**Independent Patient Choice and Procurement Panel**

**Case Acceptance Decision: CR0026-25**

**Mental Health Support Services – West Sussex**

1. On 17 July 2025, Capital Project Trust (Capital), a charity that helps improve mental health services from a lived experience perspective, asked the Panel to advise on NHS Sussex Integrated Care Board’s (Sussex ICB’s) selection of a provider for mental health support services in West Sussex.
2. The Panel, when deciding whether to accept a case, assesses whether its eligibility criteria are met and, when the Panel is approaching full capacity, the Panel will also assess any new cases against its prioritisation criteria.
3. The Panel has decided that while Capital’s request meets the Panel’s eligibility criteria, it will not be accepting the case on prioritisation grounds.
4. This note, which provides the Panel’s reasons for its decision, is set out as follows:

* first, the background to Capital’s request is described;
* second, Capital’s case is assessed against the Panel’s eligibility criteria; and
* finally, Capital’s case is assessed against the Panel’s prioritisation criteria.

**Background**

1. On 15 November 2024, Sussex ICB published a contract notice inviting proposals from interested providers for the supply of mental health support services in Brighton & Hove and West Sussex. The mental health support services being procured through this contract will promote well-being, prevent mental ill health through early intervention and offer opportunities for service users to pursue meaningful activities and avoid social isolation.
2. The procurement was divided into two lots, one for Brighton & Hove and one for West Sussex. Capital’s representations concern the provider selection process for the West Sussex contract.
3. Sussex ICB’s provider selection process used the competitive process under the Provider Selection Regime (PSR) regulations. It is a ‘mixed procurement’ for the purposes of the PSR regulations as the procurement includes a combination of relevant health care services (as defined in the PSR regulations) and non-health care services.
4. Bids for the two new contracts were due by 20 January 2025. Each contract has a five year duration with the option of a two year extension. The estimated value of the West Sussex contract is approximately £35 million (excluding VAT) over its maximum seven year duration.
5. Prior to this procurement process, Capital has been directly contracted by Sussex ICB for its services. However, the new contracts consolidate several previously separate contracts, including Capital’s current contract with Sussex ICB. Lead providers will now hold the new contracts, sub-contracting as needed and as required, with other providers. Capital did not bid for the new West Sussex contract as it considered that it was too small to take on the lead provider role, but was named as a sub-contractor by several bidders.
6. On 27 May 2025, Sussex ICB published a contract award notice stating that the successful bidder for the new West Sussex contract was BHT Sussex, a housing association and homeless charity. BHT Sussex included Capital as one of the subcontractors in its proposal.
7. Notwithstanding its status as a subcontractor in the winning proposal, Capital made representations to Sussex ICB regarding its provider selection process for the West Sussex contract on 6 June 2025. These representations were considered by Sussex ICB’s internal review panel, and on 9 July 2025 the ICB wrote to Capital confirming its original decision to award the new contract to BHT Sussex. Capital has, in response, asked the Panel to advise on Sussex ICB’s provider selection decision.

**Eligibility**

1. The Panel’s eligibility criteria set out seven conditions that must be met for a case to be eligible for acceptance by the Panel.[[1]](#footnote-1) These are as follows.
2. The relevant authority intends to make an award under direct award process C, the most suitable provider process, or the competitive process (including a framework agreement or awarding a contract based on a framework agreement following a mini-competition).
3. The request comes from a provider that might otherwise have been a provider of the services to which the contract relates.
4. Following the provider’s representations the relevant authority has conducted a review of its original decision and has decided to enter the contract or conclude the framework agreement as originally intended.
5. The request has been made in writing (which includes electronically) within 5 working days of the provider being notified of the decision by the relevant authority.
6. The provider has set out why it believes the relevant authority has failed to apply the regime correctly.
7. The provider has submitted all of the necessary supporting information for the Panel to carry out its review as requested in the Panel’s pro forma.
8. The representations are not considered by the Panel to be trivial, vexatious, or an abuse of the Panel’s procedures.
9. The Panel concluded that Capital’s request met all seven eligibility criteria. However, in carrying out its assessment the Panel paid particular attention to the second criterion, namely whether Capital’s request came “from a provider that might otherwise have been a provider of the services to which the contract relates”.
10. This was because it was not immediately clear to the Panel:
    1. whether Capital’s services fall within the definition of health care services set out in the PSR regulations and, if not, whether this had implications for Capital’s ability to make representations to the Panel; and
    2. whether Capital qualified as a “provider that might otherwise have been a provider of the services to which the contract relates” given Capital’s acknowledgement that it was unable to fulfil the lead provider role.

*Capital as a potential supplier of non-health care services*

1. In terms of Capital potentially not being a supplier of relevant health care services and, if so, the implications for its eligibility to make representations to the Panel, the relevant provisions of the PSR regulations are as follows:

* Regulation 12(3) of the PSR regulations states that "any provider of the services to which the contract or framework agreement relates … may make written representations" to the Relevant Authority.
* Regulation 2 defines a ‘provider’ as "a person who provides, or offers to provide, relevant health care services for the purposes of the health service in England".
* Regulation 2 also defines relevant health care services as "health care services which fall within one or more of the CPV codes specified in the table in Schedule 1, to the extent described in that table".

1. These provisions could potentially be read as excluding those providers who do not provide health care services (e.g. a subcontractor who only provides a non-health care element of a mixed contract) from making representations to the Panel. However, Regulation 3(5) states that “Where a relevant authority procures relevant health care services as part of a mixed procurement, the term ‘relevant health care services’ in these Regulations, except this regulation, includes any goods or services procured together with those relevant health care services”.
2. Accordingly, in the context of a mixed contract that comprises some health care services and some other services, the Panel’s view, having taken advice, is that the term 'provider' includes all providers that supply (or offer to supply), the services to which the contract relates. That is, even if Capital is a provider of non-health care services, it is still eligible to make representations to the Panel given that the procurement in question was carried out under the Provider Selection Regime.

*Capital’s role as a sub-contractor rather than a bidder*

1. In terms of whether Capital, as a sub-contractor, qualifies as a “provider that might otherwise have been a provider of the services to which the contract relates”, Regulation 12(3) of PSR regulations states that "any provider of the services to which the contract or framework agreement relates … may make written representations" to the Relevant Authority.
2. That is, the question is whether Capital is a “provider of the services to which the contract … relates”. The Panel notes that this does not explicitly require Capital to be a supplier of “all” of the services to which the contract relates. As a result, providers which supply only “some” of the services to which the contract relates (i.e. sub-contractors) appear eligible to make representations.
3. As a result, the Panel’s view, having taken advice, is that the right to make representations extends to organisations that could only supply some of the services to which the contract relates, and given this, Capital meets the requirements of the Panel’s eligibility criteria. That is, it is a provider that might otherwise have been a provider of the services to which the contract relates.
4. In conclusion, the Panel’s view is that Capital’s request to the Panel meets the Panel’s eligibility criteria for case acceptance.

**Prioritisation**

1. In terms of prioritisation, the Panel’s case acceptance criteria states that:

“There will be a particular need for the Panel to apply its prioritisation criteria where the number of requests means that the Panel is close to using its full capacity and the acceptance of further requests may jeopardise its ability to offer advice within an acceptable timeframe. The Panel considers that this is likely to be the case where it has 10 or more cases under review. This guidance on capacity, however, should not be interpreted as a strict limit”.[[2]](#footnote-2)

1. Since publishing its prioritisation criteria in early 2024, the Panel has gained a better understanding of the workload associated with case reviews. The Panel’s current view is that it is approaching to full capacity when it has four or more cases under review. As the Panel currently has four cases under review, all of which are at an early stage, the Panel is currently approaching full capacity, and has accordingly considered Capital’s request for a Panel review against its prioritisation criteria.
2. The Panel’s case acceptance and prioritisation criteria says that “Factors that the Panel will take into account in applying its prioritisation criteria are set out below. This is not, however, intended to be an exhaustive list. It may also be necessary for the Panel to take other factors into account.

* The potential benefit to patients arising from the Panel’s advice.
* The potential for the advice to assist relevant authorities in complying with the PSR regulations in the future.
* The potential for the advice to help future interpretation and use of the PSR regulations and guidance.
* The materiality of the relevant authority’s provider selection decision on the provider and/or the relevant authority.
* The advice will deliver a benefit that is proportionate to the Panel’s use of resources in formulating its advice.” [[3]](#footnote-3)

1. The Panel notes that this is a relatively small service, both under existing arrangements and likely new arrangements, which has implications for the potential benefit to patients arising from the Panel’s advice.
2. The Panel also notes that it has previously considered issues associated with provider sustainability that appear relevant to this case (see [Case 0008-24: Review of a proposed contract award for drug and alcohol services in Bath and North East Somerset](https://www.england.nhs.uk/publication/panel-review-drug-and-alcohol-services-in-bath-and-north-east-somerset/)). As a result, this has implications for the extent to which a Panel decision on this case is likely to assist future compliance and future interpretation of the PSR regulations.
3. The Panel further notes that Capital is concerned that Sussex ICB’s decision to move to a lead provider model, combined with its subsequent selection of BHT Sussex as the successful bidder, will cause Capital to close unless it can secure a larger value sub-contract (or a direct contract similar in value to its current contract). If Capital’s concerns about the implications of Sussex ICB’s decisions are accurate, this indicates that Sussex ICB’s decisions are highly material for Capital. At the same time, the Panel notes that the impact on Capital is ameliorated, at least to some extent, as a result of Capital being a named subcontractor for the successful bidder, which means it will receive at least some revenue from a sub-contract with BHT Sussex even if this is less than Capital would like.
4. In summary, the Panel currently has limited capacity to accept new cases and any new case that is accepted will constrain the Panel’s ability to accept other cases in the coming weeks. The potential benefit for patients arising from the Panel’s advice in this case is likely to be relatively small given the relatively small size of the service. Further, the case does not obviously raise issues not previously considered by the Panel. Finally, while Capital says that Sussex ICB’s decision will potentially cause it to become unviable as a service provider, the Panel notes that any potentially detrimental effect on Capital as a result of Sussex ICB’s decisions is, at least in part, ameliorated by Capital’s status as a sub-contractor to the successful bidder.
5. Taking all of these factors from the Panel’s prioritisation criteria into account, the Panel has decided not to accept Capital’s request that it advise on Sussex ICB’s selection of a provider for mental health support services in West Sussex.

25 July 2025

1. The Panel’s case acceptance and prioritisation criteria can be found at <https://www.england.nhs.uk/publication/acceptance-and-prioritisation-criteria-independent-procurement-and-choice-panel/>. [↑](#footnote-ref-1)
2. The Panel’s prioritisation criteria can be found at <https://www.england.nhs.uk/publication/acceptance-and-prioritisation-criteria-independent-procurement-and-choice-panel/>. [↑](#footnote-ref-2)
3. See Independent Patient Choice and Procurement Panel, *Acceptance and Prioritisation Criteria*, available at <https://www.england.nhs.uk/publication/acceptance-and-prioritisation-criteria-independent-procurement-and-choice-panel/>. [↑](#footnote-ref-3)