

Acceptance and Prioritisation criteria: Independent Procurement and Choice Panel

NHS England has established the Independent Patient Choice and Procurement Panel ('the Panel') to advise on issues relating to the application of:

- a. Health care services (Provider Selection Regime) Regulations 2023
- b. elements in part 8 of the National Health Service Commissioning Board and Clinical Commissioning Groups (responsibilities and standing rules) regulations 2012 (as amended) related to the qualification of providers by integrated care boards (ICBs) for services where the legal rights to choice apply.

This document relates to decisions under the Provider Selection Regime and explains the criteria the Panel will use for deciding whether a request is eligible for review and how the Panel will prioritise its work. The Panel's acceptance criteria will ensure that the Panel makes the best use of its resources and can provide the highest quality advice.

1. Eligibility

The Panel applies eligibility criteria to assess whether a request is covered by the PSR regulations and related guidance for the Panel. Requests to the Panel must meet the following criteria to be eligible for review:

- 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)
- The request comes from a provider that might otherwise have been a provider of the services to which the contract relates
- 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
- 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
- The provider has set out why it believes the relevant authority has failed to apply the regime correctly
- 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

- The representations are not considered by the Panel to be trivial, vexatious, or an abuse of the Panel's procedures

In exceptional circumstances, where there is agreement from the relevant authority, the Panel may review a contract award decision under direct award processes A or B or the urgent award process if such a review would be consistent with the Panel's prioritisation criteria and if the Panel believes that such a review would assist in clarifying issues for the wider sector.

2. Prioritisation

The Panel applies prioritisation criteria to requests that are eligible for review to ensure that the Panel's resources are used as effectively as possible. As a general principle, the Panel believes that it is important to advise on as many cases as possible. The Panel, however, also has finite resources and it seeks to ensure that the use of its resources is proportionate to the benefit that the parties, and the wider NHS, will gain from its advice.

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. The Panel may need to prioritise between cases in various situations, including where the Panel is also considering matters related to its choice remit as well as its procurement remit.

In addition, the Panel may apply its prioritisation criteria when deciding on the approach it will take to reaching a decision on those cases that have been accepted. Further details of the Panel's approach to reviewing cases are set out in the Standard Operating Procedures for the Panel.

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

If a request is not accepted for review the Panel will inform the provider and the relevant authority.

3. Interaction with legal proceedings

The Panel reserves the right to stop the consideration of a matter where legal proceedings are under way and the case panel forms the view that its advice would no longer assist in helping to resolve the matters under consideration.