



Wigan Borough Clinical Commissioning Group



Guidance Document for Personalisation & Personal Budgets (including Direct Payments)

**Special Educational Needs and
Disability (SEND)**

August 2014

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1. About this Guidance

The aim of this document is to explain the approach taken by Wigan Council and Wigan Borough Clinical Commissioning Group (WBCCG) to personalisation and Personal Budgets across education, health and social care. It also includes detailed guidance regarding direct payments.

2. Personalisation

Personalisation is at the heart of the Special Educational Needs and Disability (SEND) reforms. Personalisation is about putting children, young people and their families at the centre of the Education, Health and Care (EHC) process. It means starting with the person as an individual with strengths, preferences and aspirations, identifying their needs and making choices about how and when they are supported to live their lives.

There are a number of ways in which personalisation is being developed. These include:-

- Person-centred approaches where disabled children and their families are put at the centre of processes, enabling them to express their views, wishes and feelings and be included in decision making
- Personalising the support that families receive by working in partnership with services across education, health and social care
- Funding mechanisms through the use of direct payments and Personal Budgets
- Brokerage support, to support families to develop a personalised and creative Personal Support Agreement that describes how they will use their indicative budget to meet the agreed outcomes

3. Personal Budgets

A Personal Budget is an allocation of money identified to provide support for an eligible person to meet their identified needs, which must support the outcomes specified in the EHC Plan. Personal Budgets can be managed in a number of different ways, such as by way of a direct payment (more detail regarding managing a Personal Budget can be found in section 3.6).

3.1 Requesting a Personal Budget

Young people and parents of children have a right to request a Personal Budget, once the authority has confirmed that it will prepare a draft EHC Plan. They may also request a Personal Budget during a statutory review of an existing EHC Plan. An EHC Plan is the product of a co-ordinated assessment which specifies the outcomes sought for the child or young person across education, health and social care. The EHC Plan will clearly state which outcomes can be met by a Personal Budget (if a Personal Budget is agreed).

Depending on the needs of the individual and local eligibility criteria, the scope of the budget will vary.

At present, a Personal Budget may consist of elements of funding from education, health and social care. In the main this will be:-

- For education⁽¹⁾ – element 3 (top-up funding)
- For health – Continuing Care (CC) funding
- For social care – Specialist provision as assessed by the Targeted Disability Service (TDS)

However, through joint commissioning Wigan Council and WBCCG will seek to increase choice and control over time through a wider range of budget areas being available.

Where a child or young person is eligible for one or all of the funding streams described above, a referral to the Brokerage Service must be made, unless the family express a preference to take on this role themselves. The Broker will work with the family to develop a personalised and creative Personal Support Agreement that describes how they will use their indicative budget to meet the agreed outcomes as identified in the EHC Plan.

3.2 A System for Determining a Personal Budget

A Resource Indication System (RIS) is in development which will help to inform decisions about funding levels for Personal Budgets. The tool which will be used to assist in developing the system is a Resource Indication Questionnaire (RIQ).

It is envisaged that there will be a twelve month testing period in which the RIQ will be utilised to gather the views of families and develop a robust and sustainable RIS. Once Wigan Council is confident that the RIS is fit for purpose, it will be applied to indicate levels of resource required to support outcomes in education, health and social care. A separate tool is also being developed for allocating Continuing Care funding.

For the interim period, existing mechanisms to determine funding will be used. These are:

- For education – Costed Provision Map
- For Continuing Care – the Decision Support Tool
- For Social Care – the Child and Families Assessment information

⁽¹⁾ A personal budget and in particular a direct payment cannot be made in respect of provision which will take place in a school, post 16 institution or early years setting without the written consent of the head teacher, principle or the person occupying an equivalent position.

The options for a personal budget within a special school maybe more limited than that of a mainstream school as the provision is more integrated.

3.3 Completing the RIQ

The RIQ will be completed once a Summary Assessment, (a summary of the child's or young person's needs across education, health and care) has been drawn (see point 3.4 for Pathway).

The RIQ will be completed for all new referrals and for all reviews.

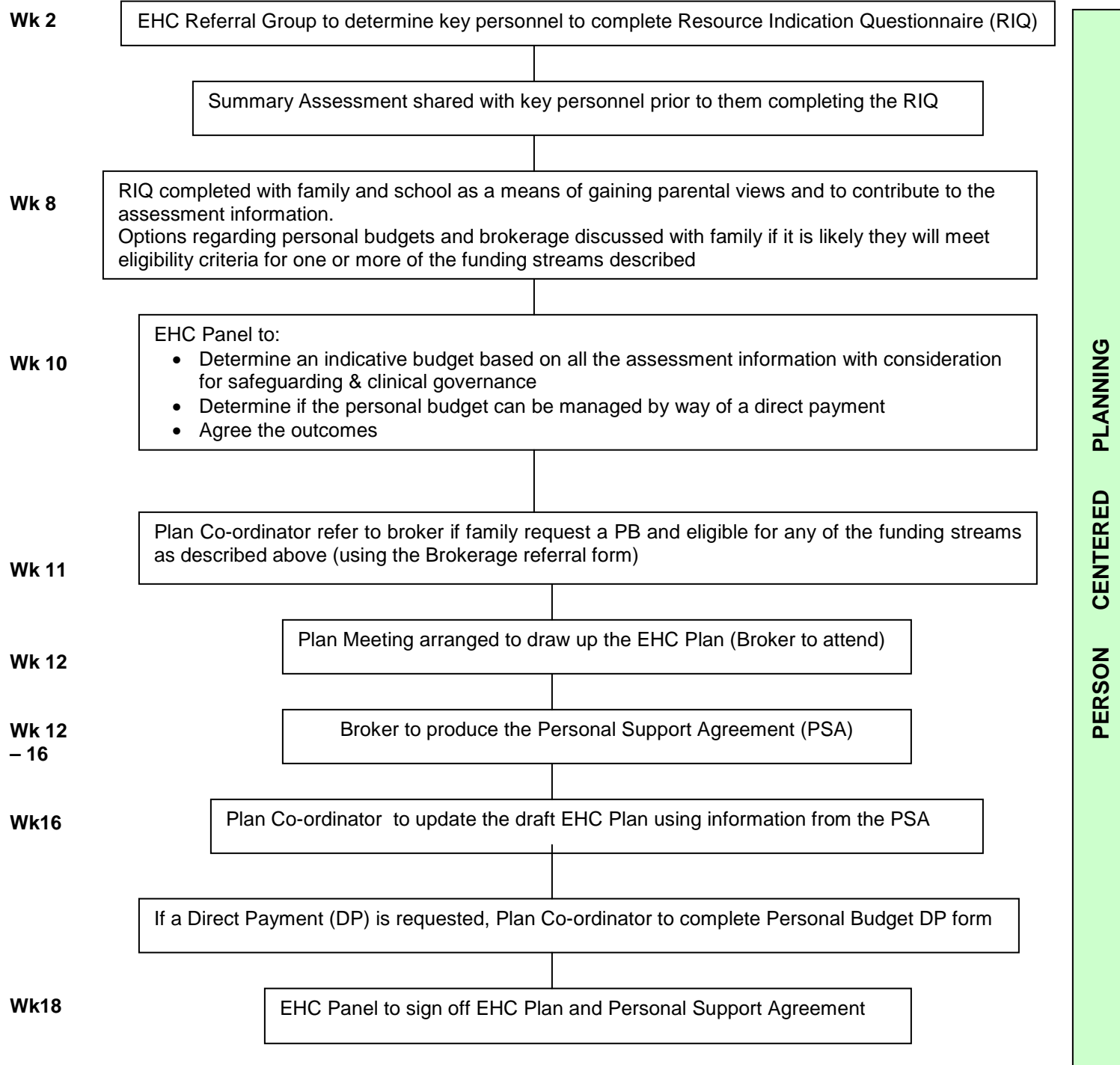
3.3.1 New referrals

For new referrals, the RIQ in the first instance will be completed by the person fulfilling the Key Working role.

3.3.2 Annual reviews

For annual reviews, the RIQ will be completed by the SEND service or Support services.

3.4 Personal Budget Pathway for New Referrals



It is acknowledged that some children and young people will already be receiving packages of care which may include direct payments. For those children, an option of a personal budget will be explored as an alternative to their current arrangements to ensure that there is an opportunity for creativity and personalisation.

3.5 Exclusions

Direct payments will not be appropriate for all aspects of Education, Health or Care. The following table identifies those areas which are exempt.

Education	Health	Care
School Placements or post -16 institutions	<ul style="list-style-type: none">-Primary medical services provided by GPs-Vaccination or immunisation, including population-wide immunisation programmes-Screening- National child measurement programme-NHS Health Checks-Urgent or emergency treatment services, such as unplanned in-patient admissions to hospital or accident and emergency-Surgical procedures-Specialist nursing care-Domiciliary care-Specialist Paediatrics-Some Specialist Medical Equipment-Prescription or dental charges	<p>Child Looked After Placements</p> <p>To purchase services directly from the LA (although a mixed package can be arranged, ie some services arranged and some Direct Payment)</p> <p>To purchase long-term residential care, including nursing care.</p> <p>As a payment to carers to purchase personal care for the person they care for.</p>
Alcohol or tobacco, Gambling, to repay debt, anything illegal or unlawful, to employ close relatives who live in the same household (except for exceptional circumstances). Families in receipt of a Personal Budget cannot access the service that the resource allocation has been determined from.		

3.6 Mechanisms for delivery of a Personal Budget

Personal Budgets can be managed in a number of different ways:-

- Direct payments - where individuals receive the cash to contract, purchase and manage services themselves
- An organised arrangement (sometimes referred to as a notional budget) where Wigan Council or WBCCG makes the arrangements for the care
- Third party arrangements/nominees – where funds are paid to an individual or another organisation on behalf of the parent/young person and they manage the funds
- A combination of the above

4. Direct Payments

4.1 Decision to make a Direct Payment

Wigan Council and WBCCG will only make a direct payment when they are satisfied that:-

- The person receiving the direct payment will use them to secure the agreed provision in an appropriate way and where the recipient is a representative or nominee, act in the best interests of the child or young person
- The direct payments will not have an adverse impact on other services which Wigan Council or WBCCG provides or arranges for children and young people with an EHC Plan
- Securing the proposed agreed provision by direct payments is an efficient use of Wigan Council's or WBCCG's resources

4.2 Consent and Capacity to Consent

4.2.1 Consent

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;
- a person ***nominated*** in writing by the child's parent or the young person to receive direct payments on their behalf
- the ***representative*** of a person aged 16 or over who lacks the relevant capacity to consent;
- the ***representative*** of a child under 16

The direct payment can be received and managed by the person who gives their consent, or that person can identify a nominee to receive and manage it for them. Where a person lacks the capacity to consent, direct payments can be given to their authorised representative, if they consent to receiving the payment on the person's behalf. In the case of children, direct payments can be received by their parents or those with parental responsibility for that child.

The person receiving direct payments (the individual themselves if direct payments are made to them, or their nominee or representative) will be responsible for ensuring that the money is spent in line with the Personal Support Agreement.

4.2.2 Capacity to Consent

Under the Mental Capacity Act 2005 a person lacks capacity if they are unable to make a decision because of an impairment of, or a disturbance in the functioning of, the mind or brain. Broadly speaking, 'mental capacity' means the ability to make a decision in question at the time it needs to be made. Where there is

reasonable belief that a person is unable to make a decision about the making of direct payments to them, Wigan Council and or WBCCG will assess the person's capacity to consent, using a two stage test of capacity.

4.2.3 Fluctuating Capacity

Where a person who has consented to the making of direct payments to them subsequently loses their capacity to consent, Wigan Council and or WBCCG may, where it is satisfied that the loss of capacity is temporary, allow a representative to be appointed to receive direct payments on their behalf, or an existing nominee to continue to receive them, until they regain capacity. In these circumstances, the role will be similar to that of a representative for someone who has been assessed to lack capacity on an ongoing basis. Wigan Council and WBCCG will prioritise continuity of care, ensuring that any disruption is as minimal as possible.

4.3 Ability to Manage Direct Payments

When deciding whether or not someone has the ability to manage direct payments (including a representative or nominee), Wigan Council and or WBCCG will consider:-

- 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 if their circumstances have changed; and
- 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

If a decision is made that someone is not suitable for direct payments, the person will be informed in writing, stating the reasons for that decision.

4.4 Nominees and Representatives

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

4.4.1 Nominees for People with Capacity

The role of nominee for direct payments for healthcare is different from the role of nominee for direct payments for social care. For social care direct payments, a nominee does not have to take on all the responsibilities of someone receiving

direct payments, but can simply carry out certain functions such as receiving or managing direct payments on behalf of the person receiving them. In direct payments for healthcare, however, the nominee is responsible for fulfilling all the responsibilities of someone receiving direct payments.

If the proposed nominee is not a close family member of the person, living in the same household as the person, or a friend involved in the person's care, then the nominee will be required to apply for an enhanced Disclosure and Barring Service (DBS) certificate (formerly a CRB check) with a check of the adults' barred list. If a proposed nominee in respect of a person aged 18 or over is barred, consent will not be given. This is because the Safeguarding Vulnerable Groups Act 2006 prohibits a barred person from engaging in the activities of managing the person's cash or paying the person's bills.

If the proposed nominee is a close family member of the person, living in the same household as the person or a friend involved in the person's care, there is no legal power to request these checks.

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

4.4.2 Representatives for People without Capacity

A representative is someone who agrees to act on behalf of someone who is otherwise eligible to receive direct payments but cannot do so because they do not have the capacity to consent to receiving one, or because they are a child. Representatives are responsible for consenting to a direct payment and fulfilling all the responsibilities of someone receiving direct payments (also known as a 'suitable person').

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 Wigan Council and or WBCCG.

An appointed representative could be anyone deemed suitable by the Wigan Council and or WBCCG, taking into account previously expressed wishes of the recipient, and as far as possible their current wishes and feelings. Where possible, Wigan Council and or WBCCG will consider appointing someone with a close relationship to the person, for example a close family member or a friend.

A representative can be:

- a deputy appointed by the Court of Protection to make decisions relevant to healthcare and direct payments ("the relevant decisions");

- a donee of a lasting power of attorney with the power to make the relevant decisions;
- a person vested with an enduring power of attorney with the power to make the relevant decisions;
- the person with parental responsibility, if the recipient is a child;
- the person with parental responsibility, if the recipient is over 16 and lacks capacity; or
- someone appointed by Wigan Council and or WBCCG to receive and manage direct payments on behalf of a person, other than a child, who lacks capacity.

4.5 Transition: When a Child becomes an Adult

Where a child in respect of whom direct payments are being made becomes an adult (on their 18th birthday), the local authority must take reasonable steps to ascertain whether the young person consents to receive direct payments.

4.6 Receiving a Direct Payment

4.6.1 Once it has been agreed that a person can have a direct payment, Wigan Council will issue a Direct Payments Agreement specifying the following:-

- the name of the child or young person in respect of whom direct payments are to be made
- the proposed amount of direct payments (Schedule 2)
- any conditions on how direct payments may be spent
- the dates for payments into the bank account approved by Wigan Council

4.6.2 By signing the Direct Payments Agreement, the person is agreeing to:

- receive the direct payments
- use the direct payments only to secure the agreed provision
- comply with any conditions specified
- notify Wigan Council of any changes in circumstances which might affect the need for the agreed provision
- use the bank account approved by Wigan Council solely for the direct payments and ensure it is only accessible by the recipient or any other person approved in writing
- keep a record of money paid in and withdrawn from the approved bank account
- provide Wigan Council with information or evidence relating to the account and the agreed provision when requested

4.6.3 Where the recipient is a nominee –

- the child's parent or the young person must consent in writing to direct payments being used to secure the agreed provision and
- the nominee will be required to sign the Direct Payment Agreement outlining their responsibility as a principle for all contractual arrangements entered into and secured by means of direct payments, for the benefit of the child or young person

4.7 Amount of Direct Payments

Wigan Council and WBCCG will ensure that the amount of direct payments is sufficient to secure the agreed provision. The amount may increase or reduce if Wigan Council and WBCCG are satisfied that the new amount is sufficient to secure the agreed provision.

4.8 Stopping or Reducing a Direct Payment

The size of the direct payment maybe increased or decreased at any time, if Wigan Council and or WBCCG are satisfied that the new amount is sufficient to cover the full cost of the Personal Support Agreement. Before making a decision to stop or reduce a direct payment, wherever possible and appropriate, Wigan Council and or WBCCG will consult with the person receiving it to enable any misunderstandings or inadvertent errors to be addressed, and enable any alternative arrangements to be made.

Whenever a direct payment is reduced or stopped, Wigan Council will ensure that the person receiving the direct payment is given four weeks notice, and an explanation regarding the reasons for the decision, in writing.

Direct payments may be reduced:

- where Wigan Council and or WBCCG are satisfied that a reduced amount is sufficient to cover the full cost of the current Personal Support Agreement;
- if a surplus payment has accumulated that has remained unused. A surplus may indicate that the individual is not receiving the care they need or too much money has been allocated. As part of the review process,
- Wigan Council and or WBCCG will establish why the surplus has built up. Under these circumstances, a reduction in direct payment in any given period cannot be more than the amount that would have been paid to them in the same period;
- Where direct payments have been reduced, the person receiving care, a representative or nominee may request Wigan Council and or WBCCG to reconsider the decision, and may provide evidence or relevant information to be considered as part of that deliberation. Where this happens, Wigan Council and or WBCCG will inform the person receiving care and any representative or nominee in writing of the decision after reconsideration, and state the reasons for the decision. Wigan Council and or WBCCG is

not required to undertake more than one reconsideration of any such decision.

Direct payments will be stopped if:

- a person, with capacity to consent, withdraws their consent to receiving direct payments;
- a person who has recovered the capacity to consent, does not consent to direct payments continuing; or
- a representative withdraws their consent to receive direct payments, and no other representative has been appointed.

Direct payments may be stopped if Wigan Council and or WBCCG are satisfied:

- the person no longer needs care;
- direct payments are no longer a suitable way of providing the person with care;
- There is reason to believe that a representative or nominee is no longer suitable to receive direct payments, and no other person has been appointed;
- a nominee withdraws their consent, and the person receiving care or their representative does not wish to receive the direct payment themselves;
- the person has withdrawn their consent to the nominee receiving direct payments on their behalf;
- the direct payment has been used for purposes other than the outcomes and or services agreed in the Personal Support Agreement;
- fraud, theft or an abuse in connection with the direct payment has taken place; or
- the person has died.

If, for whatever reason, the person receiving care is no longer able or willing to manage the direct payment, Wigan Council and or WBCCG will be responsible for fulfilling the contractual obligations the person entered into. After a direct payment is stopped, all rights and liabilities acquired or incurred as a result of a service purchased by direct payments will transfer to Wigan Council and or WBCCG.

4.9 Repayment of a Direct Payment

In some circumstances, Wigan Council and or WBCCG may ask for all, or part of, the direct payment to be repaid (the decision to seek repayment, and the amount of money to be reclaimed will be at the discretion of Wigan Council and or WBCCG).

Direct payments may be reclaimed if:

- they have been used to purchase a service that does not meet the agreed outcomes as identified in the EHC Plan or;

- theft, fraud or other offences have occurred;
- the person receiving care has died, leaving part of the direct payment unspent (unless exceptional circumstances apply);
- the EHC Plan has changed substantially resulting in surplus funds;
- the individual's circumstances have changed substantially, such as admission to hospital resulting in the individual not using the direct payment to purchase their care; or
- a significant proportion of the direct payment has not been used to purchase services to meet the agreed outcomes as specified in the EHC Plan resulting in money being accumulated.

If Wigan Council and or WBCCG decide to seek repayment, they will give the relevant person reasonable notice in writing, stating:

- the reasons for their decision;
- the amount to be repaid;
- the time in which the money must be repaid; and
- the name of the person responsible for making the repayment.

On receipt of notice from Wigan Council and or WBCCG, the person, representative or nominee may request a reconsideration of the decision. They may also provide additional evidence or relevant information to inform that decision. Wigan Council and or WBCCG must reconsider their decision in light of any new evidence, and then notify and explain the outcome of their deliberation in writing. Wigan Council and or WBCCG can only be required to reconsider their decision once.

4.10 Using a Direct Payment to Employ Staff

People may wish to use their direct payment to employ staff to provide them with care and support. A range of support is available for persons seeking to employ staff (see section 5).

A direct payment can only be used to pay an individual living in the same household, a close family member or a friend if Wigan Council and or WBCCG is satisfied that to secure a service from that person is necessary in order to satisfactorily meet the person receiving care's need for that service; or to promote the welfare of a child for whom direct payments are being made. These judgements on a case by case basis. The restriction applies where the relationship between the two people is primarily personal rather than contractual, for example if the people concerned would be living together in any case.

4.10.1 Indemnity and Direct Payments for Healthcare

Direct payments for healthcare can be used to pay for a personal assistant (PA) to carry out certain personal care and health tasks that might otherwise be carried out by qualified healthcare professionals such as nurses, physiotherapists

or occupational therapists. In such cases the healthcare professional will need to be satisfied that the task is suitable for delegation, specify this in the Personal Support Agreement and ensure that the PA is provided with the appropriate training and development, assessment of competence and have sufficient indemnity and insurance cover.

Providers of some services may need to conform with prospective legislation which will implement the Finlay Scott Recommendations (June 2010) on indemnity cover and Article 4(2)(d) of Directive 2011/24/EC53. PAs employed via a direct payment do not need to comply with the legislation that will require them to have indemnity cover if practising unless they are a member of a regulated health profession, even if carrying out activities which might otherwise be performed by health professionals. WBCCG will consider and discuss with the person, their nominee or representative, the potential risks associated with the clinical tasks being carried by the PAs on a case by case basis and this will form part of the risk assessment and care planning process and outcome recorded in the Personal Support Agreement .

In the first instance, it will be the responsibility of the person buying the service to check the indemnity cover of the provider from which they are buying services. They must make enquiries to ascertain whether the provider has indemnity or insurance, and if so, whether it is proportionate to the risks involved, and otherwise appropriate. However, the person buying the service can ask Wigan Council to undertake these checks on their behalf.

4.10.2 Registration and Regulated Activities

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). A direct payment cannot be used to purchase a regulated activity from a non-registered service provider. If someone wishes to use a direct payment to purchase a service which is not a regulated activity, they may do so.

If a person employs a care worker directly, without the involvement of an agency or employer, the employee does not need to register with CQC. CQC guidance makes it clear that where a person, or a related third party on their behalf, makes their own arrangement for nursing care or personal care, and the nurse or carer works directly for them and under their control without an agency or employer involved in managing or directing the care provided, the nurse or carer does not need to register with the CQC for that regulated activity. A related third party means:

- a. An individual with parental responsibility for a child to whom personal care services are to be provided.

- b. An individual with power of attorney or other lawful authority to make arrangements on behalf of the person to whom personal care services are to be provided.
- c. A group or individuals mentioned in a) and b) making arrangements on behalf of one or more persons to whom personal care services are to be provided.
- d. A trust established for the purpose of providing services to meet the health or social care needs of a named individual.

This means that individual user trusts, set up to make arrangements for nursing care or personal care on behalf of someone are exempt from the requirement to register with the CQC. Also exempt are organisations that only help people find nurses or carers, such as employment agencies (sometimes known as introductory agencies), but who do not have any role in managing or directing the nursing or personal care that a nurse or carer provides.

In some circumstances, the provider may also need to be a registered member of a professional body affiliated with the Council for Healthcare Regulatory Excellence. If the Personal Support Agreement 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.

In the first instance it will be the responsibility of the person buying the service to check whether the provider they are purchasing from is appropriately registered. However, the person buying the service can ask Wigan Council to undertake these checks on their behalf.

5. Information, Advice and Support

Key personnel as identified at the EHC Referral Group will have a detailed discussion with the family to determine if they are interested in a Personal Budget.

5.1 Brokerage Support

If a Personal Budget is agreed, the family will be offered the option of Brokerage support to help them draw up a Personal Support Agreement which describes how they will use their indicative budget to meet the agreed outcomes. The Personal Support Agreement aligns to the outcomes set out in the EHC Plan.

More specifically, the Broker will:

- Work with families on a holistic basis to develop a Personal Support Agreement and package which keeps their loved one healthy, safe and well and ensure that they are leading a good life

- Ensure families have access to independent information, advice and support
- Work with individuals and families to promote innovative and creative support planning that give real choice and control, dignity and respect and ensures that they are kept healthy, safe and well
- Encourage and develop informal support and co-ordinate support and resources
- Support people to make the Personal Support Agreement happen – seeking out excellent providers and great Personal Assistants
- Support families to keep strong by providing both practical and emotional support
- Support families to navigate the system by offering the one point of contact to co-ordinate services
- Ensure families have the tools and training to confidently take forward the Personal Support Agreement and get a better life
- Promote choice, control and empowerment by doing as much as is needed and no more than necessary

When drawing up the Personal Support Agreement, the Broker will discuss with the child / young person and their family existing resources that can be drawn upon. These resources may include:-

People: The people they know e.g. close friends, extended family, work colleagues, social friends and neighbours

Access: The place they live, local resources, shops, health services, schools, leisure facilities and community activities they are part of

Assets: The money they have control over, their income, benefits, savings, and if they have one, a Personal Budget

Skills and knowledge: Their strengths, abilities, knowledge and decision making skills

Resilience: Their well-being, the inner strength that keeps them going when times get tough, their physical, emotional and mental health, and for some, their faith, belief system or religion

If families choose to take their Personal Budget as a direct payment then support will be offered



5.2 Direct Payment Support

If a Personal Assistant (PA) is required, support, information and guidance will be provided making it easier for individuals to recruit, select and employ. Individuals will be supported with:

5.2.1 Recruitment

Recruitment tasks will include:-

- Advice and support to draw up a job description
- Advice and support to draw up a person specification
- Advice and support to advertise a post, score applications and shortlist
- Assist the employer to request and evaluate references
- Advice and support on drawing up a contract of employment
- Practical support to act as an addressee for application forms where necessary.
- Assisting the individual to formulate interview questions and sit on interview panels/ provide and organise venues where appropriate

5.2.2 Employer Support

Assist in the maintenance of the individuals own workforce in relation to:-

- Provision of up to date information on employment law from an employees/employers perspective including eligibility to work, DBS (Disclosure and Barring Service) checks, assisting individuals to source and maintain public liability and employers liability insurance, risk assessments, health and safety and reporting of incidents
- Provision of advice relating to benefits and pitfalls of employing PAs
- Provision of advice and guidance on all payment related issues, but not limited to sick pay, holiday pay, maternity pay and other employer related expenses
- Information, advice and support on training, staff appraisals and health and safety issues for PAs
- Information, advice and support concerning probationary periods, inductions and termination of employment
- Information, advice and support in the management of staff and assertive skills, training, coaching and delegation
- Information, advice and support in disciplinary dismissal and grievance procedures in conjunction with the individuals insurance provider
- Support and advice with record keeping
- Advice, information and support around sickness and absence policies

5.2.3 Personal Assistance Support

- To help people who wish to become PAs make connections with employers by maintaining a register and signposting to advertising opportunities such as the Council's e-market place
- To assist PAs to develop and learn
- To provide an opportunity for employers and PAs to learn and share experiences
- To be responsible for Disclosure and Barring Services

6. Safeguarding and Managing Risk

There is a delicate balance between empowerment and safeguarding, and providing choice whilst managing risk. During the planning process, Wigan Council and or WBCCG will have a detailed discussion with the Personal Budget holder about potential risks, and how to manage them. This will form part of an ongoing dialogue.

The Personal Support Agreement will contain details of any proportionate means of eliminating, reducing or managing the risks, and this should be informed by a discussion about the significant potential risks and their consequences.

When deciding whether or not to employ someone, Wigan Council will 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. Whilst individuals cannot request DBS checks on other individuals, Wigan Council will undertake these checks on potential employees.

7. Monitoring and Review

7.1 Personal Budgets

The Personal Budget will be monitored on an on-going basis and reviewed annually in line with the EHC review. The EHC review will focus on the child or young person's progress towards achieving the outcomes specified in the EHC Plan and whether the arrangements made in the form of a Personal Budget continue to meet those outcomes.

7.2 Direct Payments

The Direct Payment will be reviewed formally within three months of the person receiving a direct payment; and when conducting a review or a re-assessment of an EHC Plan. If Wigan Council and or WBCCG become aware, or are notified, that the persons circumstances or needs have changed, they will consider

whether it is appropriate to carry out a review of the Personal Support Agreement to ensure the individual's needs are still being met. Similarly, if they become aware, or are notified that the direct payment has been insufficient to purchase the services agreed in the Personal Support Agreement, a review will be carried out as soon as possible.

7.2.1 Purpose of a Review

The review will be a mechanism to consider whether:

- the agreed provision should continue to be secured by means of a direct payment
- the Personal Support Agreement adequately addresses the needs of the person and the agreed outcomes are being met
- the direct payments have been used effectively and appropriately
- the amount continues to be sufficient to secure the agreed provision
- the conditions set out at point 4.1 are being met

The review is also an opportunity to check the condition and circumstances of the person and to consider whether their needs or risks have changed, and if so, whether the Personal Support Agreement is still appropriate. If the person lacks capacity or is vulnerable, Wigan Council and or WBCCG will consider safeguarding and also whether their liberty is being promoted by the Personal Support Agreement.

7.2.2 Outcomes of a Review

Following a review, Wigan Council and or WBCCG may:

- amend the Personal Support Agreement;
- decide to pay the direct payment to the person receiving care, rather than the representative or nominee;
- decide to pay the direct payment to a representative or nominee rather than the person;
- increase, maintain or reduce the size of the direct payment;
- require that a direct payment is not used to purchase a service from a particular individual;
- require that the person, representative or nominee provide additional information; and
- take any other action considered appropriate. This will usually be to ensure the safe and effective running of the direct payment or Personal Support Agreement, or to protect public money if there is a significant risk of abuse.

8. Complaints and Appeals

It is expected that in many cases, an immediate informal response by a front-line member of staff or practitioner, will resolve the issue/s as they arise. If the complainant is not satisfied with the response, they may seek to take the complaint to the next stage

8.1 Complaint Procedure Wigan Council

Complaints can be made in writing to:
Complaints & Quality Standards Team
Wigan Council
Progress House
Westwood Park Drive
Wigan, WN3 4HH

A person may to speak to a member of the Complaints & Quality Standards Team, who can advise about applying for an advocate by phoning: 01942 486175

Stage 1 of the procedure will involve the appropriate manager looking into the complaint and responding within ten working days of receiving it. This may be extended by a further ten working days if necessary.

If the complaint is very serious and cannot be resolved with the manager responsible, or there is an unacceptable delay in responding, a 'formal' complaint (Stage 2) can be made by contacting the Complaints and Quality Standards Team as above.

Further information can be accessed at:

<http://www.wigan.gov.uk/Council/Contact-us/Childrens-Social-Care-Complaints-Procedure.aspx>

Annex A- Persons excluded from direct payments

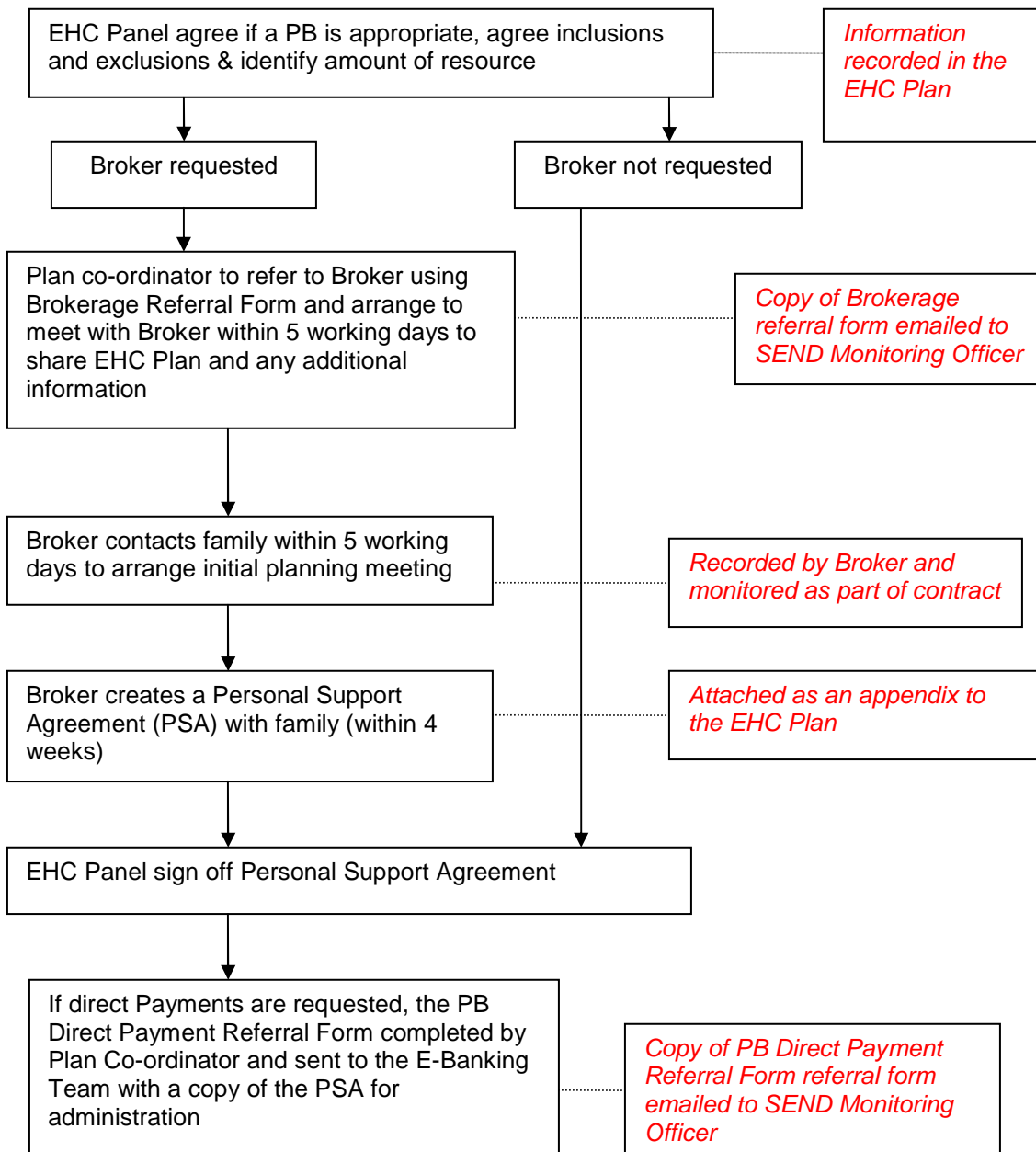
A person is unable to receive a direct payment if they are:

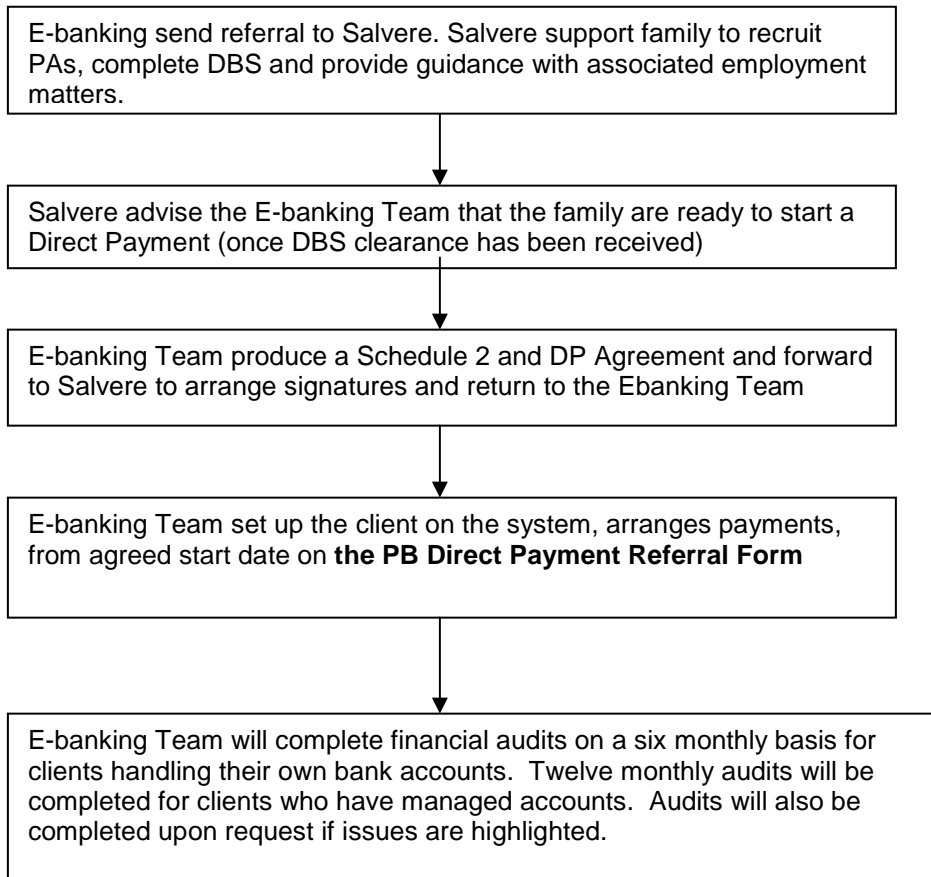
- a. subject to a drug rehabilitation requirement, as defined by section 209 of the Criminal Justice Act 2003 (drug rehabilitation requirement), imposed by a community order within the meaning of section 177 (community orders) of that Act, or by a suspended sentence of imprisonment within the meaning 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 2008⁶⁵ ("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); or
- 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.) 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.

Annex B- Personal Budget Process Flowchart





Annex C- Brokerage Referral Form

Referrals for brokerage can be made when:

1. the family has expressed an interest in a personal budget and
2. the child or young person meets eligibility for one or more of the following:
 - For education – element 3 (top-up funding)
 - For health – Continuing Care funding
 - For social care – Specialist provision as assessed by TDS

Name of Referrer

Contact Number

Date Referral passed to Broker

Contact Details

Name of young person:

Date of Birth:

Name of primary carer:

Address:

Telephone Number:

Personal Budget Information

Amount of Funding Agreed:

Outcomes Identified (or copy of EHC summary attached)

.....
.....
.....

Exclusions

.....

Copy passed to Admin for Information:

Annex D- Children's Personal Budget Direct Payment Referral Form

A copy of the Personal Support Agreement should be attached with this form and sent to the Ebanking Team (please cc Gill Burchall and Kathryn Leigh and make it clear in the subject box that this is a Children's Referral)

Details of Persons Referring

Name of Referrer			
Contact Number		Date Referred	

Client Details

Name of child or young person in respect of whom a direct payment will be made			
Address			
Date of Birth			
Name of representative (in most cases this will be the person with parental responsibility)			
Contact Number			

Direct Payment Details

Proposed Amount of Direct Payment (this is the increase only if a DP is already in place)	
Needs that the Direct Payment will address (if no Personal Support Agreement is available)	

Outcomes to be achieved (if no Personal Support Agreement is available)
Goods or Services to be secured by the Direct Payment

Please state the status of the Direct Payment below
--

	Amount	End date
ONE OFF PAYMENT		
DECREASE		

Signature Team Manager / SEND Lead Officer:

Date:

Annex E- References

National Health Service (Direct Payments) Regulations 2013(1) as amended by the National Health Service (Direct Payments) (Amendment) Regulations 2013(2).

The Special Educational Needs (Personal Budgets) Regulations 2014