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Terms of reference: the independent patient choice and procurement panel

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1. Purpose

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

1. [Health care services \(Provider Selection Regime\) regulations 2023 \(the PSR Regulations\)](#) (<https://www.legislation.gov.uk/uksi/2023/1348/contents/made>).
2. [Regulation 42 of The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 2\) Regulations 2023](#) (<https://www.legislation.gov.uk/uksi/2023/1105/regulation/2/made>).

2. Duties and Responsibilities

Provider Selection Regime (PSR):

The Panel will provide advice under the PSR Regulations and the PSR Statutory Guidance (<https://www.england.nhs.uk/long-read/the-provider-selection-regime-statutory-guidance/#modification-of-contracts-and-framework-agreements-during-their-term>) to relevant authorities in cases where a provider is aggrieved by a contract or framework award decision made by a relevant authority pursuant to the PSR Regulations, and the provider believes the PSR Regulations have not been complied with. The role of the Panel is to:

- provide independent expert advice (as referred to in regulation 23 of the PSR Regulations) to relevant authorities in such cases, following internal review by the relevant authority (under regulation 12(4) of the PSR Regulations), where the provider has made a request, and the Chair (or a delegate of the Chair) has decided to accept the case for review
- ensure timely advice is given where a provider has made a request to the Panel and the request has been accepted, within the target timelines set out in the Panel standard operating procedure (SOP)
- publish the advice, or a summary of the advice, for each review the Panel undertakes (subject to considerations of confidentiality and data protection)
- consider the themes and issues identified in the advice and publish information on issues/themes for the benefit of providers and relevant authorities
- ensure that advice is consistent with the PSR Regulations and PSR Statutory Guidance, and ensuring the advice is consistent across cases and across time.

Patient Choice:

The Panel will provide advice to NHS England and ICBs in cases where a provider has raised a complaint to NHS England's National Choice Team (NCT) about the implementation of ICB obligations as set out in regulation 42 of the NHS Standing Rules. The Panel will support the timely resolution of these types of complaints.

Where a complaint is not resolved within the timescales specified and otherwise meets the relevant criteria set out in the Provider Qualification Complaints standard operating procedure (SOP), the Panel's role will be to:

- provide independent and expert advice to NHS England to support the timely resolution of qualification of providers complaints

- ensure that advice provided by the Panel is consistent with the Patient Choice Regulations and Patient Choice Statutory Guidance, as well as across cases and time
- publish the advice, or a summary of the advice, for each review the Panel undertakes.

3. Membership

The Panel consists of:

- a Chair, appointed by NHS England, and
- a number of expert Panel members made available or appointed by NHS England but who will operate independently.

Where the Panel Chair is unavailable or has a conflict of interest, a panel member will be nominated to chair case panels and/or Full Panel Meetings.

4. Confidentiality and information sharing

Information requested by the Panel for the purposes of offering advice and provided by the relevant parties, does not breach any obligation of confidence. However, it may be subject to restrictions on disclosure imposed by other pieces of legislation.

Parties should inform the Panel if specific materials and information shared with the Panel are to be considered confidential. General requests for confidentiality will not be accepted. This includes any commercially sensitive information shared by providers or relevant authorities. Members will not disclose information or written material (such as agendas, minutes, discussion papers or other documents) to other parties, unless otherwise directed by the Chair.

5. Declaration of interest

A conflict of interest is a set of circumstances by which a reasonable person would consider that an individual's ability to apply judgement or act, in the context of delivering, commissioning, or assuring taxpayer funded health and care services is, or could be, impaired or influenced by another interest they hold.

Panel members and attendees must have regard to the PSR Regulations which provide that "the concept of conflicts of interest includes any situation where an individual has, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement process".

All Panel members and panel meeting attendees should ensure that they are not placed in a position that risks, or appears to risk, compromising their role or the NHS public and statutory duties or reputation. Members must also not accept gifts or hospitality by virtue of their role on the Panel.

Panel members and panel meeting attendees are required to declare conflicts of interest and the receipt of gifts, hospitality and/or sponsorship, in line with the policies in force within NHS England. Conflicts of interest should be declared in writing to the Panel secretariat. Specific conflicts related to a specific provider or relevant authority should be raised as soon as possible prior to the meeting for which that conflict arises, so that arrangements for the Panel to be quorate can be made.

A register of conflicts of interest and gifts and hospitality will be maintained by the Panel secretariat.

6. Case acceptance and case decisions

Case acceptance decisions (PSR only):

- acceptance decisions will be taken by the Chair using the Panel's published case acceptance criteria
- where the Chair is minded not to accept a request, the Panel will be consulted (in a meeting or by correspondence)
- if the Chair is unavailable or has a conflict of interest, acceptance decisions will be taken by a member nominated by the Chair.

Case decisions:

For PSR cases:

- if accepted for review, the Chair will appoint a case review panel to determine the Panel's advice to the relevant authority
- the case review panel will consist of 1 or 2 members of the Panel
- the quorum for case review meetings is the number of panel members on the case review panel
- a case work provider will prepare a report to be presented to the case panel and,
- the case panel may request information from or request to meet with the provider and/or the relevant authority to reach a conclusion on its advice
- the case panel will determine the Panel's advice to the relevant authority.

For Choice cases:

- in cases that are accepted for review the Panel will be:
 - the Chair (or a nominated member if the Chair is unavailable or has a conflict of interest)
 - those panel members designated by the Chair
- the NCT case manager will prepare a report on the issues for the panel members to review and members of the panel will usually meet with the provider and ICB to discuss the case
- the Panel will determine its advice to the ICB and NHS England
- quorum for decisions is the Chair and a majority of panel members appointed to the case
- where there is no majority opinion on the advice to be provided in relation to a case reviewed by the Panel, the Chair will have a casting vote.

All decisions can be taken in person, via videoconference e.g. Teams or in correspondence.

The Chair may ask subject matter experts or others to assist on any particular matter at the Chair's discretion.

7. Full Panel Meetings

Full Panel Meetings will be scheduled as necessary, for example monthly.

The purpose of the meetings includes:

- for the exchange of information relating to decisions made and the advice given to relevant authorities by PSR Review Panels,
- for the Panel to consider themes and issues arising from the advice and how they may apply to wider application of the PSR,
- taking decisions on patient choice cases (see below).

In relation to Patient Choice, the Panel will review submissions from the NCT, Provider & Integrated Care Board (ICB) then make recommendations.

Full Panel Meetings will also be used to consider themes and issues arising in relation to both PSR and patient choice matters.

The meetings can take place in person or via videoconference e.g. Teams.

The following may attend Full Panel Meetings, but are not members of the Panel:

- NHS England Senior Responsible officers
- NHS England Secretariat representative(s)
- CSU/NCT Case manager/s
- Other individuals at the invitation of the Chair

Members or other attendees will be excluded where there is a potential, actual or perceived conflict of interest, at the sole discretion of the Chair.

8. Agenda

The agenda for Full Panel Meetings will be set by the Chair ahead of each meeting.

9. Reporting

The Panel Secretariat will provide regular reports to NHSE's Strategic Planning and Investment Committee (SPI) on:

- (a) themes and issues in panel advice and
- (b) performance of the PSR CSU case work contract.

10. Secretariat

The Panel's secretariat can be contacted at
england.procurementpanelinfo@nhs.net
(<mailto:england.procurementpanelinfo@nhs.net>).

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