**Independent Patient Choice and Procurement Panel**

**Review of a proposed contract award**

**Liaison & Diversion and RECONNECT Services for Lancashire and Cumbria**

**Case Reference: CR0009-25**

**18 February 2025**

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# **Executive Summary**

1. On 2 January 2025, Lancashire and South Cumbria NHS Foundation Trust (LSCFT) asked the Independent Patient Choice and Procurement Panel (the Panel) to advise on the selection of a provider by NHS England North West (NHSE NW) for its Liaison & Diversion and RECONNECT Service in Lancashire and Cumbria.
2. The Panel accepted LSCFT’s request on 7 January 2025 in accordance with its case acceptance criteria. These criteria set out eligibility requirements for case acceptance and the prioritisation criteria the Panel will apply when it is approaching full capacity. LSCFT’s request met the eligibility requirements, and as the Panel was not approaching full capacity, there was no need to apply the prioritisation criteria.
3. NHSE NW, one of seven regional NHSE teams in England, commissions specialised services in Cheshire and Merseyside, Greater Manchester, and Lancashire and Cumbria, including health and justice services. LSCFT is currently contracted by NHSE NW to provide Liaison & Diversion Services, RECONNECT Services, Enhanced RECONNECT Services and Mental Health Treatment Requirement Services in Lancashire and Cumbria.
4. With LSCFT’s contract due to expire on 31 March 2025, NHSE NW published a Prior Information Notice on Find a Tender Service on 9 April 2024, in order to better understand the capacity and appetite of the market to deliver the services supplied under LSCFT’s current contract.
5. NHSE NW assessed potential providers’ interest in delivering services, and their preferences in relation to the service and geographic scope of different lots that might be tendered. As a result of this engagement, NHSE NW decided to reprocure the current service in three lots, namely:

* Lot 1 – Liaison & Diversion and RECONNECT Services for Lancashire and Cumbria;
* Lot 2 – Enhanced RECONNECT Services for Lancashire and Cumbria; and
* Lot 3 – Mental Health Treatment Requirement Services for Lancashire and Cumbria.

1. The Liaison & Diversion and RECONNECT services in Lot 1, which are the subject of this review, provide early intervention for vulnerable people as they come to the attention of the criminal justice system, and offer care after custody services to improve continuity of care for vulnerable people leaving custody.
2. NHSE NW received three bids for Lot 1. The successful bidder was Practice Plus Group Health and Rehabilitation Services (PPG). LSCFT’s proposal was ranked third.
3. The Panel, in reviewing LSCFT’s representations about the provider selection process, considered eight potential breaches of the PSR regulations. The Panel finds that the PSR regulations were not breached in five areas (as set out below):

* First, the Panel finds that NHSE NW in deciding the relative weighting accorded to questions for the purposes of scoring bidders’ responses did not breach the PSR regulations and, in particular, the obligation to act transparently, fairly and proportionately.
* Second, the Panel finds that NHSE NW in evaluating and scoring LSCFT’s and PPG’s responses to the Information Governance & Information Sharing question did not breach the PSR regulations and, in particular, the obligation to act transparently, fairly and proportionately.
* Third, the Panel finds that NHSE NW in evaluating and scoring LSCFT’s and PPG’s responses to the Social Value question did not breach the PSR regulations and, in particular, the obligation to act transparently, fairly and proportionately.
* Fourth, the Panel finds that NHS NW in evaluating PPG’s response to the question on past contract performance did not breach the PSR regulations and, in particular, the obligation to act fairly and proportionately.
* Finally, the Panel finds that NHSE NW’s decision to commission the services covered by the current contract in three separate lots did not breach the PSR regulations and, in particular, the obligation on commissioners to act with a view to: (i) securing the needs of the people who use the services; (ii) improving the quality of the services, and (iii) improving efficiency in the provision of the services.

1. The Panel finds that the PSR regulations were breached in the following three areas:

* First, the Panel finds that NHSE NW in asking LSCFT to address the exit strategy for its current contract as part of its tender response breached NHSE NW’s obligation under the PSR regulations to act fairly.
* Second, the Panel finds that NHSE NW in not giving bidders the revised TUPE information supplied by LSCFT breached its obligations under the PSR regulations to act fairly and transparently.
* Finally, in relation to NHSE NW’s provision of information to LSCFT as an unsuccessful bidder, and its response to LSCFT’s representations concerning the provider selection process, the Panel finds that:
  + the tender outcome letter sent to LSCFT by NHSE NW was misleading as to “the reasons why the successful provider was successful” and “the reasons why the unsuccessful provider was unsuccessful” and as a result NHSE NW breached Regulation 11(8), which requires it to set out these reasons;
  + by not supplying the evaluation panel’s “final agreed feedback” in response to LSCFT’s request, NHSE NW breached Regulation 12(4)(b), which requires it to promptly provide any information requested by an unsuccessful bidder where the relevant authority has a duty to record that information; and
  + in failing to give LSCFT the opportunity to explain or clarify its representations, NHSE NW breached Regulation 12(4)(a), which requires it to ensure that an unsuccessful bidder making representations has the opportunity to explain or clarify its representations.

1. The Panel’s view is that the breaches of the PSR regulations had a material effect on NHSE NW’s provider selection decision (i.e. had these breaches not taken place, a different bidder may have been selected).
2. The Panel’s advice to NHSE NW is that it should, at a minimum, invite the three bidders to resubmit their proposals. In doing so, the question about service mobilisation should be revised so as to remedy the breach of the PSR regulations identified in this report, and bidders should be supplied with revised and updated TUPE information. In addition, in relation to LSCFT’s contract for the provision of services to mentally disordered offenders with NHS Lancashire and South Cumbria Integrated Care Board (which LSCFT delivers using a staff team integrated with the NHSE NW service), bidders should be supplied with information that allows an understanding of how services are currently delivered and the potential implications for TUPE costs.
3. Alternatively, NHSE NW may choose to abandon the current provider selection process.
4. By way of wider observation, the Panel notes that the Provider Selection Regime, with its more limited recourse to the courts, obliges commissioners and potential providers to take a more open, collaborative approach to resolving disputes about provider selection processes.
5. Commissioners should take particular care to meet the PSR regulations’ requirements in relation to tender outcome letters, information requests from unsuccessful bidders, and responding to representations constructively. Complying with these obligations will help minimise the likelihood of matters escalating to the Panel.
6. Potential providers should engage pro-actively, constructively and cooperatively with commissioners. Unsuccessful bidders should ensure that any representations are made clearly, within the constraints of any information deficiencies, and at the earliest possible opportunity. Incumbent providers should ensure that they provide full and accurate information to commissioners in a timely way and, during any provider selection process, continuing to engage constructively in their role as incumbent provider.

# **Introduction**

1. On 2 January 2025, Lancashire and South Cumbria NHS Foundation Trust (LSCFT) asked the Independent Patient Choice and Procurement Panel (the Panel) to advise on the selection of a provider by NHS England North West (NHSE NW) for its Liaison & Diversion and RECONNECT Service in Lancashire and Cumbria.
2. The Panel accepted LSCFT’s request on 7 January 2025 in accordance with its case acceptance criteria. These criteria set out eligibility requirements for case acceptance and the prioritisation criteria the Panel will apply when it is approaching full capacity.[[1]](#footnote-2) LSCFT’s request met the eligibility requirements, and as the Panel was not approaching full capacity, there was no need to apply the prioritisation criteria.
3. The Panel’s Chair appointed three members[[2]](#footnote-3) to a Case Panel for this review (in line with the Panel’s procedures). The Case Panel consisted of:

* Andrew Taylor, Panel Chair;
* Albert Sanchez-Graells, Case Panel Member; and
* Alison Tonge, Case Panel Member.

1. The Case Panel’s review has been carried out in accordance with the Panel’s Standard Operating Procedures (procedures).[[3]](#footnote-4)
2. This report, which provides the Panel’s assessment and advice to NHSE NW,[[4]](#footnote-5) is set out as follows:

* Section 3 briefly describes the role of the Panel;
* Section 4 sets out the background to the Panel’s review, including the events leading up to, and including, the selection of a provider for the Liaison & Diversion and RECONNECT service;
* Section 5 sets out the concerns raised by LSCFT;
* Section 6 summarises the provisions of the PSR regulations relevant to this review;
* Section 7 sets out the issues considered by the Panel and its assessment of these issues; and
* Section 8 sets out the Panel’s advice to NHSE NW.

1. The Panel would like to record its thanks to both NHSE NW and LSCFT for their assistance and cooperation during this review.

# **Role of the Panel**

1. The PSR regulations, issued under the Health and Care Act 2022, put into effect the Provider Selection Regime for NHS and local authority commissioning of health care services. The PSR regulations came into force on 1 January 2024.[[5]](#footnote-6)
2. Previously, health care services were purchased under the Public Contracts Regulations 2015 and the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013. The Provider Selection Regime, however, provides relevant authorities (i.e. commissioners) with greater flexibility in selecting providers of health care services.
3. The Panel’s role is to act as an independent review body where a provider has concerns about a commissioner’s provider selection decision. Panel reviews only take place following a commissioner’s review of its original decision.
4. For each review, the Panel’s assessment and advice is supplied to the commissioner and the potential provider that has requested the Panel review. It is also published on the Panel’s webpages. The commissioner is then responsible for reviewing its decision in light of the Panel’s advice.

# **Background to this review**

1. NHSE NW, one of seven regional NHSE teams in England, commissions specialised services in Cheshire and Merseyside, Greater Manchester, and Lancashire and Cumbria, including health and justice services.[[6]](#footnote-7) LSCFT is currently contracted by NHSE NW to provide Liaison & Diversion Services, RECONNECT Services, Enhanced RECONNECT Services and Mental Health Treatment Requirement Services in Lancashire and Cumbria.[[7]](#footnote-8)
2. With LSCFT’s contract due to expire on 31 March 2025, NHSE NW published a Prior Information Notice on Find a Tender Service (FTS) on 9 April 2024, in order to better understand the capacity and appetite of the market to deliver the services supplied under LSCFT’s current contract.
3. NHSE NW assessed potential providers’ interest in delivering services, and their preferences in relation to the service and geographic scope of different lots that might be tendered. As a result of this engagement, NHSE NW decided to reprocure the current service in three lots, namely:

* Lot 1 – Liaison & Diversion and RECONNECT Services for Lancashire and Cumbria;
* Lot 2 – Enhanced RECONNECT Services for Lancashire and Cumbria; and
* Lot 3 – Mental Health Treatment Requirement Services for Lancashire and Cumbria.

1. The Liaison & Diversion and RECONNECT services in Lot 1, which are the subject of this review, provide early intervention for vulnerable people as they come to the attention of the criminal justice system, and offer care after custody services to improve continuity of care for vulnerable people leaving custody.
2. On 22 August 2024, NHSE NW published a Contract Notice on FTS setting out its intention to follow the competitive process under the PSR regulations to select a provider for each lot. Interested providers were invited to submit their bids by 12 noon on 26 September, subsequently extended to 12 noon on 2 October, via the Atamis procurement portal. The contract for Lot 1 is intended to commence on 1 April 2025, and have a 5-year duration with the option of a 3-year extension. It has an indicative maximum lifetime value, including the 3-year extension, of £32 million (excluding VAT).[[8]](#footnote-9)
3. NHSE NW received three bids for Lot 1, and these were assessed by an evaluation panel between 4 October and 11 November 2024. The successful bidder was Practice Plus Group Health and Rehabilitation Services (PPG).[[9]](#footnote-10) LSCFT’s proposal was ranked third out of the three proposals.
4. NHSE NW wrote to bidders on 11 December 2024 informing them of the outcome and on 13 December published a notice of its intention to award the contract for Lot 1 to PPG.
5. On 20 December 2024, prior to the expiry of the standstill period, LSCFT made representations to NHSE NW about its conduct of the provider selection process for Lot 1. In response, NHSE NW reviewed its contract award decision and wrote to LSCFT on 23 December confirming its decision to award the contract to PPG.
6. On 24 December 2024, LSCFT made further representations to NHSE NW raising concerns about NHSE NW’s compliance with Regulation 12(4) of the PSR regulations, which relates to the sharing of information during the review process. NHSE NW replied on the same day stating that it believed that its letter of 23 December responded to LSCFT’s concerns and advising that if LSCFT remained unsatisfied it could make representations to the Panel.
7. On 2 January 2025, prior to the expiry of the extended standstill period, LSCFT asked the Panel to review NHSE NW’s provider selection decision for Lot 1. The Panel accepted this request on 7 January 2025. On being made aware of this, NHSE NW confirmed that it would hold the standstill period open for Lot 1 for the duration of the Panel’s review, as required by the PSR regulations.

# **Representations by LSCFT**

1. LSCFT’s concerns about the provider selection process for Liaison & Diversion and RECONNECT services (Lot 1), as summarised in its submission to the Panel, were as follows:

“Lancashire and South Cumbria NHS Foundation Trust (LSCFT) have particular concerns regarding the relative Weighted Scores for:

* MB01 Mobilisation
* WF01 Workforce Staffing Model
* G02 Information Governance & Information Sharing
* SV01 Social Value

“On 23rd and 24th December we received responses in relation to our initial challenge from NHSE England/NECSU but remain dissatisfied with the response and lack of transparency in relation to relative weighted scoring.

“We do not think NHSE have complied with the requirements of Regulation 12 (4) and Regulation 24 namely we have not been afforded opportunity to ‘explain or clarify’ and also as per the information requirements, we have not received the information requested.

“It appears the response seeks to avoid addressing concerns by asserting that it does not need to comply with the requirements of the Public Contract Regulations which we have not actually asked for.

“We would also question the outcome of this process which will mean the fragmentation of these services, previously provided successfully by one provider, into one to be provided by three separate providers.

“MB01 - We have scored 8.25% out of 11%, the same score as the Successful Provider (SP). This is despite LSCFT as the incumbent provider, not needing to mobilise a new service in the same way as would be required of other providers. As a consequence, we have concerns that we have been scored against different criteria, because we have been required to include details of possible demobilisation while other potential providers have not. This is clearly inequitable. The response we have been provided with by the Relevant Authority (RA) states that a robust process has been carried out in line with the published evaluation criteria; we remain dissatisfied given the lack of transparency in the response provided to the concerns raised that unpublished criteria has been utilised to assess the bids.

“WF01 - The finances included within the bid of the SP may have been produced without due consideration of the true staffing data, set out in the ELI provided by LSCFT. We require confirmation the staffing costs provided by the SP include full cost of staff which they inherit under TUPE. We would be concerned if the RA has evaluated unaffordable bids from other providers given the true staffing costs.

“We requested the actual ELI List which was provided by the RA to other bidders & confirmation that full costs of staff on the provided ELI list have been included in the Financial Model Template which has been submitted by the SP. We remain dissatisfied that consistent ELI has been applied & costings provided by the successful bidder do not include all staff that would TUPE at transfer point leading to a higher cost base to the SP than submitted through tender, & using price assumptions and caveats ‘beyond their control’ to change price after award. Furthermore if the SP has included the full TUPE list we are concerned it would materially change the Value for Money Weighted Score differential between LSCFT & the SP.

“G02 - We remain concerned regarding the differential score between LSCFT & the SP based on the debrief comments which demonstrate that the score of 3 for the SP is manifestly incorrect; for example the RA states that ‘The response details consent including some limitations to this but evaluators would have welcomed further detail in the context of Health and Justice services.’ This suggests that the SP should have received a lower score than it was awarded given the lack of detail it provided for Health & Justice services which was an explicit requirement of this question.

“SV01 - Based on the feedback provided we believe LSCFT should have scored at least the same as the SP. The RA noted that LSCFT's response ‘focused on engagement with local community groups and the use of peer recovery models to support social integration.’ It however then noted that ‘No mention of specifics for the service in particular and lacked detail on how the service/organisation would use local influence with partner agencies.’ We would find these two statements to be contradictory, suggesting LSCFT should have received a higher score.

“We have general concerns regarding the relative weighting accorded to some of the Scores. LSCFT scored 21.75% for all elements of Service Delivery compared with a score of 14.5% for the SP out of a possible Weighted Score of 29%. This means that the SP scored only 50% on what must be regarded as the most important element of the Service. Furthermore, the SP was awarded a Weighted Score of 8% out of a total of 10% for Value for Money. This compares to the 2% awarded to LSCFT. This 6% difference in Weighted Score represents a difference in submission value of between only £150k & £200k per annum. This is indicative of a superior service being sacrificed for a marginal saving in cost to the RA.

“Finally we requested confirmation of the SP Response to Question 3Y and details of the due diligence that has been carried out by the Authority with regard to their history.”

# **PSR regulations relevant to this review**

1. In its representations to the Panel, LSCFT suggested that NHSE NW had breached the PSR regulations in relation to the general obligations on commissioners (as set out in Regulation 4), the application of basic and key criteria (as set out in Regulation 19 and Regulation 5), and the obligations of the relevant authority to provide information to unsuccessful bidders (as set out in Regulations 11, 12 and 24).
2. Those parts of the PSR regulations most relevant to this review and discussed in this report are set out below:

* First, the PSR regulations set out the general obligations that apply to relevant authorities (i.e. commissioners) when selecting a provider of health care services (Regulation 4). This states that relevant authorities must “act: (a) with a view to - (i) securing the needs of people who use the services; (ii) improving the quality of the services; and (iii) improving efficiency in the provision of the services; and (b) transparently, fairly and proportionately”.
* Second, the PSR regulations set out the process that relevant authorities must follow when using the Competitive Process (Regulation 11). This states that “(1) Where the relevant authority follows the Competitive Process, the process is that the relevant authority follows the steps set out in this regulation … (8) Step 5 is that the relevant authority promptly informs, in writing … (b) each unsuccessful provider that their offer has been unsuccessful, such communications to include the information set out in Schedule 9.”
* Third, the PSR regulations set out the obligations that apply to relevant authorities in relation to the standstill period (Regulation 12). This states that “(4) Where the relevant authority receives representations [during the standstill period], it must – (a) ensure each provider who made representations is afforded such further opportunity to explain or clarify the representations made as the relevant authority considers appropriate, (b) provide promptly any information requested by an aggrieved provider where the relevant authority has a duty to record that information under regulation 24 (information requirements) …”
* Finally, the PSR regulations set out the information that relevant authorities must keep a record of (Regulation 24). These include: “… (d) the decision-making process followed, including the identity of individuals making decisions … (f) where the Competitive Process was followed, a description of the way in which the key criteria were taken into account, the basic selection criteria were assessed and contract or framework award criteria were evaluated when making a decision; (g) the reasons for decisions made under these Regulations …”.

1. The Provider Selection Regime Statutory Guidance “sits alongside the Regulations to support organisations to understand and interpret the PSR regulations”.[[10]](#footnote-11) Reference is made to relevant provisions of the Statutory Guidance in the Panel’s assessment of the issues in Section 7.

# **Panel Assessment**

1. This section sets out the Panel’s assessment of LSCFT’s representations and its findings on whether NHSE NW complied with the PSR regulations. The Panel’s assessment is set out in eight parts:
   * first, the weighting allocated to different questions for the purposes of scoring bidders’ submissions (Section 7.1);
   * second, the evaluation of bidders’ responses to the Mobilisation question (Section 7.2);
   * third, the provision of indicative staffing information to bidders and the evaluation of bidders’ responses to the Workforce - Staffing Model question (Section 7.3);
   * fourth, the evaluation of bidders’ responses to the Information Governance & Information Sharing question (Section 7.4);
   * fifth, the evaluation of bidders’ responses to the Social Value question (Section 7.5);
   * sixth, the evaluation of PPG’s response to the past contract performance question (Section 7.6);
   * seventh, the potential fragmentation of services as a result of dividing the current contract into three lots (Section 7.7); and
   * finally, the provision of information to unsuccessful bidders and the response to representations (Section 7.8).

## **Weighting of questions for scoring purposes**

1. This section sets out the Panel’s assessment of LSCFT’s concerns about the weightings attached to each question for the purposes of calculating each bidder’s overall score.
2. LSCFT told the Panelthat:

“We have general concerns regarding the relative weighting accorded to some of the scores.

“LSCFT scored 21.75% for all elements of Service Delivery compared with a score of 14.5% for the SP [successful provider] out of a possible weighted score of 29%. This means that the SP scored only 50% on what must be regarded as the most important element of the Service.

“Furthermore, the SP was awarded a weighted score of 8% out of a total of 10% for value for money. This compares to the 2% awarded to LSCFT.

“This 6% difference in weighted score represents a difference in submission value of between only £150k & 200k per annum. This is indicative of a superior service being sacrificed for a marginal saving in cost to the RA” (see paragraph 36).

1. NHSE NW, in responding to LSCFT’s earlier representations on this issue, said that it had “followed the published evaluation criteria. The Relevant Authority will award the contract to the provider offering the most advantageous provider response by scoring the highest combined score for quality and finance and who also passes the economic and financial due diligence, in accordance with the evaluation criteria and weightings set out in the published Provider Response Document (PRD) Schedule 6 Provider Response Evaluation Criteria Handbook and PRD Schedule 6a Financial Evaluation Criteria Handbook”.[[11]](#footnote-12)
2. The Panel notes that the PSR statutory guidance states that:

“The relative importance of the key criteria is not predetermined by the Regulations or this guidance and there is no prescribed hierarchy or weighting for each criterion. Relevant authorities must decide the relative importance of the key criteria for each decision they make under this regime, based on the proposed contracting arrangements and what they are seeking to achieve … The regime does not specify how relevant authorities must balance the key criteria”.[[12]](#footnote-13)

1. The Panel’s view is that NHSE NW, consistent with the statutory guidance, had the discretion to decide the weightings for the key criteria and how this translated to individual questions. As a result, the Panel finds that NHSE NW in deciding the relative weighting accorded to questions for the purposes of scoring bidders’ responses did not breach the PSR regulations and, in particular, the obligation to act transparently, fairly and proportionately.

## **Evaluation of the Mobilisation question**

1. This section sets out the Panel’s assessment of LSCFT’s concerns about NHSE NW’s evaluation of bidders’ responses to the Mobilisation question (MB01).
2. By way of background, the question on mobilisation was as follows:

**MB01 Mobilisation** (micro weighting 11%):

“Please provide a detailed mobilisation plan to demonstrate timelines and actions associated with mobilising the service and summarise how the mobilisation plan will be implemented, highlighting any key stages and actions proposed.

“Your response should reference, but not be limited to:

* Equipment and resource planning;
* Exit strategy for the current provider handing over to the successful bidder, where applicable;
* Transfer of Undertakings (Protection of Employment) (TUPE), including liabilities under the New Fair Deal legislation;
* IT systems; premises and lease arrangements (where applicable); and
* Key stakeholder engagement.

“N.B. Incumbent providers must demonstrate that they understand the requirements for this new contract, which will differ from their current contract. All bidders must submit a full mobilisation plan.”

1. Scoring of bidder responses to all non-finance related questions, including the mobilisation question, was on a 0-4 scale as set out in the table below.[[13]](#footnote-14)

A close-up of a survey

Description automatically generated

1. During the provider selection process, LSCFT asked a clarification question about the Mobilisation question, namely “as the incumbent provider please confirm whether response and mobilisation plan are submitted as the incumbent provider or as a new provider of services”. NHSE NW responded “As detailed within the published question, incumbent providers must demonstrate that they understand the requirements for this new contract, which will differ from their current contract. All bidders must submit a full mobilisation plan”.[[14]](#footnote-15) The Panel notes that this response repeats the wording used in the note to the mobilisation question (see paragraph 47).
2. LSCFT, in its representations to the Panel (set out at paragraph 36), said that:

“We have scored 8.25% out of 11% [for the Mobilisation question], the same score as the Successful Provider (SP). This is despite LSCFT as the incumbent provider, not needing to mobilise a new service in the same way as would be required of other providers.

“As a consequence, we have concerns that we have been scored against different criteria, because we have been required to include details of possible demobilisation while other potential providers have not. This is clearly inequitable.

“The response we have been provided with by the Relevant Authority (RA) states that a robust process has been carried out in line with the published evaluation criteria; we remain dissatisfied given the lack of transparency in the response provided to the concerns raised that unpublished criteria has been utilised to assess the bids”.

1. LSCFT further told the Panel that, as the incumbent provider, it had been treated inequitably because the Mobilisation question demanded that it explain how it would demobilise its current service, within the same character and word count, as other bidders who only had to answer “the singular question of how they would mobilise a new service”.[[15]](#footnote-16) LSCFT was concerned that it was, in effect, scored on considerations that related to its current contract rather than its ability to deliver the new contract.
2. The Panel asked NHSE NW: (i) about the extent to which the new service differed from the current service; and (ii) to clarify the Mobilisation question’s requirement that bidders set out an “exit strategy for the current provider handing over to the successful bidder, where applicable”, including whether this question was specific to LSCFT, as the incumbent provider.
3. On the first point, NHSE NW said that the new service differed from the current service as a result of the current service being divided into three lots. It said that bidders, in responding to the mobilisation question for Lot 1, needed to explain how they would mobilise this service and, for the incumbent provider, this would mean how it would mobilise from its current service.[[16]](#footnote-17)
4. On the second point, NHSE NW initially told the Panel that it was asking bidders about their approach to transitioning from the current provider, and that “where applicable” applied to “situations where there is no incumbent provider”.[[17]](#footnote-18) (The Panel notes that there is an incumbent provider for Lot 1.) NHSE NW later told the Panel that in hindsight the phrase “where applicable” should not have been used, but that its intention was not to ask LSCFT to address issues that were different to those that other bidders were being asked to address. Rather, the question was aimed at all bidders and how they would transition to the new contract, whether as the incumbent provider or as a new provider.
5. NHSE NW further said that it did not think that LSCFT was disadvantaged by including information on its exit strategy within the same word count as other bidders. It noted that PPG had also addressed its exit strategy within the same word count.[[18]](#footnote-19) (The Panel observed that PPG’s response addressed its exit from the new contract while LSCFT’s response addressed its exit from the current contract.)
6. NHSE NW also told the Panel that it did not believe that the way in which the question was formulated affected the evaluation outcome. This was because the evaluators did not consider that LSCFT, as the incumbent provider, had to address issues different to those addressed by other bidders. Rather, all bidders’ responses were assessed in the same way.[[19]](#footnote-20)
7. The Panel’s view is that, notwithstanding NHSE NW’s intention, the wording of the mobilisation question caused LSCFT to understand that, as part of its bid, it had to address matters that related to the management of its current contract. The Panel considers that LSCFT’s interpretation of the question was not unreasonable. The Panel also considers that LSCFT may have submitted a significantly different response if the question had been worded differently. The Panel cannot be confident that LSCFT would not have been awarded a different score if the question had been worded in a way that made it clear that LSCFT was not being asked to address its exit plans for its current contract.
8. Given this, the Panel finds that NHSE NW, in asking LSCFT to address the exit strategy for its current contract as part of its tender response, breached NHSE NW’s obligation under the PSR regulations to act fairly.

## **Provision of staffing information to bidders**

1. This section sets out the Panel’s assessment of LSCFT’s concerns about the information that was provided to bidders regarding the staffing of the current service, and its effect on bidders’ responses to the Workforce – Staffing Model question.

**7.3.1 Background to the Workforce question**

1. Bidders were asked to respond to the following Workforce – Staffing Model question:

**WF01 Workforce – Staffing Model** (micro weighting 12%):

“Please describe your proposed staffing and management arrangements, which demonstrate you meet the requirements of the service specifications, including sub-contractors (if applicable).

“Your response should include:

* Arrangements for both operational management and clinical leadership;
* The selected skill mixes with a clear rationale;
* How People with Lived Experience will be incorporated within the staffing model;
* Your approach to managing staffing capacity, including contingency arrangements in the case of staff absences and planned or unplanned increases in workload;
* Arrangements for staff supervision and support including the role of reflective practice; and
* Your approach to recruitment and retention of workforce including training plans and competency frameworks, ensuring variable skill sets.

“Cross reference will be made to your completed FMT (to be assessed by NHS England Finance Team) in response to this question. Please refer to ITT Schedule 6a Financial Evaluation Criteria.”

1. Scoring of bidders’ responses to the Workforce – Staffing Model question was on a 0-4 scale as set out in the table at paragraph 48. Bidders’ completion of the Financial Model Template (FMT) was also assessed for correlation with their staffing model.[[20]](#footnote-21) Bidders’ responses to the FMT were given a risk assessment score as per the table below.

A blue and white table with white text

Description automatically generated

1. Bidders were also given the following guidance for answering the Workforce – Staffing Model question:

“The Provider is required to enter the gross staff costs which should include Whole Time Equivalents, Gross Salary, Employers NI contributions, Employers Pension contributions, plus any other relevant staffing costs. Please note that the anticipated costs in respect of any staff to be transferred under TUPE arrangements should also be included where relevant …

“An Indicative TUPE schedule is provided here for reference. Providers must note that the TUPE information provided in this schedule is an indicative reference only. The Relevant Authority offers no guarantees or assurances as to the accuracy of the information provided. Providers are expected to conduct their own due diligence when developing the service models and related costings for their Provider responses. If eligible for TUPE, any anticipated redundancy costs will be a cost to the Provider and should be included in the Non-Staff Costs worksheet of the FMT.”[[21]](#footnote-22)

1. NHSE NW repeated this guidance to the Panel, saying that “the TUPE information is provided by the incumbent provider and NHSE share this information with all potential bidders but do not assume any responsibility for the accuracy of the information provided. This is clearly indicated on the FMT document. The main table is to show all current staff who may be eligible for TUPE to enable potential bidders to carry out their own assessment and due diligence".

**7.3.2 Distribution of the TUPE schedule to bidders**

1. Prior to the provider selection process, NHSE NW asked LSCFT for a TUPE schedule that it could include with the tender documentation.[[22]](#footnote-23) NHSE NW said that the initial TUPE schedule supplied by LSCFT did not allocate staff between the three lots being tendered, but this issue was rectified by 15 July 2024 and the resulting schedule for Lot 1 was included with the tender documentation.[[23]](#footnote-24)
2. On 28 August, a bidder queried an apparent discrepancy between the staffing numbers in the vacancy table and the TUPE list.[[24]](#footnote-25) As a result, on 29 August, NHSE NW asked LSCFT for clarification, setting a 2 September deadline for its response. NHSE NW reiterated its request twice on 3 September and, on 4 September, LSCFT supplied a revised TUPE schedule. The accompanying email said “Apologies again for getting this to you very late. It appears that this is more complicated than first thought. Please find attached list of ‘in post’ staff as at the 3rd July 2024. We would like to discuss the submission further and ask that this not be shared with others until full explanation can be given”.[[25]](#footnote-26)
3. The revised TUPE schedule of 4 September gave rise to two issues relevant to this review:

* first, it triggered a discussion between LSCFT and NHSE NW about LSCFT’s contract with NHS Lancashire and South Cumbria Integrated Care Board (ICB) for the provision of services to mentally disordered offenders, and the implications of LSCFT’s use of an integrated staff team to deliver services under both contracts;[[26]](#footnote-27) and
* second, LSCFT included in the revised TUPE schedule a number of staff who had, in error, been omitted from the earlier schedule.

1. These two issues are discussed, in turn, in the following paragraphs.

**Inclusion of ICB-funded staff in the TUPE schedule**

1. LSCFT and NHSE NW discussed the revised TUPE schedule on a call on 5 September (i.e. the day after the revised schedule was submitted). According to NHSE NW, LSCFT said that the revised schedule included staff funded by the ICB, and that it used an integrated team to deliver services under both the ICB and the NHSE NW contracts.[[27]](#footnote-28) NHSE NW told the Panel that it was at this point that NHSE NW first became aware of the ICB contract (although LSCFT has said that the ICB contract was identified to NHS NW in a previous competitive tender – see paragraph 72).
2. NHSE NW formed the impression that the revised TUPE schedule submitted on 4 September newly included ICB-funded staff who – in NHSE NW’s view – should not have been in the schedule.[[28]](#footnote-29) NHSE NW’s senior commissioning manager told the Panel that “the original list, as far as I was led to believe, was the posts that would have been funded within this funding system” (i.e. within the NHSE NW contract). She continued “I was told that those posts that were added on … were ICB-funded posts.”[[29]](#footnote-30)
3. LSCFT, however, has a different recollection of its discussion with NHSE NW, and believes NHSE NW was told on the 5 September call that ICB-funded staff were in the TUPE schedule from the beginning.[[30]](#footnote-31) Having reviewed the TUPE schedules, the Panel can see that the original TUPE schedule included ICB-funded staff, and as a result, considers that NHSE NW’s understanding that this was not the case was incorrect.
4. In any event, going back to the events of 5 September, NHSE NW told LSCFT that it would “need by the end of the day [i.e. 5 September] a full and accurate TUPE list detailing people in post and current vacancies (including if these are out to recruitment). This cannot be delayed any further”.[[31]](#footnote-32)
5. The following day, 6 September, LSCFT emailed NHSE NW with further details of the ICB contract and a further revised TUPE schedule. In relation to the ICB contract, LSCFT said that:

* “we are receiving approx. £460k for the ‘Criminal Justice Liaison Service (Criminal Justice Mental Health Team)’ from the ICB”;
* “This work is not directly commissioned by NHSE but does form an integral part of the activity returns submitted to NHSE, although the costs of the posts are not included in any finance returns. The inclusion of these posts within the current delivery model was identified during our bid for the current service as stated in the attached tender response document which is also embedded in our current contract”; and
* “The roles funded by the ICB form an integral part of the delivery of the Liaison & Diversion service but do have a separate funding stream”.

1. In relation to the further revised TUPE schedule submitted by LSCFT (the 6 September schedule), LSCFT told NHSE NW that “We have reviewed the TUPE list and taken some initial legal advice and, as a result, we have concluded that the attached list is the most appropriate version to submit. It does include posts that are fully and partially funded by the ICB and the proportions are noted in the final column. As they all contribute to the same service we [do] not think it is ‘safe’ to exclude posts just on the basis that there is a separate funding stream”.
2. Also on 6 September, NHSE NW responded to the TUPE clarification question saying:

"Providers are advised to form their own view on whether TUPE applies, obtaining their own legal advice and carrying out due diligence including taking into account the New Fair Deal non-statutory policy setting out how pensions issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers delivering public services. The successful provider will be required to indemnify the Relevant Authority against all possible claims arising under TUPE".[[32]](#footnote-33)

1. Even though a response to the clarification question had now been given, correspondence between NHSE NW and LSCFT regarding the composition of the revised TUPE schedule continued. NHSE NW reiterated its position that the TUPE schedule should only include NHSE NW funded staff, and LSCFT reiterated its view that it was not possible to “attribute roles within the service we are delivering to individual contracts” (see email extracts below.)

|  |  |  |
| --- | --- | --- |
| **Date** | **Sender** | **Relevant content** |
| 12 Sept | NHSE NW | “Thank you for the TUPE list you have shared. Any posts 100% funded by the ICB are outside of scope of the NHS England procurement as this sits with a separate commission – so can these please be removed from this and any future lists. For posts you have detailed as part funded these will need to be negotiated as part of the mobilisation of the new contract fully considering TUPE law” |
| 12 Sept | NHSE NW | “I cannot comment on any other services that are commissioned separately to our contract as arrangements for these are outside of my scope. These services sit separately to those commissioned by Health and Justice and up until last week I had no knowledge of these or any connection to Liaison and Diversion. This remains a separate commission and any arrangements for this sit with LSCFT and the ICB who commission this service. All aspects of this are outside of scope of the NHS England procurement and need to be fully separated by LSCFT” |
| 12 Sept | LSCFT | “As previously stated, we do not believe it is possible to attribute roles within the service we are delivering to individual contracts and any ELI [i.e. TUPE] list that we supply will reflect that. In reality, the way in which this service is delivered meets one of the key criteria for authorities awarding contracts i.e. ‘integration, collaboration and service sustainability’. We have seamlessly integrated two services, as we indicated we would in our bid for the original contract, and not only is this a testament to the service, and the colleagues delivering it, but it is not possible to simply split people, or roles based on funding source alone. In actual fact, the funding we receive from many sources, like with many commissioned services, is used collaboratively to enhance services and ensure they are sustainable” |
| 13 Sept | NHSE NW | “With regards to TUPE lists – NHS England’s position is that only staff funded via our direct commission to deliver Liaison and Diversion are covered and any additional investment and staff do not form part of this arrangement. Unless you can show something to the contrary, there has been no agreement from commissioners to fully integrate this service and I was not aware that this was a decision that LSCFT had taken. If LSCFT did choose to align the services then this needs to be looked at as a priority and arrangements to separate out the services in line with the different funding streams in order that any potential new provider can pick up this work moving forward. If you feel that LSCFT’s approach in merging the services has value – may I suggest you include this in your bid (with the agreement of other service commissioners)” |
| 18 Sept | NHSE NW | “I now have had the opportunity to speak to colleagues in the ICB regarding the differently funded services that LSCFT are commissioned to provide from police custody. All commissioners are in agreement that Liaison and Diversion (NHS England) and the police custody mental health service (Lancs and South Cumbria ICB) are commissioned separately and should not be considered as one service. As you are aware, NHS England are in the process of re-procuring the L&D service and as such require TUPE information relating to this funding stream only. Staff funded by the ICB are not in scope and need to form part of the ICB commissioned service only. If there are any vacancies with the L&D team staff model that other staff could slot into then all commissioners are happy for this arrangement (subject to LSCFT getting their own legal advice regarding TUPE law and what is possible)” |

1. NHSE NW did not obtain a further revised TUPE schedule from LSCFT nor did it supply bidders with either of the revised TUPE schedules from 4 or 6 September. This was because NHSE NW believed that the revised schedule had been amended to include ICB-funded staff who, in its view, should not have been in the schedule. NHSE NW told the Panel that it “was left with a position where [NHSE NW] … could only assume that the list that we originally published … was the correct list”.[[33]](#footnote-34)

**Inclusion of RECONNECT staff in the revised TUPE schedules**

1. LSCFT included a number of staff in the revised TUPE schedules on 4 and 6 September who had been left off the original schedule (see paragraph 66). LSCFT told the Panel that the additional staff were RECONNECT staff who had been erroneously omitted from the original TUPE schedule (and were not ICB-funded staff).[[34]](#footnote-35)
2. LSCFT, however, did not explain to NHSE NW the source of the additional staff on the TUPE schedule in either the covering emails that were sent with the revised TUPE schedules on 4 and 6 September or in any other documents seen by the Panel. The Panel asked LSCFT if it had explained the situation to NHSE NW during their 5 September call. At its meeting with the Panel, LSCFT said that it could not remember what was said on this call, but later it told the Panel that one of its attendees could clearly remember informing NHSE NW about the source of the additional staff.[[35]](#footnote-36)
3. LSCFT told the Panel that including the RECONNECT staff added 16 additional whole time equivalent (WTE) staff to the TUPE schedule who had a combined annual salary cost of approximately £500k. LSCFT told the Panel that it used its knowledge of this information to help formulate its bid.[[36]](#footnote-37)

**NHSE NW’s response to the revised TUPE schedules**

1. As set out at paragraph 76, NHSE NW did not distribute the revised TUPE schedules from either 4 or 6 September as it believed that these revised schedules included ICB-funded staff that should not have been in the schedule.
2. NHSE NW’s senior commissioning manager said that she did not look at the revised TUPE schedules because of her understanding, formed on the 5 September call, that the revised TUPE schedule now included ICB-funded staff, who were not previously on the list. In her view, this rendered the revised TUPE schedule inaccurate.[[37]](#footnote-38)
3. She also said that “I did not receive any further correspondence from LSCFT on the matter since the email on 06.09.25 despite my emails to them on 12.09.25 and 18.09.25”.[[38]](#footnote-39) (The Panel, however, notes the email sent by LSCFT on 12 September – see table at paragraph 75.)

**7.3.3 Panel assessment and finding**

1. LSCFT in its representations to the Panel (see paragraph 36), said that:

“The finances included within the bid of the SP [successful provider] may have been produced without due consideration of the true staffing data, set out in the ELI [Employee Liability Information] provided by LSCFT. We require confirmation the staffing costs provided by the SP include full cost of staff which they inherit under TUPE.

“We would be concerned if the RA has evaluated unaffordable bids from other providers given the true staffing costs. We requested the actual ELI List which was provided by the RA to other bidders & confirmation that full costs of staff on the provided ELI list have been included in the Financial Model Template which has been submitted by the SP.

“We remain dissatisfied that consistent ELI has been applied & costings provided by the successful bidder do not include all staff that would TUPE at transfer point leading to a higher cost base to the SP than submitted through tender, & using price assumptions and caveats “beyond their control” to change price after award. Furthermore if the SP has included the full TUPE list we are concerned it would materially change the Value for Money Weighted Score differential between LSCFT & the SP”.

1. In summary, LSCFT has suggested that: (1) not all bidders may have been provided with the same information on staffing; and (2) inaccuracies in the TUPE schedule give the successful bidder the opportunity to increase its price after the contract award.
2. On the first issue, LSCFT raised this concern in its earlier representation to NHSE NW. LSCFT asked NHSE NW to “Please provide the actual ELI List which was provided by the Authority to other bidders …”.[[39]](#footnote-40) NHSE NW, in responding to LSCFT’s representation, said “All providers were issued with the same documents via Atamis [the procurement portal], including the TUPE list, which was detailed within PRD Document 8a Financial Model Template Lot 1”.[[40]](#footnote-41)
3. The Panel has seen no evidence that NHSE NW supplied other bidders with any staffing information either additional or different to that which was supplied to LSCFT, and is satisfied that no breach of the PSR regulations occurred in this respect.
4. On the second issue, the Panel’s view is that the original TUPE schedule supplied to bidders was misleading as a result of the schedule not providing information about the ICB-funded staff that had been included nor the RECONNECT staff that had been excluded and thus giving bidders a potentially misleading view of the number of staff used to deliver the current service, their cost and potential TUPE liabilities.
5. The Panel has considered whether the misleading nature of the TUPE schedule given to bidders, and NHSE NW’s decision not to distribute the revised TUPE schedule to bidders, gave rise to a breach of the PSR regulations, and in particular the obligation under the PSR regulations for commissioners to act fairly and transparently.[[41]](#footnote-42)
6. On this point, NHSE NW told the Panel that it offered no guarantees or assurances as to the accuracy of the TUPE schedule, and that providers were expected to carry out their own assessment and due diligence.[[42]](#footnote-43) The Panel notes that this requirement was clearly set out in the tender documentation (see paragraph 62). NHSE NW also drew the Panel’s attention to the arrangements that were made for bidders to contact the incumbent supplier, LSCFT, for the purposes of further assessment and due diligence on staffing.[[43]](#footnote-44)
7. The Panel also notes that the other bidders were likely to have had significant experience of delivering similar services elsewhere which they could draw on to inform their assessment of the staffing needed to deliver services (although this may have been less useful in terms of informing their expectations about TUPE related costs).
8. The Panel further appreciates that the TUPE schedule supplied with tender documentation can only ever be indicative as the final list of staff transferring to a new provider under TUPE rules can only be settled after a contract award decision. This means that there will always be some variation between the indicative TUPE information supplied in tender documentation and a final TUPE list, and the Panel agrees that it is for bidders to manage the risk of any variation. The Panel also appreciates that commissioners, in this case NHSE NW, are reliant on the incumbent provider, in this case LSCFT, to supply any indicative TUPE information that is distributed to bidders.
9. The Panel understands that the combination of: (a) potential variation in TUPE information between the point of issuing tender documentation and contract award; and (b) the commissioner’s reliance on the incumbent provider to supply TUPE information; means that it cannot offer any guarantees or assurances as to the accuracy of TUPE information.
10. Notwithstanding the other information available to bidders and their responsibility for carrying out their own assessment and due diligence, the Panel’s view is that it is not unreasonable to expect bidders’ proposals to be influenced, to some degree, by the TUPE information supplied by commissioners in tender documentation. As a result, commissioners in supplying this information cannot avoid their obligation under the PSR regulations to act fairly and transparently even if they are not giving guarantees or assurances about the accuracy of TUPE information.
11. The Panel’s view is that NHSE NW’s decision not to distribute the revised TUPE schedule meant that bidders, other than LSCFT, had a misleading impression of the number of staff used to deliver the current service, their cost and potential TUPE liabilities. As a result, the Panel finds that NHSE NW, in deciding not to give bidders revised TUPE information supplied by LSCFT, breached its obligations under the PSR regulations to act fairly and transparently.

## **Evaluation of the Information Governance & Information Sharing question**

1. This section sets out the Panel’s assessment of LSCFT’s concerns about NHSE NW’s evaluation of bidders’ responses to the Information Governance & Information Sharing question.
2. By way of background, the Information Governance & Information Sharing question was as follows:

**G02 Information Governance & Information Sharing** (micro weighting 11%):

“Please describe how you will build and maintain effective and relevant Information Governance, confidentiality and data protection processes which also consider information flows with all stakeholders.

Your response should include:

* Policies and procedures;
* Staff awareness and training;
* Senior ownership of data security;
* Statutory obligations;
* Information security assurance;
* Clinical information assurance;
* Records management;
* Data quality;
* Information incident management;
* Information risk management;
* Service user consent;
* How you will provide timely relevant information to criminal justice agencies to enable key decision-makers to make more informed decisions on diversion; charging; case-management; effective participation in criminal justice proceedings; remand and sentencing; and
* How you will ensure that assessments and reports are updated as an individual passes along the criminal justice pathway.”

1. Scoring of responses was on a 0-4 scale as set out in the table in paragraph 48. LSCFT was given a score of 2 (weighted score of 5.5%) and PPG was given a score of 3 (weighted score of 8.25%).
2. In its representation to the Panel, LSCFT said, as set out in paragraph 36, “We remain concerned regarding the differential score between LSCFT & the SP [successful provider] based on the debrief comments which demonstrate that the score of 3 for the SP is manifestly incorrect; for example the RA states that ‘The response details consent including some limitations to this but evaluators would have welcomed further detail in the context of Health and Justice services.’ This suggests that the SP should have received a lower score than it was awarded given the lack of detail it provided for Health & Justice services which was an explicit requirement of this question”.
3. In considering LSCFT’s concerns, the Panel (i) reviewed NHSE NW’s processes for evaluating bidders’ proposals with particular reference to how this supported a consistent approach to scoring; (ii) asked NHSE NW how it had ensured a robust process that delivered consistency in evaluating bidders’ responses; and (iii) reviewed the responses submitted by LSCFT and PPG, focusing on LSCFT’s concern that NHSE NW’s feedback on the PPG response indicated that its scoring had been manifestly incorrect.
4. NHSE NW told the Panel that bidders’ responses were evaluated by a multi-agency panel who had achieved consensus on bidders’ scores. It provided the Panel with a copy of the training that was supplied to evaluators and, at its meeting with the Panel, described the evaluation process.[[44]](#footnote-45) NHSE NW told the Panel that evaluators “were provided with the questions, specifications, scoring criteria and clarification log, along with copies of the training slides”.[[45]](#footnote-46) The Panel notes that the evaluation guidance addressed various areas relevant to ensuring a robust evaluation process, including the importance of the evaluator role and what good feedback should look like.[[46]](#footnote-47)
5. The Panel considered whether the feedback comment was indicative of a score for PPG that was manifestly incorrect. Having reviewed the Information Governance & Information Sharing question and its evaluation, the Panel’s view is that the feedback comment was not unreasonable, and the score given to PPG’s answer fell within the range of scores that could be considered reasonable. Further, the Panel does not consider that the evaluation panel’s feedback comment was indicative of PPG’s score being manifestly incorrect.
6. Given the evidence on the evaluation process, and the Panel’s review of responses to the Information Governance & Information Sharing question and their evaluation, the Panel finds that NHSE NW, in evaluating and scoring these responses, did not breach the PSR regulations and, in particular, the obligation to act transparently, fairly and proportionately.

## **Evaluation of the Social Value question**

1. This section sets out the Panel’s assessment of LSCFT’s concerns about NHSE NW’s evaluation of bidders’ responses to the Social Value question.
2. By way of background, the question on Social Value was as follows:

**SV01 Social Value** (micro weighting 10%):

“Please describe the commitment your organisation will make to ensure that opportunities under the contract deliver Effective stewardship of the environment.

Your response should include:

* Your ‘Method Statement’, stating how you will achieve this;
* How your commitment meets the NHS goals of working towards net zero greenhouse gas emission; and
* How you will influence staff, customers and communities through the development of the contract to support environmental protection and improvement*.”*

1. Scoring of bidders’ responses was on a 0-4 scale as set out in the table in paragraph 48. LSCFT received a score of 3 (weighted score of 7.5%) and PPG received a score of 4 (weighted score of 10%).
2. LSCFT told the Panel, as set out in paragraph 36, that “Based on the feedback provided we believe LSCFT should have scored at least the same as the SP [successful provider]. The RA noted that LSCFT's response ‘focused on engagement with local community groups and the use of peer recovery models to support social integration.’ It however then noted that ‘No mention of specifics for the service in particular and lacked detail on how the service/organisation would use local influence with partner agencies.’ We would find these two statements to be contradictory, suggesting LSCFT should have received a higher score”.
3. In considering LSCFT’s concerns about the evaluation of the Social Value question, the Panel adopted the same approach as it did when considering LSCFT’s concerns regarding the scoring of responses to the Information Governance & Information Sharing question. That is, the Panel: (i) considered NHSE NW’s processes for evaluating bidders’ proposals with particular reference to how this supported a consistent approach to scoring; (ii) considered how NHSE NW had ensured a robust process that delivered consistency in evaluating different bidder’s responses; and (iii) reviewed the responses to the Social Value question that were submitted by LSCFT and PPG, focusing on LSCFT’s concern that NHSE NW’s feedback to LSCFT included inconsistent statements.
4. NHSE NW’s overall approach to the evaluation and scoring of bidders’ responses is described in paragraph 100. The Panel noted that, in relation to social value, there was no specific guidance in the evaluator training on how responses should be evaluated in relation to a specification or best practice.[[47]](#footnote-48) As a result, the Panel asked NHSE NW about any advice given to evaluators for scoring responses to this question. NHSE NW said that it had provided the scoring criteria (see table at paragraph 48) but would not provide a greater level of detail (e.g. model answers) as it would be concerned that this would be “stifling of creativity”. NHSE NW told the Panel that having a wide range of evaluators on the panel allowed different viewpoints on bidders’ responses that would be taken into account in the consensus on a final score.[[48]](#footnote-49)
5. The Panel, having reviewed the Social Value question and its evaluation, considered whether NHSE NW’s feedback to LSCFT was unreasonable. The Panel’s view is that NHSE NW’s feedback to LSCFT was not unreasonable, and did not consider it to be contradictory (as suggested by LSCFT) as “engagement with local community groups” and “local influence with partner agencies” are different issues.
6. Given the evidence on the evaluation process, and the Panel’s review of responses to the Social Value question and their evaluation, the Panel finds that NHSE NW in evaluating and scoring these responses did not breach the PSR regulations and, in particular, the obligation to act transparently, fairly and proportionately.

## **Evaluation of PPG’s response on past contract performance**

1. This section sets out the Panel’s assessment of LSCFT’s concerns about the evaluation of PPG’s response to the question about its past contract performance.
2. By way of background, question 3y of the selection criteria was as follows:

**Question 3y** (weighting: pass/fail):

“Have any of the following actions been brought against your organisation or any organisation that forms part of this Provider response?

* Contract terminated or suspended by the Relevant Authority earlier than the original intended date.
* Contract not renewed due to failure to perform.
* Withdrawn from a contract prematurely.
* Litigation.
* Any enforcement notices served by any regulatory body”

“Scoring was in accordance with the following criteria:

Yes = Fail (Subject to satisfactory explanation in response to question 3y(i))

No = Pass

Failure to respond – Fail”

**Question 3y(i)** (weighting: pass/fail):

“Please detail any or all action taken to demonstrate your organisation or any organisation that forms part of this Provider response’s reliability to rectify any issues identified at 3y (self- cleaning.)”

“Scoring was in accordance with the following criteria:

Satisfactory information provided = Pass

Unsatisfactory or no information provided = Fail

Failure to respond = Fail”[[49]](#footnote-50)

1. LSCFT told the Panel that it “requested confirmation of the SP [successful provider] Response to Question 3Y and details of the due diligence that has been carried out by the Authority with regard to their history” (see paragraph 36).
2. LSCFT had earlier told NHSE NW “We also require confirmation of the Successful Provider Response to Question 3Y …”.[[50]](#footnote-51) NHSE NW responded by saying that “the Relevant Authority carried out a robust process and can confirm that the successful provider passed all elements of the evaluation process as detailed within Provider Response Document (PRD) Schedule 6 Provider Response Evaluation Criteria Handbook and PRD Schedule 6a Financial Evaluation Criteria Handbook, including meeting all the requirements within Regulation 20”.[[51]](#footnote-52)
3. In considering LSCFT’s concerns, the Panel reviewed the evaluation of PPG’s response to this question. The Panel noted that the documentation supplied by NHSE NW did not include a complete record of the decision in that a query which was recorded for NHSE NW “to review and confirm if acceptable” was marked as resolved, but the accompanying moderator comments were a copy of the bidder’s response to Question 3y(i) rather than any note of confirmation.[[52]](#footnote-53) In response to the Panel’s questions, NHSE NW explained the process it followed to complete its assessment. It said that the approval of this particular response had taken place on a call between NHSE NW and its procurement team, and acknowledged that the decision record had not been updated accordingly. As a result, the decision record was incomplete and disclosure of the record would not, by itself, provide any details on any due diligence undertaken on PPG’s response.[[53]](#footnote-54)
4. In the context of LSCFT’s request for “details of the due diligence that has been carried out by the Authority”, the Panel notes that the PSR statutory guidance states “relevant authorities are expected to undertake reasonable and proportionate due diligence on providers. Relevant authorities are expected to consider whether the organisation they enter into a contract with has the legal and financial capacities and the technical and professional abilities to deliver the contract”.[[54]](#footnote-55) That is, the statutory guidance discusses due diligence by commissioners in the context of questions that relate to the basic selection criteria. The statutory guidance further states that under the competitive process “relevant authorities must only use the information contained in the bid to assess the bid”.[[55]](#footnote-56)
5. The Panel’s view is that the process carried out by NHSE NW to evaluate PPG’s response to the question on its past contract performance was reasonable and in line with the approach set out in the statutory guidance (notwithstanding the gap in the decision record). As a result, the Panel finds that NHS NW, in evaluating PPG’s response to the question on past contract performance, did not breach the PSR regulations and, in particular, the obligation to act fairly and proportionately.
6. The Panel also notes that where decision records are not complete, this may adversely affect a commissioner’s ability to comply with Regulation 12(4), which places an obligation on commissioners to supply decision records – see Section 7.8.2.

## **Potential fragmentation of services**

1. This section sets out the Panel’s assessment of LSCFT’s concerns about the potential fragmentation of services. LSCFT told the Panel “We would also question the outcome of this process which will mean the fragmentation of these services, previously provided successfully by one provider, into one to be provided by three separate providers” (see paragraph 36).
2. NHSE NW told the Panel that it entered into a contract for the provision of Liaison & Diversion services with LSCFT in 2019 and this is due to end on 31 March 2025. It said that during the contract term, national pilot programmes were rolled out, including for example RECONNECT, which “were varied into NHSE NW’s contract” with LSCFT, and that those pilot projects “had never been through a procurement exercise”.[[56]](#footnote-57)
3. NHSE NW told the Panel that it had undertaken a market engagement exercise to consider proposed models, test potential providers’ interest in options for different lots, and the financing of these services. NHSE NW noted that the Enhanced RECONNECT service (Lot 2) had different funding arrangements which resulted in its new contract needing a different duration to the contracts for other services. This assisted NHSE NW’s decision to place this service in a separate lot.[[57]](#footnote-58)
4. The Panel notes that the most appropriate point at which to raise concerns about potential service fragmentation is before a provider selection process begins. In any event, given NHSE NW’s explanation, the Panel is not persuaded that there is any merit to LSCFT’s concerns. The Panel finds that NHSE NW’s decision to commission the services covered by the current contract in three separate lots did not breach the PSR regulations and, in particular, the obligation on commissioners to act with a view to: (i) securing the needs of the people who use the services; (ii) improving the quality of the services, and (iii) improving efficiency in the provision of the services.

## **Information for unsuccessful bidders and responding to representations**

1. This section sets out the Panel’s assessment of LSCFT’s concerns about NHSE NW’s provision of information to LSCFT as an unsuccessful bidder, and its response to LSCFT’s representations concerning the provider selection process.
2. LSCFT told the Panel that it was concerned that NHSE NW had not complied with the requirements of Regulation 11(8), Regulation 12(4) and Regulation 24 (see paragraphs 36 and 37).
3. The Panel’s assessment addresses three issues:
   * First, whether NHSE NW’s letter informing LSCFT that its bid for Lot 1 was unsuccessful (hereafter, the “tender outcome letter”) complied with the PSR regulations, and in particular Regulation 11(8).
   * Second, whether NHSE NW when responding to LSCFT’s representations supplied LSCFT with the information to which it was entitled under the PSR regulations, and in particular Regulations 12(4)(b) and 24.
   * Finally, whether NHSE NW in considering LSCFT’s representations afforded LSCFT the opportunity to explain or clarify its representations as required by Regulation 12(4)(a).

**7.8.1 NHSE NW’s tender outcome letter**

1. LSCFT, in responding to NHSE NW’s tender outcome letter, said that “the relative Weighted Scores do not appear to be supported by the Reasons for Scores provided. We do not understand why only a ‘Summary of Reasons for Score’ has been provided for the Successful Provider”.[[58]](#footnote-59)
2. As a result, the Panel assessed whether the tender outcome letter complied with Regulation 11(8). Regulation 11(8) requires commissioners to promptly inform, in writing “… each unsuccessful provider that their offer has been unsuccessful, such communications to include the information set out in Schedule 9 …”. The information specified in Schedule 9 includes “… (3) The reasons why the successful provider was successful; (4) The reasons why the unsuccessful provider was unsuccessful …”.
3. NHSE NW, in responding to LSCFT, said that it had “fulfilled its requirements in relation to Regulation 11 of the PSR”. It continued “there is no longer a requirement to detail the characteristics and relative advantages for the successful providers score. The scoring criteria was approved by the Relevant Authority and detailed within the published Provider Response Document”.[[59]](#footnote-60)
4. The Panel notes that the tender outcome letter set out the weighted scores against each question for both LSCFT and the winning bidder, PPG, along with a “reasons for score” for LSCFT and a “summary of reasons for score” for PPG.[[60]](#footnote-61)
5. The Panel compared the “reasons for score” for LSCFT in the tender outcome letter to the “final agreed feedback” that was adopted by NHSE NW’s evaluation panel. The Panel noted that the tender outcome letter closely aligned to the evaluation panel’s final agreed feedback. Most differences were minor edits that did not cause any significant difference to arise between the content of the tender outcome letter and the content of the evaluation panel’s feedback. However, the Panel also noted that in four out of eight questions (namely Service Delivery (SD) 01, SD02, SD03 and Social Value (SV) 01) the “reasons for score” in the tender outcome letter did not have a small number of the positive comments about LSCFT’s proposal that were in the evaluation panel’s “final agreed feedback”[[61]](#footnote-62).
6. The Panel also compared the “summary of reasons for score” for PPG in the tender outcome letter sent to LSCFT with the “final agreed feedback” for PPG that was adopted by NHSE NW’s evaluation panel. As might be expected, the summary in the tender outcome letter was significantly shorter in length than the evaluation panel’s final agreed feedback (i.e. around 770 words in the tender outcome letter vs around 1,800 words in the final agreed feedback).
7. The Panel considers that a summary of a successful provider’s “final agreed feedback” (or its equivalent) can meet the requirements of Regulation 11(8). That is, a summary can, in principle, be sufficient to set out the “reasons why the successful bidder was successful”. However, the Panel also considers that any such summary must accurately reflect the reasons agreed by an evaluation panel if it is to comply with Regulation 11(8).
8. The Panel compared the “summary of reasons for score” for PPG in the tender outcome letter sent to LSCFT with the evaluation panel’s final agreed feedback for PPG to assess whether the summary was accurate. The Panel found that the summary was not accurate in four out of eight questions (namely, SD01, SD02, SD03 and Mobilisation (MB) 01). The summary of PPG’s feedback in each case removed many of the evaluation panel’s adverse comments. This created the impression of a stronger proposal than was reflected in the evaluation panel’s agreed feedback.
9. The Panel’s view is that the tender outcome letter did not accurately reflect the evaluation panel’s reasons why PPG was successful and, to a lesser extent, why LSCFT was unsuccessful. As a result, the Panel finds that NHSE NW did not meet its obligation under Regulation 11(8) to set out in the tender outcome letter “the reasons why the successful provider was successful” and “the reasons why the unsuccessful provider was unsuccessful”.

**7.8.2 NHSE NW’s provision of information following representations**

1. LSCFT, in making representations to NHSE NW following receipt of the tender outcome letter, asked NHSE NW to “provide the detailed Reasons for Score for the Successful Provider for all questions”.[[62]](#footnote-63)
2. In response, NHSE NW told LSCFT that “the information provided within the response letter dated 23 December provided you with a response to the queries outlined within your letter”. It went on to say that:

“As previously advised, the Relevant Authority reviewed your queries as part of an internal review process on 23 December 2024 and are confident the appropriate decision has been made and compliant with the Competitive Process under the Healthcare Services (Provider Selection Regime) Regulations 2023 (PSR). In particular, the Relevant Authority is confident that they have complied with the requirements of Regulation 12(4). They are also confident that they have complied with Regulation 24 as advised in our letter dated 23 December 2024. The evaluation was carried out in accordance with the Provider Response Document (PRD) Schedule 6 Provider Response Evaluation Criteria Handbook and Schedule 6a Financial Evaluation Criteria Handbook”.[[63]](#footnote-64)

1. LSCFT, in its representations to the Panel, raised concerns about NHSE NW’s compliance with Regulations 12(4) and 24 (see paragraph 36).
2. Regulation 12(4) says that commissioners in receipt of qualifying representations must “(b) provide promptly any information requested by an aggrieved provider where the relevant authority has a duty to record that information under regulation 24”, and Regulation 24 states that commissioners must keep a record of “… the reasons for decisions made under these Regulations”.
3. The Panel’s view is that Regulations 12(4) and 24, in combination, oblige a commissioner to supply the record of the reasons for its tender award decision where this is requested. In this case, LSCFT clearly made such a request, and the Panel’s view is that NHSE NW should have – at a minimum – provided the “final agreed feedback” on PPG and LSCFT that was adopted by its evaluation panel. The Panel finds that by not supplying the “final agreed feedback” NHSE NW breached Regulation 12(4).

**7.8.3 LSCFT’s opportunity to explain or clarify its representations**

1. LSCFT, in making representations to NHSE NW following receipt of the tender outcome letter, said that it had “particular concerns regarding the relative Weighted Scores for G02 Information Governance & Information Sharing, WF01 Workforce – Staffing Model, MB01 Mobilisation, and SV01 Social Value. We can/will provide more detail of these concerns as required”. The letter further specified LSCFT’s concerns in three areas, but without elaborating on its concerns about the scoring of the Information Governance & Information Sharing or Social Value questions.[[64]](#footnote-65)
2. LSCFT told the Panel that NHSE NW dismissed its concerns about the scoring of the Information Governance & Information Sharing and Social Value questions without giving it an opportunity to provide more detail about its concerns.[[65]](#footnote-66)
3. Under the PSR regulations, Regulation 12(4) states that commissioners in receipt of qualifying representations “must – (a) ensure each provider who made representations is afforded such further opportunity to explain or clarify the representations made as the relevant authority considers appropriate …”. The PSR statutory guidance also says that commissioners “Must ensure that the provider is afforded an opportunity to explain or clarify its representation(s) if these are not clear”.[[66]](#footnote-67)
4. NHSE NW told the Panel that a provider’s representations should describe its issues so that the relevant authority can assess them. NHSE NW acknowledged Regulation 12(4), noting that it says that the further opportunity to explain or clarify is “as the relevant authority considers appropriate”. NHSE NW told the Panel that, as a result, there was no requirement for it to give LSCFT the opportunity to further explain or clarify. Moreover, that the points raised by LSCFT were addressed in NHSE NW’s response.[[67]](#footnote-68)
5. The Panel’s view is that NHSE NW could not know whether it had addressed the points raised by LSCFT given that LSCFT was not given the opportunity to provide the additional detail as it had offered. Further, the Panel considers that NHSE NW has misunderstood the caveat in Regulation 12(4), which says “as the relevant authority considers appropriate” in relation to ensuring each provider is afforded further opportunity to explain or clarify its representations.
6. This caveat is clearly not intended to give commissioners the freedom to decide that a bidder making representations should be given no further opportunity to explain or clarify their representations. The statutory guidance is clear that commissioners must ensure that the provider is afforded an opportunity to explain or clarify its representation(s) if these are not clear. The Panel’s view is that this caveat provides commissioners with an opportunity to bring a provider’s explanations or clarifications to a conclusion where an appropriate explanation or clarification has already been made, rather than allowing the commissioner to decide that such explanations or clarifications do not need to be made in the first place.
7. As a result, the Panel finds that NHSE NW in failing to give LSCFT the opportunity to explain or clarify its representations in relation to the Information Governance & Information Sharing and Social Value questions breached Regulation 12(4).

**7.8.4 Panel findings and wider observations**

1. In summary, the Panel makes three findings concerning NHSE NW’s provision of information to LSCFT as an unsuccessful bidder, and its response to LSCFT’s representations:

* First, the Panel finds that the tender outcome letter sent to LSCFT by NHSE NW did not accurately reflect the evaluation panel’s reasons why PPG was successful and, to a lesser extent, why LSCFT was unsuccessful and, as a result, NHSE NW breached Regulation 11(8) which requires it to set out “the reasons why the successful provider was successful” and “the reasons why the unsuccessful provider was unsuccessful”.
* Second, the Panel finds that that NHSE NW, by not supplying, at a minimum, the evaluation panel’s “final agreed feedback” for LSCFT and PPG in response to LSCFT’s request, breached Regulation 12(4)(b), which requires it to promptly provide any information requested by an unsuccessful bidder where the relevant authority has a duty to record that information.
* Third, the Panel finds that NHSE NW, in failing to give LSCFT the opportunity to explain or clarify its representations, breached Regulation 12(4)(a), which requires it to ensure that an unsuccessful bidder making representations has the opportunity to explain or clarify its representations.

1. The Panel also has two wider observations related to the matters considered in this section.
2. First, the Panel notes that the disadvantage to LSCFT that was created by inaccuracies in NHSE NW’s tender outcome letter (i.e. the breach of Regulation 11(8)) was compounded by NHSE NW’s failure to provide the “final agreed feedback” when this was requested by LSCFT (i.e. the breach of Regulation 12(4)(b)).
3. Second, and perhaps most importantly, the Panel notes that the Provider Selection Regime does not involve the courts in the same way as was previously the case under the Public Contracts Regulations. As a consequence, unsuccessful bidders no longer have the same access to court-mandated disclosure. The shift to a more collaborative dispute resolution process under the Provider Selection Regime, including the establishment of the Panel, means that there is a greater obligation on commissioners to work cooperatively with providers that make representations. It also has the effect of placing considerable importance on commissioners meeting the PSR’s requirements in relation to their handling of tender outcome letters and representations made by unsuccessful providers.

# **Panel Advice**

1. The Panel, in reviewing LSCFT’s representation regarding the provider selection process for NHSE NW’s Liaison & Diversion and RECONNECT Service in Lancashire and Cumbria, considered eight potential breaches of the PSR regulations.
2. The Panel finds that the PSR regulations were not breached in five areas (as set out below):

* First, the Panel finds that NHSE NW in deciding the relative weighting accorded to questions for the purposes of scoring bidders’ responses did not breach the PSR regulations and, in particular, the obligation to act transparently, fairly and proportionately.
* Second, the Panel finds that NHSE NW in evaluating and scoring LSCFT’s and PPG’s responses to the Information Governance & Information Sharing question did not breach the PSR regulations and, in particular, the obligation to act transparently, fairly and proportionately.
* Third, the Panel finds that NHSE NW in evaluating and scoring LSCFT’s and PPG’s responses to the Social Value question did not breach the PSR regulations and, in particular, the obligation to act transparently, fairly and proportionately.
* Fourth, the Panel finds that NHS NW in evaluating PPG’s response to the question on past contract performance did not breach the PSR regulations and, in particular, the obligation to act fairly and proportionately.
* Finally, the Panel finds that NHSE NW’s decision to commission the services covered by the current contract in three separate lots did not breach the PSR regulations and, in particular, the obligation on commissioners to act with a view to: (i) securing the needs of the people who use the services; (ii) improving the quality of the services, and (iii) improving efficiency in the provision of the services.

1. The Panel finds that the PSR regulations were breached in the following three areas:

* First, the Panel finds that NHSE NW, in asking LSCFT to address the exit strategy for its current contract as part of its tender response, breached NHSE NW’s obligation under the PSR regulations to act fairly.
* Second, the Panel finds that NHSE NW, in not giving bidders the revised TUPE information supplied by LSCFT, breached its obligations under the PSR regulations to act fairly and transparently.
* Finally, in relation to NHSE NW’s provision of information to LSCFT as an unsuccessful bidder, and its response to LSCFT’s representations concerning the provider selection process, the Panel finds that:
  + the tender outcome letter sent to LSCFT by NHSE NW was misleading as to “the reasons why the successful provider was successful” and “the reasons why the unsuccessful provider was unsuccessful” and as a result NHSE NW breached Regulation 11(8), which requires it to set out these reasons;
  + by not supplying the evaluation panel’s “final agreed feedback” in response to LSCFT’s request, NHSE NW breached Regulation 12(4)(b), which requires it to promptly provide any information requested by an unsuccessful bidder where the relevant authority has a duty to record that information; and
  + in failing to give LSCFT the opportunity to explain or clarify its representations, NHSE NW breached Regulation 12(4)(a), which requires it to ensure that an unsuccessful bidder making representations has the opportunity to explain or clarify its representations.

1. Given these conclusions, three options are open to the Panel. The Panel may advise that:

* the breaches had no material effect on NHSE NW’s selection of a provider and it should proceed with awarding the contract as originally intended;
* NHSE NW should return to an earlier step in the provider selection process to rectify the issues identified by the Panel; or
* NHSE NW should abandon the current provider selection process.

1. The Panel’s view is that the breaches of the PSR regulations identified in this report had a material effect on NHSE NW’s provider selection decision (i.e. had these breaches not taken place, a different bidder may have been selected).
2. The Panel’s advice to NHSE NW is that it should, at a minimum, invite the three bidders to resubmit their proposals. In doing so, the question about service mobilisation should be revised so as to remedy the breach of the PSR regulations identified in this report, and bidders should be supplied with revised and updated TUPE information. In addition, in relation to LSCFT’s ICB contract for the provision of services to mentally disordered offenders, bidders should be supplied with information that allows an understanding of how services are currently delivered and the potential implications for TUPE costs.
3. Alternatively, NHSE NW may choose to abandon the current provider selection process.
4. Care should be taken to ensure that this remedy or any new provider selection process is conducted fairly. This should include taking account, and mitigating the effects, of not all bidders necessarily gaining access to the same new information in their tender outcome letters or during the subsequent representations and Panel review.
5. By way of wider observation, the Panel notes that the Provider Selection Regime, with its more limited recourse to the courts, obliges commissioners and potential providers to take a more open, collaborative approach to resolving disputes about provider selection processes.
6. Commissioners should take particular care to meet the PSR regulations’ requirements in relation to tender outcome letters, information requests from unsuccessful bidders, and responding to representations constructively. Complying with these obligations will help minimise the likelihood of matters escalating to the Panel.
7. Potential providers should engage pro-actively, constructively and cooperatively with commissioners. Unsuccessful bidders should ensure that any representations are made clearly, within the constraints of any information deficiencies, and at the earliest possible opportunity. Incumbent providers should ensure that they provide full and accurate information to commissioners in a timely way and, during any provider selection process, continuing to engage constructively in their role as incumbent provider.

1. The Panel’s case acceptance criteria are available at <https://www.england.nhs.uk/commissioning/how-commissioning-is-changing/nhs-provider-selection-regime/independent-patient-choice-and-procurement-panel/>. [↑](#footnote-ref-2)
2. Biographies of Panel members are available at <https://www.england.nhs.uk/commissioning/how-commissioning-is-changing/nhs-provider-selection-regime/independent-patient-choice-and-procurement-panel/panel-members/>. [↑](#footnote-ref-3)
3. The Panel’s Standard Operating Procedures are available at <https://www.england.nhs.uk/commissioning/how-commissioning-is-changing/nhs-provider-selection-regime/independent-patient-choice-and-procurement-panel/>. [↑](#footnote-ref-4)
4. The Panel’s advice is provided under para 23 of the PSR regulations and takes account of the representations made to the Panel prior to forming its opinion. [↑](#footnote-ref-5)
5. The PSR regulations are available at <https://www.legislation.gov.uk/uksi/2023/1348/contents/made> and the accompanying statutory guidance is available at NHS England, *The Provider Selection Regime: statutory guidance*, <https://www.england.nhs.uk/long-read/the-provider-selection-regime-statutory-guidance/>. [↑](#footnote-ref-6)
6. Further information on NHSE NW can be found on its website at <https://www.england.nhs.uk/north-west/>. [↑](#footnote-ref-7)
7. LSCFT is a community, mental health and learning disability services provider for Lancashire and South Cumbria, serving a population of around 1.8 million people. Further information on LSCFT can be found on its website at <https://www.lscft.nhs.uk>. [↑](#footnote-ref-8)
8. NHSE NW, *Contract Notice on Find a Tender Service*, 22 August 2024. [↑](#footnote-ref-9)
9. PPG is an independent provider of private, insured and NHS healthcare. Further information on PPG can be found on its website at <https://practiceplusgroup.com/>. [↑](#footnote-ref-10)
10. NHS England, *The Provider Selection Regime: statutory guidance*, p.2. [↑](#footnote-ref-11)
11. NHSE NW, *Representations response letter*, 23 December 2024. [↑](#footnote-ref-12)
12. NHS England, *The Provider Selection Regime:* s*tatutory guidance*, p21-22. [↑](#footnote-ref-13)
13. NHSE NW, *Provider Response Document*, 22 August 2024. The Provider Response Document further states that questions have individual “micro” weightings, and would be grouped into sections with “macro” weightings. Weighted scores would be calculated as follows: “Weighted Score = Maximum % weighting of quality question x actual moderated score (0-4) ÷ possible maximum score (4). For example, a quality question with a percentage weighting of 5 and an evaluated score of 3 would calculate as: (5 x 3) = 15 ÷ 4 = 3.75%”. [↑](#footnote-ref-14)
14. NHSE NW, *Clarification log*, 3 September 2024. [↑](#footnote-ref-15)
15. Panel meeting with LSCFT, 30 January 2025. [↑](#footnote-ref-16)
16. Panel meeting with NHSE NW, 3 February 2025. [↑](#footnote-ref-17)
17. NHSE NW, R*esponse to Panel questions,* 16January 2025. [↑](#footnote-ref-18)
18. Panel meeting with NHSE NW, 3 February 2025. [↑](#footnote-ref-19)
19. Panel meeting with NHSE NW, 3 February 2025. [↑](#footnote-ref-20)
20. Bidders were advised that “The FMT will be assessed for completeness and correlation with the Staffing Model for each Lot bidding for. The Provider's response to the staffing model will be reviewed and the financial response from that Provider will then be evaluated for correlation with the staffing models” (NHSE NW, *Provider Response Document Schedule 6a*, 22 August 2024). [↑](#footnote-ref-21)
21. NHSE NW, *Provider Response Document Schedule 6a*, 22 August 2024. [↑](#footnote-ref-22)
22. TUPE refers to the Transfer of Undertakings (Protection of Employment) regulations. LSCFT refers to the staff that would transfer under TUPE as Employee Liability Information (ELI). [↑](#footnote-ref-23)
23. Panel meeting with NHSE NW, 3 February 2025. [↑](#footnote-ref-24)
24. NHSE NW, *PRD Document 8a Financial Model Template Lot 1 NHSE914*, 22 August 2024. [↑](#footnote-ref-25)
25. LSCFT email to NHSE NW, *Response to TUPE Queries*, 4 September 2024. [↑](#footnote-ref-26)
26. The service specification for the ICB service states that “The CJMHLT [Criminal Justice Mental Health Liaison Team] will provide assessment, formulation, advise, liaison and consultation services in relation to care and management of individuals” and “The service has been designed to provide early detection and assessment of mentally disordered offenders so that where appropriate they may be diverted from the criminal justice system to enable treatment and support. Individuals will also be offered relevant care & treatment whist remaining within the offender pathway”. LSCFT, RW527 Criminal Justice Liaison Team Service Specification, undated. [↑](#footnote-ref-27)
27. LSCFT, *Response to Panel questions*, 27 January 2025. LSCFT additionally told the Panel that “The staff funded by NHSE and ICB work as one fully integrated team, supporting service users to receive timely access to holistic assessment and intervention of need. The whole team works collaboratively to prevent a service user from unwarranted access to other parts of the health and/or justice system. The resource which is funded from two different sources offers a single service provision” (Panel meeting with LSCFT, 30 January 2025). [↑](#footnote-ref-28)
28. NHSE NW, *Response to Panel questions*, 27 January 2025; Panel meeting with NHSE NW, 3 February 2025. [↑](#footnote-ref-29)
29. Panel meeting with NHSE NW, 3 February 2025. [↑](#footnote-ref-30)
30. LSCFT, *Response to Panel accuracy checks*, 14 February 2025. [↑](#footnote-ref-31)
31. NHSE NW email to LSCFT, *RE: Response to TUPE Queries*, 5 September 2024. [↑](#footnote-ref-32)
32. NHSE NW, Clarification Log NHSE914, 6 September 2024. [↑](#footnote-ref-33)
33. Panel meeting with NHSE NW, 3 February 2025. [↑](#footnote-ref-34)
34. Panel meeting with LSCFT, 30 January 2025. [↑](#footnote-ref-35)
35. Panel meeting with LSCFT, 30 January 2025; LSCFT, *Response to Panel accuracy checks*, 14 February 2025. [↑](#footnote-ref-36)
36. LSCFT told the Panel that “while LSCFT have costed the model using the final ELI list [i.e. the revised TUPE schedule submitted by LSCFT], it is our firm belief that other bidders cannot have done, and therefore their commercial proposals will have been costed lower than in reality they should be, and also a false reflection of the true cost of delivering this service. Given the commercial banding, a c.£400k differential in the bids of the other bidders would likely result in their bids scoring 0”. [↑](#footnote-ref-37)
37. NHSE NW, *Response to Panel questions*, 27 January 2025. [↑](#footnote-ref-38)
38. NHSE NW, *Response to Panel questions*, 27 January 2025. [↑](#footnote-ref-39)
39. LSCFT, *Representations letter*, 20 December 2024. [↑](#footnote-ref-40)
40. NHSE NW, *Representation response letter*, 23 December 2024. [↑](#footnote-ref-41)
41. LSCFT has focused on the risk of a post contract award price renegotiation (see paragraph 83), but the Panel notes inaccuracies in the TUPE schedule could give rise to other effects as well. For example, NHSE NW told the Panel that “There would be no scope to change the value of the contract within the term. So if someone were to say this isn’t feasible within that contract value, then obviously that would not be something that we would look at within a contract term” (Panel meeting with NHSE NW, 3 February 2025). If the contract value could not be renegotiated, then unexpected costs for a provider could conceivably result in, say, reduced service capacity. [↑](#footnote-ref-42)
42. NHSE NW, *Response to Panel questions*, 21 January 2025. [↑](#footnote-ref-43)
43. Panel meeting with NHSE NW, 3 February 2025. [↑](#footnote-ref-44)
44. Panel meeting with NHSE NW, 3 February 2025. [↑](#footnote-ref-45)
45. NHSE NW, *Response to Panel questions*, 4 February 2025. [↑](#footnote-ref-46)
46. NHSE NW, *Tender Evaluation Training*, September 2024. [↑](#footnote-ref-47)
47. NHSE NW, *Tender Evaluation Training*, September 2024. [↑](#footnote-ref-48)
48. Panel meeting with NHSE NW, 3 February 2025. [↑](#footnote-ref-49)
49. NHSE NW, *Provider Response Document (PRD)*, 22 August 2024. [↑](#footnote-ref-50)
50. LSCFT, *Representations letter*, 20 December 2024. [↑](#footnote-ref-51)
51. NHSE NW, *Representation response letter*, 23 December 2024. [↑](#footnote-ref-52)
52. NHSE NW, Assessment of PPG’s bid response to the Basic Selection criteria, 4 October 2024. [↑](#footnote-ref-53)
53. Panel meeting with NHSE NW, 3 February 2025. [↑](#footnote-ref-54)
54. NHS England, *The Provider Selection Regime*: *statutory guidance*, p.10. [↑](#footnote-ref-55)
55. NHS England, *The Provider Selection Regime: statutory guidance*, p.22. [↑](#footnote-ref-56)
56. Panel meeting with NHSE NW, 3 February 2025. [↑](#footnote-ref-57)
57. Panel meeting with NHSE NW, 3 February 2025. [↑](#footnote-ref-58)
58. LSCFT, *Representations letter,* 20 December 2024. [↑](#footnote-ref-59)
59. NHSE NW, *Representations response letter*, 23 December 2024. [↑](#footnote-ref-60)
60. NHSE NW, *Standstill letter to LSCFT*, 11 December 2024. [↑](#footnote-ref-61)
61. NHSE NW, *Moderation Report for LSCFT and PPG Lot 1*. [↑](#footnote-ref-62)
62. LSCFT, *Representations letter,* 20 December 2024. [↑](#footnote-ref-63)
63. NHSE NW, *Representations response letter*, 24 December 2024. [↑](#footnote-ref-64)
64. LSCFT, *Representations letter*, 20 December 2024. [↑](#footnote-ref-65)
65. LSCFT said that NHSE NW “dismissed those claims (…) without actually asking us what our grievance was in more detail. We were ready and had information on hand that we would have eagerly shared with NHSE NW”. LSCFT wanted to “enter into a reasonable conversation” but it said it did not get that opportunity from NHSE NW. LSCFT said it “felt it more appropriate to give a headline level of what the grievances were, in summary” and “reserve their position” until it had the ability to converse with NHSE NW (Panel meeting with LSCFT, 30 January 2025). [↑](#footnote-ref-66)
66. NHS England, *The Provider Selection Regime: statutory guidance*, p.27. [↑](#footnote-ref-67)
67. Panel meeting with NHSE NW, 3 February 2025. [↑](#footnote-ref-68)