB, or not have one at all. It will also be made clear that it is possible to use a combination of different ways to manage the money.
- 5.7 The CCGs will assume that an aged 16 and over has the capacity to make decisions about the making of direct payments to them, unless the individual is assessed to lack capacity.
- 5.8 Where there are concerns about an individual's capacity to consent or manage their PHB Direct payment, this must be assessed and appropriate steps taken by the CCGs or their representatives. A loss of capacity or ability to manage should not mean a loss of a PHB.
- 5.9 Merton and Wandsworth CCGs have a duty of care to ensure that individuals are protected from harm. The CCGs will ensure that:
- Risk assessment forms part of personal health assessment and approval process
 - Individuals/and their carers understand the importance of safeguarding and their role including what to do if they have concern
 - Where a Personal Assistant is to be employed a Support Service must be used to provide advice on employment matters.
 - All Personal Assistants engaged via a PHB direct payment must be subject to a Disclosure and Barring Service (DBS) check in accordance with the NHS Direct Payment Regulations unless the exemptions set out in regulations apply. If the individual refuses, Merton and Wandsworth CCGs will not grant a direct payment, although other forms of personal health budget will still be available.
 - Where a Personal Assistant is already employed prior to the allocation of personal health budget (normally through local authority personal budget funding), the individual must check whether DBS checks were carried out at the time. If not, this needs to be undertaken.

6. Ability to manage direct payments

- 6.1 The CCGs will consider whether an individual (whether the patient or their representative) is able to manage direct payments by:
- Considering whether they would be able to make choices about, and manage the services they wish to purchase;
 - Whether they have been unable to manage either a health care or social care direct payment in the past, and whether their circumstances have changed;
 - Whether they are able to take reasonable steps to prevent fraudulent use of the direct payment or identify a safeguarding risk and if they understand what to do and how to report it if necessary;
 - Considering any other factor which the CCGs may consider is relevant.
- 6.2 If the CCGs is concerned that an individual is not able to manage a direct payment they must consider:
- The individual's understanding of direct payments, including the actions and responsibilities on their part.
 - Whether the person understands the implications of receiving or not receiving direct payments.
 - What kind of support the individual may need to manage a direct payment.
 - What help is available to the individual.
- 6.3 Any decision that an individual is unable to manage a direct payment must be made on a case by case basis, taking into account the views of the individual, and the help they have available to them
- 6.4 The CCGs will inform the individual in writing if the decision has been made that they are not suitable for direct payments and whether an alternative method of receiving the PHB is considered to be suitable instead.
- 6.5 Where an individual does not agree with Merton and Wandsworth CCGs judgement they will have access to Merton and Wandsworth CCGs Appeals and Complaints procedures (See Sections 20 and 21 of the policy).

7. Exclusion from Direct Payment Personal Health Budgets

- 7.1 The exclusions outlined in the NHS (Direct Payments) Regulations 2013 are primarily related to those within Criminal Justice system for drug and alcohol related offences. These excluded groups are listed at Appendix A to this document.
- 7.2 In addition the Merton and Wandsworth CCGs **will not grant a direct payment** in the following circumstances (although other forms of personal health budget - such as notional budget - will still be available for consideration by the CCGs):
- Where an individual or their representative would not be able to manage them
 - Where it is inappropriate for that individual given their condition or the impact on that person of their particular condition
 - To People with learning disability in an assessment and treatment unit
 - Where Safeguarding concerns are reported/under investigation
 - Where there is evidence that an individual has previously been unable to manage a social care direct payment

- Where the value of the personal health budget forms part of an existing contract, and to provide a personal health budget would result in significant double funding, and create financial risk to the CCGs or provider, or set a precedent which could destabilise the service.
- Where the item and/or service is the responsibility of another statutory organisation
- Where the benefit to the individual of having a direct payment does not represent value for money
- That providing services in this way will not provide the same or improved outcomes

7.2 Individuals or their representatives may ask for a review of any CCG decision in accordance with the Appeals process set out under the Merton and Wandsworth CCGs Personal Health Budget Policy.

8. Nominees for People with Capacity

8.1 If an individual aged 16 or over who is receiving care has capacity, but does not wish (for whatever reason) to receive direct payments themselves, they may nominate someone else to receive them on their behalf (a nominee).

8.2 A representative (for an individual aged 16 or over who does not have capacity or for a child) may also choose to nominate someone (a nominee) to hold and manage the direct payment on their behalf.

8.3 The CCGs must be satisfied that a person agreeing to act as a nominee understands what is involved, and has provided their informed consent, before going ahead and providing direct payments.

8.4 Before the nominee receives the direct payment, the CCG must also give their consent. CCGs should, in particular, consider whether the person is competent and able to manage direct payments, on their own or with whatever assistance is available to them. In reaching their decision, the CCGs may also:

- consult with relevant people
- require information from the individual for whom the direct payments will be made on their state of health or any health condition they have which is included in the services for which direct payments are being considered or which may otherwise be relevant to the direct payments;
- require the nominee to provide information relating to the account into which direct payments will be made.

8.5 If the proposed nominee is not a close family member of the individual, living in the same household as the individual, or a friend involved in the individual's care, then the CCGs will require the nominee to apply for an enhanced Disclosure and Barring Service (DBS) and consider the information before giving their consent. If a proposed nominee in respect of an individual aged 18 or over is barred the CCGs will not give their consent.

8.6 An organisation (including one such as a Trust established for the purpose) may agree to act as nominee. Where this is the case, that organisation must identify the person

who will, on their behalf, have overall responsibility for the day-to-day management of the direct payments

- 8.7 An individual who has chosen to appoint a nominee may withdraw or change that nomination by writing to the CCGs. If this occurs, the CCGs will consider whether to stop paying the direct payment, consider paying it to the individual directly, or paying it to another nominee; and they should review the direct payment and care plan as soon as is reasonably possible.
- 8.8 The CCGs will notify any person identified as a nominee where it has decided not to make a direct payment to them. The notification must be made in writing and state the reasons for the decision.

9. Representatives

- 9.1 If an individual does not have capacity and so may not receive direct payments personally, the CCGs will establish whether someone could act as that person's representative.
- 9.2 In some cases someone may already be acting as a representative in another capacity. In others it may be appropriate for the CCGs to appoint someone to act as a representative. This should occur if the individual receiving care would benefit from direct payments, and there is no-one else who is able to act as a representative
- 9.3 A representative is someone who agrees to act on behalf of an individual who is otherwise eligible to receive direct payments but cannot do so because they do not have the capacity to consent to receiving one, or because they are a child.
- 9.4 Representatives must consent to act in that role on behalf of the individual for whom a direct payment is appropriate. They must agree to the direct payment arrangements and agree to fulfil all the responsibilities of someone receiving direct payments.
- 9.5 Before someone can be a representative, they must give their consent to managing the direct payment. The CCGs will ensure that potential representatives are fully informed, and provided with sufficient advice and support when making their decision.
- 9.6 In a similar way to the process for appointing nominees, the CCG should also consider whether the person is competent and able to manage direct payments, on their own or with whatever assistance is available to them.
- 9.7 A representative may identify a nominee to receive and manage direct payments on their behalf, subject to the nominee's agreement and the approval of the CCGs.
- 9.8 An appointed representative could be anyone deemed suitable by the CCGs. However, the CCGs will take into account previously expressed wishes of the individual, and as far as possible their current wishes and feelings. Where possible, CCGs should consider appointing someone with a close relationship to the individual, for example a close family member or a friend.
- 9.9 A representative can be:
- a deputy appointed by the Court of Protection ;
 - a donee of a Lasting Power of Attorney;
 - a person vested with an Enduring Power of Attorney;
 - the person with parental responsibility, if the individual is a child;

- the person with parental responsibility, if the individual is over 16 and lacks capacity; or
- a person appointed by the CCGs to receive and manage direct payments on behalf of an individual, other than a child, who lacks capacity.

9.10 When considering whether a representative is suitable, the CCGs should where appropriate, be aware of the terms under which someone has been appointed under a Lasting Power of Attorney made by the individual or by the Court of Protection as the individual's deputy. The attorney or deputy may only make decisions about the individual's healthcare and securing services on the individual's behalf to meet their care needs if they have been appointed to deal with these matters. If an attorney or deputy lacks suitable powers, they will not be able to manage the direct payment. In such circumstances, the CCG may appoint another person as a representative.

10. The Role of the Representative

10.1 A representative is responsible for managing direct payments on behalf of the person receiving care. They, or their nominee, must:

- act on behalf of the person, e.g. to help develop care plans and to hold the direct payment;
- act in the best interests of the person when securing the provision of services;
- be the principal person for all contracts and agreements, e.g. as an employer;
- use the direct payment in line with the agreed care plan;
- comply with any other requirement that would normally be undertaken by the person as set out in this guidance (e.g. review, providing information).

10.2 If a representative believes that the person for whom they are acting has regained capacity they should notify the CCGs as soon as possible.

11. Deciding whether to make direct payments to a representative

11.1 When deciding whether or not to make direct payments to a representative, the CCGs are required to act in the best interests of the individual receiving care and should, in particular, consider

- whether the individual receiving care had, when they had capacity, expressed a wish to receive direct payments, or have someone receive them on their behalf;
- whether the individual's beliefs or values would have influenced them to have consented or not consented to receiving a direct payment;
- any other factors that the individual would be likely to take into account if deciding whether to consent or not to receiving direct payments; and
- as far as possible, the individual's past and current wishes and feelings.

11.2 If a representative is not a close family member of the individual, living in the same household as the individual, or a friend involved in the individual's care, then the CCGs require the representative to apply for an enhanced Disclosure and Barring Service (DBS) certificate and consider the information before giving their consent.

- 11.3 If a proposed representative in respect of an individual aged 18 or over is barred the CCG must not give their consent.

12. When a child reaches the age of 16

- 12.1 When a child on whose behalf a representative has consented to direct payments reaches 16, the CCGs may continue to make direct payments to the representative or their nominee in accordance with the care plan, providing the child who has reached 16 and the representative and, where applicable the nominee, consent.
- 12.2 If the child who has reached 16 does not consent, the CCGs will stop making direct payments. In either case, the CCGs will, as soon as reasonably possible, review the making of direct payments.

13. Direct Payment to a Third Party

- 13.1 Some individuals may need extra assistance to manage their Direct Payments. Direct Payments may be made to a third party (an Agent) on behalf of the individual and the day to-day management of finances may be delegated in this way
- 13.2 A third party is an individual and/or organisation nominated by the Direct Payment individual to act on their behalf to either receive the Direct Payment and/or take on the employment of staff and/or payroll responsibilities. For this arrangement to succeed the individual must remain in control of directing his or her service and making key decisions, for example deciding who their personal assistant will be. This arrangement is referred to as a Direct Payment Managed Account
- 13.3 The third party should be able to comprehend employment legislation or the complexities of payroll arrangements and remain responsible for these elements of the Direct Payments on behalf of the individual.

14. Determining the use of Direct Payment Personal Health Budget

- 14.1 The aim of personal health budget is to provide individuals and carers with more choice, control, and flexibility in the way their care or support is arranged. Less conventional choices will need validation by the CCGs but will be considered if the eligible needs and outcomes of the care plan are being met.
- 14.2 A PHB direct payment would normally include the following costs which will be considered on a case by case basis:
- The direct costs of providing the service, including support service costs
 - Start-up costs such as initial staff training
 - Refresher training
 - DBS checks
 - Equipment costs (where the equipment specifically forms part of the personal health budget and is not provided through the CCG's community equipment contract)
 - Funding to cover the contingency plan (such as using an agency of a Personal Assistant is off sick)

- Equipment contingency (e.g. hire fee to cover breakdown not covered by insurance or by the CCG's community equipment contract)

14.3 The use of a personal health budget does not extend to deliver goods or services that would normally be the responsibility of other bodies (e.g. local authority education and social services, housing authorities) or are covered by the other existing contracts held by the CCGs, such as GP or District Nursing Services.

14.4 An individual cannot “top up” a PHB direct payment to purchase an item of higher specification, or gain greater benefit, over and above that is required to meet assessed need. For example, a PHB may include an agreed sum for gym membership based on the local market rate. This sum cannot be added to so that the individual joins a more expensive gym offering facilities which are not required to meet their agreed health outcomes. Any additional service purchased such as additional Personal Assistant hours to help with childcare, must be subject to a separate contract.

14.5 If equipment purchased through a personal health budget is no longer required e.g. if it no longer meets assessed needs or the individual dies, the CCGs reserve the right to request that the item be returned to the CCGs.

14.6 Additional elements may be required to be funded within the personal health budget such as the following (unplanned contingencies):

- Redundancy costs when a service provided by a Personal Assistant ceases, if the Personal Assistant is entitled
- Maternity pay, if the Personal Assistant is entitled
- Long term sickness
- Training to support newly employed staff.

14.7 The CCGs may therefore choose to hold the additional elements of the PHB funding until required by an actual liability.

15. Imposing conditions in connection with the making of direct payments

15.1 The following conditions may be imposed on the individual, their representative or nominee in connection with the making of PHB direct payments:

- the recipient must not secure a service from a particular person; and/or
- the individual, their representative or their nominee must provide information that the CCGs consider necessary (other than information already covered by other regulations in the NHS (Direct Payment) Regulations 2013.) Conditions should only be imposed in exceptional circumstances. The reasons for the imposed conditions should be documented clearly.

16. Mixed Packages of Care

16.1 Individuals may want to carry on receiving some services purchased and commissioned by CCGs whilst purchasing their other services via a Direct Payment.

- 16.2 The individual may choose to gradually take over managing their whole care arrangements via Direct Payments. This flexibility and choice should be facilitated, as some Direct Payment recipients may feel unable to take on all of the responsibility involved in managing a Direct Payment immediately. For example, an individual may decide to continue receiving services from an agency at weekends and bank holidays, whilst opting to directly employ a health personal assistant (via Direct Payments) for the remaining time.

17. Employing Personal Assistants

- 17.1 An individual may wish to use their direct payment to employ staff to provide them with care and support. In so doing, they will acquire responsibility as an employer and need to be aware of the legal responsibilities associated with this
- 17.2 When deciding whether or not to employ someone, individuals and their families should follow best practice in relation to safeguarding, vetting and barring including satisfying themselves of a person's identity, their qualifications and professional registration if appropriate and taking up references.
- 17.3 By virtue of their choice to employ personal assistants (PAs) many direct payments recipients become automatically bound by employment regulations. Merton and Wandsworth CCGs have commissioned PHB support organisations that can provide advice on employment regulations.
- 17.4 The PHB support organisations are responsible for helping to ensure that good practice is followed in the employment of personal assistants.
- 17.5 Direct Payment employers must purchase employers' liability insurance, register as an employer with HMRC and adhere to the Pay As You Earn (PAYE) system. The PAYE system is a method of tax deduction under which an employer calculates and deducts any income tax due each time a payment of wages/salary is made to an employee. This will include both employer and employee National Insurance (NI) contributions.
- 17.6 Although individuals can choose to manage their own PAYE responsibilities it is common practice to employ the services of a payroll provider to manage this on behalf of the employer. The cost of employers' liability insurance and purchasing the service of a payroll provider must be met within an individuals' PHB.
- 17.7 PHB support organisations will be expected to "signpost" individuals to basic legal advice and provide on-going support to direct payments recipients when situations change or problems arise with their direct payments arrangements. When consulted to provide support with an employment issue the support organisations must ensure that employers follow best practice as described in the Advisory, Conciliation and Arbitration Service (ACAS) guidelines.

18. Personal Assistants Payment Rates

- 18.1 Merton and Wandsworth CCGs have agreed a framework of standardised rates for employment of Personal Assistants. The rates include pension, National Insurance, income tax, and pension. Deviation from the agreed rates is entirely at the CCGs' discretion.

19. Employers' Liability Insurance, Recruitment and Payroll Costs

- 19.1 All employer-related costs should be included in the service user's PHB including; costs for tax, employers and employee's National Insurance, Employers' Liability Insurance, DBS checks, other recruitment costs and payroll costs for the purpose of care planning (to include pensions).
- 19.2 If an individual chooses to become an employer during the care planning process they will need to purchase annual employers' liability insurance. This is a legal requirement. Individuals can choose which insurance company they use.
- 19.3 All employment related costs should be outlined within an individual's PHB support plan. This could also include advertising and payroll costs. The individual is required to budget for these costs within their agreed PHB.
- 19.4 The finalised PHB and support plan is confirmed by the Merton and Wandsworth CCGs only when they are satisfied that the individual's eligible needs and outcomes will be met and all identified risks can be managed.
- 19.5 Approval will therefore include confirmation that the individual is conducting their employment responsibilities legally and has adequate funds and/or arrangements for insurance, recruitment and on-going payroll costs within their agreed PHB.

20. Employee Expenses

- 20.1 Merton and Wandsworth CCGs will consider direct payments being used to fund employee expenses on an individual basis.
- 20.2 It is expected that a PA pays for his/her own food while at work. If the care plan requires the PA to incur an expense that they would not otherwise incur, the individual should consider this as a cost funded by his/her PHB.
- 20.3 Gloves for use when assisting with personal care, for example, are considered to be a legitimate use of the direct payments and can be funded within the individual's existing budget.

21. Funding for Travel and Mileage

- 21.1 A PHB does not cover the costs of a PA's travel to and from their place of work at the beginning and end of the day.
- 21.2 The PHB can cover travel costs such as bus fares to activities which are part of the PHB Support Plan.
- 21.3 If a number of journeys are needed to participate in activities during the week, service users should consider the most cost- effective travel option. Individuals should consider if admission is free for carers accompanying disabled people.
- 21.4 If the service user has a Mobility Car or higher Mobility Allowance the CCG would not pay the full NHS Mileage rate but only the reduced rate that will be locally determined. The standing cost for running the car should be met from the Mobility Allowance as these costs would need to be met regardless. If the individual is not in receipt of Mobility Allowance at higher rate then the PHB would meet the NHS rates.

Calculations are based on the average distance between the patient's home and the activity.

22. Holiday Funding

- 22.1 There is no formal entitlement to holiday funding within a PHB but for those individuals who do not benefit from carer's respite, Merton and Wandsworth CCGs recognise that a holiday or short break is beneficial to health and wellbeing.
- 22.2 The CCGs acknowledges that there may be additional staffing and equipment costs to support someone away from their home in an environment, which may not be suitably adapted.
- 22.3 Merton and Wandsworth CCGs will consider funding up to 14 days support, plus appropriate equipment hire per annum, to enable the chosen holiday or breaks to take place. The individual should discuss the implications of the break (including travel) for their clinical care PHB support plan with their case manager and/or support planning organisation.
- 22.4 The additional costs must be calculated and approved by Merton and Wandsworth CCGs before the holiday is booked.
- 22.5 The CCGs reserve the right to refuse to fund support or equipment over and above that required to meet assessed need.
- 22.6 The PHB will not cover personal assistant travel, meals, accommodation or anything not related to the agreed support plan.

23. Health and Safety for Direct Payments Employers and Staff

- 23.1 The health and safety of workers employed by a direct payment is the responsibility of the direct payment Employer (recipient) and there is a general "duty of care" to minimise the risks to the staff they employ. Health professionals and support organisations should support this by:
 - Raising awareness about health and safety issues that may affect the recipient individual, anyone they employ, and anyone else who may be affected.
 - Sharing the results of any risk assessments carried out as part of the needs assessment with the individual. Users should share these with their employees.
 - Encouraging individuals to develop strategies on lifting, handling and other tasks both in the home and outside it where lifting equipment, for example, may not be available. Individuals must make note of and make their employees aware of specialist manual handling advice provided by Social Services or the NHS.
 - Providing a template to assist individuals to complete their own risk assessments in order for the user to decide how to minimise the risks to anyone they employ.
 - Provide an occupational therapist to advise the individual further as needed in regards to their employees using specific equipment safely, raising awareness of manual handling issues and advising if specific training may be required.

24. Funding for Personal Assistant Redundancy

- 24.1 A Personal Assistant either through an agency or broker is the employee of the service user rather than self-employed and are entitled to redundancy pay as set out in employment legislation.
- 24.2 All PHBs must include employer liability insurance.
- 24.3 In the absence of cover the CCGs will consider funding redundancy and will seek to recoup a pro rata element if the PA was previously funded through local authority direct payments.

25. Employing Family Members

- 25.1 Direct payments should not be used routinely by individuals to pay partners, married or not, or close relatives who live in the same household. This could include a parent; parent in law, son, son in law, daughter, daughter in law, stepson or daughter, brother or sister, aunt or uncle, grandparent or the spouse or partner of these people, if they live in the same household. A direct payments recipient can purchase services from one of the above if Merton and Wandsworth CCGs are satisfied that securing the service from such a person is necessary to meet satisfactorily the prescribed person's need for that service.
- 25.2 It is important to consider that the employment of relatives is not always an appropriate option for an individual and the care co-ordinator/ direct payments support worker will need to explore with the service user the potential implications of a personal relationship changing due to a contractual arrangement.
- 25.3 In addition the potential family member will need to clarify if they are in receipt of benefits and whether these new earnings will affect their entitlement.
- 25.4 In order for Merton and Wandsworth CCGs to consider when it is necessary for a resident family member to be employed the following process needs to be followed:
- If a direct payments recipient wishes to pay a close relative who lives in the same household for their care, they should set out why it is necessary to secure services from this particular person in order to satisfactorily meet their needs in the care plan
 - Agreement should also be sought from the family member, who will be receiving the payment, to ensure they understand the specific arrangements and the responsibilities involved. The family member should sign the agreed care plan.

26. Informal Carer as Paid Employee

- 26.1 If the carer is a paid employee for the individual under direct payments, it may disentitle them to help and support under the carer's legislation. In this situation the carer would need to be providing substantial and regular unpaid care, in addition to the care they were being paid to provide, in order to qualify for a carer's personal budget in their own right. A carer's self-assessment questionnaire would need to be completed in order for an appropriate decision to be made.
- 26.2 Only the caring role outside of the paid care work would be considered for a carer's personal budget. The fact that the carer is effectively in 'paid work' should not influence the level of PHB (if any) unless their ability to remain in that 'paid work' was

put at risk because of their unpaid caring role in which case that factor will be taken into account by the CCG. However the CCG reserves the right not to alter the level of PHB.

27. Registration and regulated activities

- 27.1 If someone wishes to buy a service which **is** a regulated activity under the Health and Social Care Act 2008, they will need to inquire as to whether their preferred provider is registered with the Care Quality Commission (CQC).
- 27.2 If someone wishes to use a direct payment to purchase a service which is **not** a regulated activity, they may do so. In some circumstances, the provider may also need to be a registered member of a professional body. If the Care Plan specifies that a task or tasks require a registered professional to undertake it, only a professional who is thus registered may be employed to perform that task or tasks.

28. One-off Direct Payments

- 28.1 The expectation is that the majority of one - off Direct Payments will be issued to service users for services that will improve their quality of life, i.e. training, equipment, respite or minor adaptations.
- 28.2 The types of services that can be purchased with a one - off Direct Payment are fairly flexible. The case manager should determine if the requested service is appropriate and in line with this policy.
- 28.3 One-off Direct Payments usually do not require the Direct Payment service user to set up a dedicated bank account; however the service user is still required to produce a receipt and complete a monitoring form, once the Direct Payment is used.
- 28.4 There is no minimum or maximum amount issued for a one off Direct Payment. Approval will be considered by the CCGs on an individual basis.

29. Direct Payment Service User Responsibility

- 29.1 The case manager and PHB support organisations should make certain that the individual PHB holder is fully aware of their responsibilities for managing and administering their Direct Payments.
- 29.2 Once the Direct Payment has been set up the individual is in control and must manage their own records and finances with or without assistance. Daily management of the bank account, staff and agency services must be managed by the individual themselves and/or their representative or nominee.

30. Changes to Direct Payments

- 30.1 As soon as a change is identified and each time a change occurs that affects the level of Direct Payment, the CCG or its representatives should renew/update the PHB support plan summary and.

- 30.2 Merton and Wandsworth CCGs or its representatives will give up to one month's written notice of any significant changes (such as reduction or termination of services) to allow the service user to give notice of these changes to their staff/agent, if required.

31. Payment Schedule/Cycle

- 31.1 Direct Payments are made in 4 weekly cycles in advance to ensure the service user has the funds required to pay for their staff or services on time. These 4 weekly cycles are known as payment cycles. There are 13 in the year.

32. Contingency or Reserves Fund

- 32.1 An individual can retain up to eight weeks surplus (contingency/reserve) money in their Direct Payment bank account at any one time. Although the money will accumulate in the account, there will be fluctuations throughout the year as annual leave and bank holidays are paid for.
- 32.2 The individual's bank account will be monitored regularly and any obvious surplus in excess of the agreed amount will need to be repaid. At times an individual may need to accrue an increasing balance to cover National Insurance and tax liabilities as well as to cover annual leave of any employed staff such as:
- Statutory sick pay;
 - Holiday pay;
 - Recruitment costs i.e. advertising, photocopying, postage etc.; and
 - Insurance
- 32.3 In exceptional/emergency situations the individual has access to the reserve, which they can use to address the immediate problem. However they would then need to account for this and the Direct Payment account would then need to be re-balanced.

33. Monitoring and Review of Direct Payments

- 33.1 As a minimum, a clinical review of an individual's PHB care provision should be performed within three months of the first direct payment and then annually thereafter.
- 33.2 Financial monitoring will take place monthly by the CCGs (or their representative), and individuals must be able to provide sufficient evidence, i.e. receipts and bank statements and invoices, that show the payment has been used in line with their care plan.
- 33.3 The CCG will check at appropriate intervals how direct payments are being used.
- 33.4 The individual, their representative or their nominee (as applicable) should retain for audit purposes (for 6 years after the CCG has paid the first direct payment):
- Bank Statements
 - Cheque and paying-in books
 - Invoices and receipts
 - PAYE, NI and other payroll records

- Any other information relating to the use of the direct payment.
- 33.5 The CCGs will ensure that the recipient is clear as to what information may be required as part of its review.
- 33.6 This monitoring and review requirement applies equally to personal health budgets delivered in the form of a Third Party Budget

34. Stopping or Increasing/Reducing Direct Payments

- 34.1 The amount provided under direct payments may be increased or decreased at any time, provided the new amount is sufficient to cover the full cost of the individual's care plan.
- 34.2 PHBs and direct payments are not a welfare benefit and do not represent an entitlement to a fixed amount of money. A surplus may indicate that the individual is not receiving the care they need or too much money has been allocated.
- 34.3 Before making a decision to stop or reduce a direct payment, wherever possible and appropriate, the CCGs will consult with the person receiving it to enable any inadvertent errors or misunderstandings to be addressed, and enable any alternatives to be made.
- 34.4 Where direct payments have been reduced, the individual, their representative or nominee may request that this decision be reconsidered, and may provide evidence or relevant information to be considered as part of that deliberation.
- 34.5 Where this happens, the individual, representative or nominee must be informed in writing of the outcome of the reconsideration and the reasons for this decision. The CCGs are not required to undertake more than one reconsideration of any such decision.
- 34.6 If the individual remains unhappy about the reduction, they should be referred to the CCGs complaints procedure.
- 34.7 The CCGs will stop making direct payments where:
- A individual with capacity to consent, withdraws their consent to receiving direct payments;
 - An individual who has recovered the capacity to consent, does not consent to the direct payments continuing; or
 - A representative withdraws their consent to receive direct payments, and no other representative has been appointed.
 - The money is being spent inappropriately (e.g. to buy something which is not specified in the support plan);
 - Direct payments are no longer a suitable way of providing the individual with care;
 - A nominee withdraws their consent, and the individual receiving care or their representative does not wish to receive the direct payment themselves;
 - The CCGs have reason to believe that a representative or nominee is no longer suitable to receive direct payments, and no other person has been appointed;
 - Where there has been theft, fraud or abuse of the direct payment;
 - If the individual's assessed needs are not being met or the person no longer requires care.

- 34.8 Where PHBs and direct payments are stopped, the CCGs will give reasonable notice to the individual, their representative or nominee in writing, explaining the reasons behind the decision.
- 34.9 It should be noted that, after a direct payment is stopped, all rights and liabilities acquired or incurred as a result of the service(s) purchased by direct payments will be transferred to the CCG.

35. Reclaiming a Direct Payment

- 35.1 The CCGs can claim back the value of PHBs and direct payments from individuals where:
- They have been used to purchase a service that was not agreed in the care plan;
 - There has been theft or fraud
 - The individual recipient has died leaving part of the direct payment unspent
 - The support plan has changed substantially resulting in surplus funds
 - The individual accumulates a significant under spend for any other reason; or the money has not been used (e.g. as a result of a change in the care plan or the individual's circumstances have changed) and has accumulated.
- 35.2 If a decision to reclaim payments is made, then 1 month notice must be given to the individual, their representative or nominee, in writing, (except in exceptional circumstances) stating:
- The reasons for the decision;
 - The amount to be repaid;
 - The time in which the money must be repaid;
 - The name of the individual responsible for making the repayment.
- 35.3 The individual, their representative or nominee may request that this decision be reconsidered and provide additional information to the CCGs for reconsideration. Notification of the outcome of this reconsideration must be provided in writing and an explanation provided. The CCGs are not required to undertake more than one reconsideration of any such decision. If the individual remains unhappy about the reduction, they should be referred to the CCGs complaints procedure.

Exclusions from Personal Health Budget Direct Payments

There are some people to whom the duty to make direct payments does not apply. This includes those:

a) 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 (community orders) of that Act, or by a suspended sentence of imprisonment within the meaning of section 189 of that Act (suspended sentences of imprisonment)

b) 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

c) 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 on licence) or Chapter 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

d) 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)

e) 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)

f) 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 2008 Act") which requires the person to submit to treatment pursuant to a drug treatment requirement

g) subject to a youth rehabilitation order imposed in accordance with paragraph 23 of Schedule 1 to the 2008 Act (drug testing requirement) which includes a drug testing requirement

h) subject to a youth rehabilitation order imposed in accordance with paragraph 24 of Schedule 1 to the 2008 Act (intoxicating substance treatment requirement) which requires the person to submit to treatment pursuant to an intoxicating substance treatment requirement.

i) required to submit to treatment for their drug or alcohol dependency by virtue of a requirement of a probation order within the meaning of sections 228 to 230 of the Criminal Procedure (Scotland) Act 1995 (probation orders) or subject to a drug treatment and testing order within the meaning of section 234B of that Act (drug treatment and testing order)

j) 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.) 34 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.

k) If the individual is subject to certain criminal justice orders for alcohol or drug misuse, then they will not receive a direct payment. However, they might be able to use another form of PHB to personalise their care and alternatives

Although these groups are excluded from a PHB Direct Payment the CCGs could still agree that an individual in this group could receive a notional or Third Party PHB.