

# **Independent Patient Choice and Procurement Panel**

**Review of a proposed contract award**

**Same Day Urgent Care Unit Services at Aintree Hospital Site**

**Case Reference: CR0003-24**

**6 September 2024**

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## 1. Executive Summary

1. On 31 July 2024, ID Medical Group Limited (“IDMG”) asked the Independent Patient Choice and Procurement Panel (“the Panel”) to advise on the selection of a provider for the Same Day Urgent Care Unit Service (“the SDUCU service”) by Liverpool University Hospitals NHS Foundation Trust (“LUHFT”). LUHFT had selected a provider under the Health Care Services (Provider Selection Regime) Regulations 2023 (“the PSR regulations”).
2. IDMG’s request was accepted on 1 August 2024 in line with the Panel’s case acceptance criteria.
3. LUHFT is one of the largest acute hospital trusts in England, serving a population of around 565,000 people across Merseyside as well as providing a range of specialist services across the North West region and beyond. LUHFT operates four hospitals, namely Aintree University Hospital, Royal Liverpool University Hospital, Broadgreen Hospital and Liverpool University Dental Hospital.
4. The SDUCU service at Aintree Hospital will provide primary care support to the hospital’s Accident and Emergency (A&E) department, 10 hours per day, 7 days a week. This replaces an Emergency Department GP (EDGP) service, which until recently was provided by IDMG. IDMG is an independent sector provider of workforce solutions and patient services for the NHS.
5. On 15 April LUHFT launched a procurement process to award a contract for the SDUCU service. The service specification for the new SDUCU service differs from the EDGP service in several respects. In particular, under the EDGP service patients were referred back to A&E Department or advised to return to A&E for further tests or review, while under the SDUCU service patients may be referred into primary care services rather than back to the A&E Department. This is a 12-month contract with an expected value of £1 million.
6. Interested providers were asked to complete a Standard Selection Questionnaire (SQ) by 29 April. Four responses were received, with two providers, IDMG and Primary Care 24 (PC24), invited to submit an offer, with a submission deadline of 29 May. IDMG and PC24 were also invited to deliver a presentation to LUHFT’s Evaluation Panel on 4 June, with the Evaluation Panel then evaluating bids.
7. PC24 was selected as the winning bidder, with a score of 69.6 out of 100, compared to a score of 66 for IDMG. LUHFT wrote to both bidders on 10 June to inform them of the outcome. LUHFT published a notice of its intention to award the contract to PC24 on 11 June.
8. The Panel has considered four issues in its review:
  - first, the effect on this of IDMG’s CQC registration status on the evaluation of its response to Question 7.2;
  - second, the clarifications and resubmissions of IDMG’s and PC24’s pricing proposals;
  - third, PC24’s understanding of the Provider Service Model and the evaluation of its response to Question 7.2; and

- finally, the role that bidders' presentations played in LUHFT's evaluation of their proposals.
9. On the first issue, the Panel finds that LUHFT, by adversely taking account of IDMG's CQC registration for an unrelated service when evaluating IDMG's response to Question 7.2, did not act fairly and as a result breached its obligations under the PSR regulations.
  10. On the second issue, the Panel finds that LUHFT in its handling of the clarification and resubmission of the bidders' pricing proposals did not act fairly and as a result breached its obligations under the PSR regulations. This breach arises from LUHFT: (i) not providing IDMG with the same opportunity that it gave PC24 to clarify and resubmit its pricing proposal in relation to non-clinical staffing costs; and (ii) accepting a revised pricing proposal from PC24 that made changes beyond the matters on which LUHFT was seeking clarification.
  11. On the third issue, the Panel considers that PC24 did not submit a service model with the incorrect level of staffing or that was inconsistent with the requirement set out in the service specification. As a result, the Panel finds that LUHFT's evaluation of PC24's response to Question 7.2 did not breach its obligations under the PSR regulations.
  12. On the final issue, based on the scoring answers we have seen, it is apparent that PC24's presentation was taken into account in the evaluation of its proposal notwithstanding the approach in the Mini Competition document. Further, the Panel did not see a methodology for how the presentations would be used to inform the scoring in a consistent way. As a result, the Panel finds that LUHFT did not act fairly or transparently in its treatment of the presentations made by the bidders, and as a result, breached its obligations under the PSR regulations.
  13. Given these conclusions, three options are open to the Panel (in accordance with its procedures). The Panel may advise that:
    - the breaches had no material effect on the LUHFT's selection of provider and the commissioner should proceed with awarding the contract as originally intended;
    - LUHFT should return to an earlier step in the provider selection process to rectify the issues identified by the Panel; or
    - LUHFT should abandon the current provider selection process.
  14. The Panel's view is that the breaches of the PSR regulations it has identified in this report have had a material effect on LUHFT's selection of a provider. However, the Panel considers that it may be possible to address its concerns by returning to an earlier step in the provider selection process.
  15. As a result, the Panel's advice to LUHFT is that, at a minimum, it should start a new mini competition process with IDMG and PC24, ensuring that the information and requirements are clear and accurate. It is, however, open to LUHFT to abandon the current provider selection process if it thinks that this is necessary to ensure a fair provider selection process for the SDUCU service.

## 2. Introduction

16. On 31 July 2024, IDMG asked the Panel to advise on the selection of a provider for the SDUCU service at Aintree Hospital by LUHFT. LUHFT had made this selection under the PSR regulations.
17. IDMG's request for a review of LUHFT's provider selection decision was accepted on 1 August 2024 in line with the Panel's case acceptance criteria. These criteria set out, first, the minimum eligibility requirements that must be met for case acceptance, and second, the prioritisation criteria that the Panel will apply when it is approaching full caseload capacity.<sup>1</sup> IDMG's request met the Panel's minimum eligibility requirements, and as the Panel was not approaching full capacity, there was no need to apply the Panel's prioritisation criteria.
18. The Panel's Chair appointed three members to a Case Panel for this review (in line with the Panel's procedures). The Case Panel consisted of:
  - Andrew Taylor, Panel Chair;
  - Carole Begent, Case Panel Member; and
  - Alison Tonge, Case Panel Member.<sup>2</sup>
19. This review has been carried out in accordance with the Panel's Standard Operating Procedures ("procedures").<sup>3</sup> This report sets out the Panel's assessment and advice to LUHFT<sup>4</sup> and 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 key steps undertaken by LUHFT in its procurement process;
  - Section 5 sets out the concerns raised by IDMG;
  - Section 6 sets out the Panel's assessment of the issues; and
  - Section 7 sets out the Panel's advice to LUHFT.
20. The Panel would like to record its thanks to both LUHFT and IDMG for their assistance and cooperation during this review.

## 3. The Panel's role

21. The PSR regulations, issued under the Health and Care Act 2022, have put into effect the Provider Selection Regime for commissioning health care services by the NHS and local authorities. The PSR regulations came into force on 1 January 2024.<sup>5</sup>

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<sup>1</sup> 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/>.

<sup>2</sup> 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/>.

<sup>3</sup> 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/>.

<sup>4</sup> 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. This is not an opinion on whether the relevant authority has followed the Regulations and statutory guidance in other areas.

<sup>5</sup> 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/>.

22. 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.
23. 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.
24. 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.

#### **4. Background to the Panel review**

25. LUHFT is one of the largest acute hospital trusts in England, serving a population of around 565,000 people across Merseyside as well as providing a range of specialist services across the North West region and beyond. LUHFT operates four hospitals, namely Aintree University Hospital, Royal Liverpool University Hospital, Broadgreen Hospital and Liverpool University Dental Hospital.<sup>6</sup>
26. The SDUCU service at Aintree Hospital will provide primary care support to the hospital's A&E department, 10 hours per day, 7 days a week. Until recently, IDMG was contracted by LUHFT to provide its Emergency Department GP (EDGP) service at Aintree Hospital. IDMG is an independent sector provider of workforce solutions and patient services for the NHS.<sup>7</sup>
27. IDMG's contract for the EDGP service expired on 31 March 2024, and on 15 April LUHFT published a contract notice setting out its intention to follow the competitive process under the PSR regulations to award a contract for the SDUCU service at Aintree Hospital. This is a 12-month contract with an expected value of £1 million. LUHFT and IDMG agreed to extend IDMG's contract until 31 July 2024, while the procurement process was being carried out.
28. The service specification for the new SDUCU service differs from the EDGP service in several respects. In particular, under the EDGP service patients were referred back to A&E Department or advised to return to A&E for further tests or review, while under the SDUCU service patients may be referred into primary care services rather than back to the A&E Department.
29. Interested providers were asked to complete a Standard Selection Questionnaire (SQ) by 29 April. Four responses were received, with two providers, IDMG and PC24, invited to submit an offer, with a submission deadline of 29 May.<sup>8</sup> IDMG and PC24

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<sup>6</sup> Further information on LUHFT can be found on its website at <https://www.liverpoolft.nhs.uk/>.

<sup>7</sup> Further information about IDMG can be found at <https://www.id-medical.com/>.

<sup>8</sup> PC24 is a social enterprise that provides primary and urgent care services in Liverpool and the surrounding area. Further information about PC24 is available at <https://primarycare24.org.uk/>.

were also invited to deliver a presentation to LUHFT's Evaluation Panel on 4 June, with the Evaluation Panel then evaluating bids.

30. PC24 was selected as the winning bidder, with a score of 69.6 out of 100, compared to a score of 66 for IDMG. LUHFT wrote to both bidders on 10 June to inform them of the outcome. LUHFT published a notice of its intention to award the contract to PC24 on 11 June.
31. On 13 June, prior to the expiry of the standstill period, IDMG made representations to LUHFT, asking it to share detailed evidence of its decision making and a detailed breakdown of scoring for both IDMG and PC24 against the award criteria. LUHFT wrote to IDMG on 27 June providing details of its scoring and decision making process. IDMG responded on 1 July, expressing continued concerns about the scoring and evaluation process.
32. As a result, LUHFT conducted a formal review of its provider selection decision, assisted by an independent reviewer at the Trust. After this internal review, LUHFT wrote to IDMG on 24 July setting out its "Further Decision", saying that "we have concluded that we have correctly followed the Competitive Process in the PSR and that we complied with all applicable requirements. We do not consider that the matters you have raised have a bearing on our original decision". In this letter LUHFT confirmed its intention to award a contract to PC24.
33. On 26 July, IDMG wrote to LUHFT once again saying that it still had concerns about the scoring and evaluation process, and in response, LUHFT confirmed on 30 July that it had considered IDMG's concerns and did not consider the matters raised to have a bearing on its original decision or the 'Further Decision' communicated on 24 July. LUHFT confirmed that its "decision remains to enter into the contract with PC24 as intended after the standstill period has ended".
34. On 31 July, IDMG requested that the Panel review LUHFT's provider selection decision. As set out above, the Panel accepted this case for review on 1 August. LUHFT, on being made aware of the Panel's acceptance of IDMG's request, confirmed that it would hold the standstill period open for the duration of the Panel's review.
35. IDMG's provision of the EDGP service ceased on 31 July, in line with the extended contract expiry date, and an interim SDUCU service is currently being provided in house by LUHFT.

## **5. Representations by IDMG**

36. In making its initial representations to the Panel, IDMG raised the following concerns about LUHFT's selection of PC24 as the provider of the SDUCU service.

"We have issues with how question 7.2 was marked and the "clarification" process around pricing submissions. We see no way that the winning provider could have scored more than a 0 in question 7.2 as they could not have provided a service model with the correct level of staffing. We also believe that the winning bidder was able to resubmit pricing based on their lack of understanding and instead should have been removed from the process.

“[Question] 7.2 asks for the provider to submit a response which included the “Provider service model”. The feedback to the winning provider (included below) shows they cannot have submitted a model that complied and understood the requirement. I would suggest this would require a score of 0 rather than a 2 based on the scoring criteria (shown below).

“Feedback to winning provider lacks an understanding of the model there will not be a second clinical navigator provided by ED. This role will be undertaken by ACP’s in SDUCU Mersey Care or the successful provider. The process for booking patients in this response was for PC24 to undertake this, however, the process is for all patients to be booked on the LUHFT system. The triage would have to be undertaken by a registered nurse not a HCA.

2 Fair - Some minor reservations of the Bidder’s relevant ability, understanding, experience, skills, resources & quality measures needed to meet this requirement, with limited evidence to support the response.

1 Poor - Considerable reservations of the Bidder’s relevant ability, understanding, experience, skills, resources & quality measures needed to meet this requirement, with little or no evidence to support the response.

0 Very Poor - Does not comply and/or insufficient information provided to demonstrate that the Bidder has the ability, understanding, experience, skills, resource & quality measures needed to meet this requirement, with little or no evidence to support the response.

“In our feedback on 7.2 we were told ‘CQC registration - minor skin surgery and community skin clinics not primary care – requested further information, however remains unclear’. We clarified this both in person at the presentations and on the email (I will attach) explaining that we work to CQC standards even if we currently are not registered in a primary care setting but can do so if required. They then told us that they didn’t want CQC included in the submission so this feedback is not reflective of our submission and CQ’s [clarification questions]. Although the feedback in presentations is included in the winning bidders.

“The Trusts feedback said ‘Both providers were afforded the opportunity to clarify and submit updated pricing based on the clarifications the Trust raised.’ When we had a clarification (I will attach) it was not based on the same criteria and it didn’t read as an opportunity to resubmit pricing but to clarify what was on offer. “We asked for further info on what system licences they required and they didn’t respond. We believe the winning provider was allowed to provide updated costs based on additional ‘inclusion of non-essential, non-clinical posts’ which fundamentally changes their offering.”

37. Late in the review, while meeting with the Panel, IDMG raised a further concern about PC24 being given an opportunity to test the new model of care that was being adopted for the SDUCU service, and whether this had provided it with an unfair advantage in the procurement process. LUHFT, in response, noted that IDMG was given a similar opportunity to that afforded to PC24. In any event, the Panel’s procedures state that “Any meetings or correspondence after the initial submission ... will not provide an



opportunity to raise new matters with the case review panel". As a result, the Panel makes no finding on this issue.

## **6. Panel Assessment**

38. This section sets out the Panel's assessment of the representations made by IDMG and whether LUHFT complied with the PSR regulations in relation to each of these matters. The Panel's assessment is set out in three parts:
- first, the evaluation of IDMG's response to Question 7.2 and the effect on this of IDMG's CQC registration (Section 6.1);
  - second, the clarifications and resubmissions that took place in relation to IDMG's and PC24's pricing proposals (Section 6.2);
  - third, the evaluation of PC24's response to Question 7.2 and the effect on this of PC24's understanding of the Provider Service Model (Section 6.3); and
  - finally, the role that bidders' presentations played in LUHFT's evaluation of their proposals (Section 6.4).

### **6.1 LUHFT's evaluation of IDMG's response to Question 7.2**

39. This section considers whether LUHFT acted fairly, in accordance with its obligations under Regulation 4 of the PSR regulations, when scoring IDMG's response to Question 7.2 and, in particular, with reference to IDMG's CQC registration. Regulation 4(1) requires that "When procuring relevant health care services, a relevant authority must act (a) 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; (b) transparently, fairly and proportionately.
40. Question 7.2 in the LUHFT's Mini Competition document was set out as follows:
- "Please provide a detailed overview on how you will maintain or improve the quality of the service being delivered? Please include the following:
- Your experience in providing urgent care services. The team's knowledge skills and previous experience.
  - Provider service model
  - All recent regulatory inspection reports e.g., CQC.
  - Commissioner/lead provider satisfaction with quality delivered in previous contracts/subcontracts.
  - Feedback about service delivery from patients, relatives, and unpaid carers, including survey results complaints, and action being taken in response.
  - How you will evidence that the service is effective and meets the national targets such as 15 minutes to triage and the four-hour quality standard.
  - How the provider will provide information data on the quality and the performance of the service being provided."

41. Scoring of provider responses to this question was on a 0-5 scale, as set out in Table 1.

**Table 1: Scoring principles for Question 7.2**

Score	Scoring Principle
5	Excellent - Exceptional demonstration by the Bidder of the relevant ability, understanding, experience, skills, resources, and quality measures needed to meet this requirement, with evidence to support the response.
4	Good - Above average demonstration by the Bidder of the relevant ability, understanding, experience, skills, resources & quality measures needed to meet this requirement, with evidence to support the response.
3	Average - Demonstration by the Bidder of the relevant ability, understanding, experience, skills, resources & quality measures needed to meet this requirement, with evidence to support the response.
2	Fair - Some minor reservations of the Bidder's relevant ability, understanding, experience, skills, resources & quality measures needed to meet this requirement, with limited evidence to support the response.
1	Poor - Considerable reservations of the Bidder's relevant ability, understanding, experience, skills, resources & quality measures needed to meet this requirement, with little or no evidence to support the response.
0	Very Poor - Does not comply and/or insufficient information provided to demonstrate that the Bidder has the ability, understanding, experience, skills, resource & quality measures needed to meet this requirement, with little or no evidence to support the response.

Source: Mini Competition - Same Day Urgent Care Unit, LUHFT Reference: C285448

42. As set out above, Question 7.2 asks bidders for the SDUCU contract to supply “All recent regulatory inspection reports e.g., CQC” as evidence in support of the provider’s response to a question about how it will maintain or improve the quality of the SDUCU service. Prior to its submission, PC24 asked, by way of clarification, that LUHFT “advise where the CQC registration for the SDUCU sits” to which LUHFT responded that “SDUCU CQC registration sits with LUHFT”. This question and response, like all clarification questions and answers during a procurement process, was provided to both PC24 and IDMG.

### **6.1.1 Consideration of IDMG’s CQC registration status during the provider selection process**

43. IDMG told the Panel that at its presentation to LUHFT’s Evaluation Panel on 4 June, IDMG’s CQC registration status was discussed. IDMG was concerned that it had not been sufficiently clear at the presentation and followed up by email after the meeting saying that “We are not a GP practice, but [an] independent service provider. Each activity can be registered at [a] different location with CQC and goes through their registration process. Our last inspection was in [our] Minor Operations service ... What I wanted is to provide the assurance that we run our services to CQC standards. Would you require the provider to register the SDUCU service under their CQC registration?”.<sup>9</sup>
44. LUHFT responded on 5 June stating that “CQC registration is not required” for the provider of the SDUCU service.<sup>10</sup> IDMG responded to this on 6 June stating “Thank

<sup>9</sup> IDMG, *Email to LUHFT*, 4 June 2024.

<sup>10</sup> LUHFT, *Procurement portal message to IDMG*, 5 June 2024.

you for clarifying the above in regards to CQC. In addition, we give you assurance, as we are CQC registered for regulated activities, we absolutely adhere to CQC expectations as well as standards”.<sup>11</sup>

45. During the subsequent evaluation of IDMG’s submission, the three evaluators all made reference to IDMG’s CQC registration status in the commentary that accompanied their scoring of IDMG’s response to Question 7.2.
- Evaluator 1: “Full understanding of the proposed model with suggestions made for future provision/service development. Limited experience of referral process into primary care to support deflection where appropriate. CQC registration - minor skin surgery and community skin clinics not primary care – requested further information, however remains unclear”.
  - Evaluator 2: “1) provided limited evidence of experience for primary care services. 2) CQC registration was for minor skin surgery and community skin clinics and not primary care”.
  - Evaluator 3: “Demonstrated an understanding of the model and provided limited evidence of experience for primary care services. Stated in the response CQC registered but was for minor skin surgery and community skin clinics not primary care. I appreciate they wanted to demonstrate the standards that they work to but this should have been explained”.
46. Notwithstanding IDMG’s communications of 4 and 6 June, two out of the three evaluators say that the situation is unclear, either that IDMG did not respond to the information that had been requested or that IDMG had not explained that it worked to CQC standards. The overall moderated comment agreed by the evaluators was “Full understanding of the proposed model with suggestions made for future provision/service development. Limited experience of referral process into primary care to support deflection where appropriate. CQC registration – minor skin surgery and community skin clinics not primary care – requested further information, however remains unclear”.<sup>12</sup>

### **6.1.2 Discussion of the IDMG’s CQC registration during LUHFT’s review of its provider selection decision**

47. Following IDMG’s formal representations to LUHFT about the provider selection process, LUHFT provided “a detailed breakdown of the scores of IDMG’s offer, including the score for each question, as well as a breakdown of the scores of the winning bidder”. LUHFT explained that this “also provides reasoning as to the decision on awarding such scores against the award criteria requirements”.<sup>13</sup> This detailed breakdown showed that IDMG had scored 3 against Question 7.2, and set out the explanation provided at paragraph 46.
48. IDMG, on seeing the evaluation comment in relation to Question 7.2, wrote to LUHFT saying that:

“ID Medical sent an email to the [evaluation] panel with further CQC explanation after a clarification was raised by the Trust on 4/6/2024 ... It had been communicated to ID

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<sup>11</sup> IDMG, *Procurement portal message to LUHFT*, 6 June 2024.

<sup>12</sup> LUHFT, *Letter to IDMG*, 27 June 2024.

<sup>13</sup> LUHFT, *Letter to IDMG*, 27 June 2024.

Medical that they didn't need to have CQC registration so we are unsure why providing additional information or even the perceived lack of clarity would be seen as a negative for something that was not required. Our ability to obtain CQC registration with a Good rating evidences our ability to provide a good quality clinical service".<sup>14</sup>

49. LUHFT reviewed this issue during its formal review of its provider selection process and confirmed its original evaluation of IDMG's response to Question 7.2. In reporting the results of its review to IDMG, it said:

"We confirm that CQC registration is not required for Same Day Urgent Care Unit Services as we clarified on the portal. However, Question 7.2 asked for a detailed overview on how you will maintain or improve the quality of the service being delivered and asked that you include your experience in providing urgent care services, the team's knowledge skills and previous experience and 'all recent regulatory inspection reports e.g., CQC'. You provided a CQC report for minor skin surgery and community skin clinics rather than primary care so a clarification was requested. In your offer you stated 'ID Medical Group is CQC registered and service provision is provided in accordance with all applicable CQC standards for service providers and managers, ensuring the delivery of high quality, safe, patient focused care' and that 'Services will be provided in accordance with CQC regulations, ensuring the delivery of high quality, safe, patient-focused care'. Your clarification was sought and considered."<sup>15</sup>

50. After a further letter from IDMG, LUHFT further said:

"[IDMG's] response was not clear to the Trust in circumstances where CQC registration is not required (being within the hospital's CQC registration) and where your CQC registration is for minor skin surgery not the same day care services the subject of the Procurement. In your clarification, you stated that "we give you assurance, as we are CQC registered for regulated activities, we absolutely adhere to the CQC expectations as well as standards" which remained unclear to the Trust."<sup>16</sup>

### **6.1.3 LUHFT's explanation of its approach during the Panel's review**

51. During the Panel's review, LUHFT said that its query about CQC registration was to gain assurance that IDMG could demonstrate its experience in primary care, as LUHFT believed that IDMG had given details of its CQC registration as evidence of its primary care experience. However, LUHFT questioned the value of IDMG's CQC registration as evidence of its primary care experience, given that IDMG's CQC registration was not for primary care services.<sup>17</sup>

### **6.1.4 Panel assessment and finding**

52. The Panel notes that the individual evaluator's comments and the moderated feedback on the scoring of IDMG's response to Question 7.2 both refer to a lack of clarity around IDMG's CQC registration status. The references to a lack of clarity about IDMG's CQC registration is difficult to understand given IDMG's messages to LUHFT on 4 and 6 June. The implication from the feedback comments is that LUHFT adversely took

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<sup>14</sup> IDMG, *Letter to LUHFT*, 1 July 2024.

<sup>15</sup> LUHFT, *Letter to IDMG*, 24 July 2024.

<sup>16</sup> LUHFT, *Letter to IDMG*, 30 July 2024.

<sup>17</sup> LUHFT, *Meeting with the Panel*, 29 August 2024.

account of IDMG's CQC registration status for another service in its evaluation of IDMG's response when it was not relevant to the SDUCU service.

53. The Panel has considered LUHFT's explanation of this issue as set out in its correspondence with IDMG following its internal review of the provider selection process and during the Panel's review. In its explanation, LUHFT says that it was interested in IDMG's CQC registration as evidence of its experience in urgent care and/or primary care services. The Panel notes that other evidence is likely to have been more useful in determining IDMG's experience in this area, and was not persuaded that LUHFT's explanation addressed the underlying concern. That is, LUHFT's scoring of IDMG's response to Question 7.2 was adversely influenced by its CQC registration status for another service when it was not relevant to the SDUCU service.
54. As a result, the Panel finds that LUHFT, by adversely taking account of IDMG's CQC registration for an unrelated service when evaluating IDMG's response to Question 7.2, did not act fairly and as a result breached its obligations under the PSR regulations.

## **6.2 Clarifications and resubmissions of pricing proposals**

55. This section considers whether LUHFT acted fairly in making requests for clarification and allowing resubmission of pricing proposals during the provider selection process. IDMG's concern is that it was not given the same opportunity as PC24 to resubmit its pricing proposal, and as a result was not treated fairly by LUHFT.
56. LUHFT set out its process for evaluating bids, including pricing proposals, in the Mini Competition document. This stated:

“In the event of the price clarification meeting being required with your organisation, the Trust may discuss outstanding compliance issues or ask for clarification on certain aspects of your submission. A price re-submission may be required in order to rectify any compliance issues or errors that become apparent during the price evaluation. Following any required clarification, the price evaluation panel will then calculate your weighted price score using the evaluation criteria in this section of the document.”
57. The Mini Competition document also stated that clarification may be sought to ensure that a pricing proposal is complete and compliant, or to clarify aspects that are ambiguous or unclear. Additionally, it stated that:

“Clarification questions are not intended to allow Bidders to reopen negotiations or change submitted bids on any aspect of their submissions. Responses must be confined to the matters on which clarification is sought.”
58. The service specification stated “The Service will be staffed with experienced primary care GPs, advanced clinical practitioners (ACP) and the required supporting team. A full day clinic session will include the following personnel:
  - 1x General Practitioner
  - 1x Senior Clinical Navigator (ACP)
  - 1x ACP

- 1x HCA/Phlebotomist”.<sup>18</sup>
59. The pricing schedule that bidders were asked to complete with their proposals requested the “Total cost of the service and the breakdown of each element” and “Any startup costs”. No guidance was offered on how the cost breakdown should be set out, and as a result, IDMG and PC24 submitted their pricing proposals in different formats.
- PC24’s pricing proposal set out the annual cost of clinical staff (broken down into General Practitioner, a grouping of the Clinical navigator and ACP roles, and the HCA/Phlebotomist role), non-clinical staff (including receptionists / care co-ordinator and service manager), and non-pay costs (including central overheads, insurance, IT system maintenance, travel, stationary etc).
  - IDMG’s pricing proposal simply set out a fully absorbed weekly cost for each of the four clinical staff identified in the service specification. This approach allocated all of the non-clinical staffing and other costs of supplying SDUCU service against each of the four clinical staff positions. Unlike the PC24 proposal, IDMG’s proposal did not separately show clinical staffing costs, non-clinical staffing costs and other costs.
60. The total cost of the IDMG proposal for the SDUCU service was less than PC24’s initial pricing proposal.
61. During the procurement process both bidders were asked to clarify their pricing proposals due to a change in the service specification. The service specification originally stated that “The Service will be staffed with experienced primary care GPs, advanced clinical practitioners (ACP) and the required supporting team”. PC24 sought confirmation of this in a clarification question on 20 May which asked “Please can the contracting authority confirm if admin support i.e. receptionist will be provided by the contracting authority, or is it the expectation for the provider to provide the receptionist.”<sup>19</sup> LUHFT responded on 23 May (to all bidders) stating “The expectation is for the provider to include [the required supporting team] in their workforce”.
62. LUHFT told the Panel, however, that “During the presentations it became clear that admin support/receptionist support wasn’t required, and the Trust determined that it could use its own in-house staff and systems”.<sup>20</sup> The resulting interactions with IDMG and PC24 are set out below.

### 6.2.1 Clarification of IDMG’s pricing proposal

63. LUHFT sent a message to IDMG on 4 June via the procurement portal, asking IDMG “can you provide a complete breakdown of costs to support your commercial schedule submission please?”.<sup>21</sup> IDMG responded later that day, repeating the aggregate cost breakdown supplied in its submission, listing the elements included in this. No additional cost analysis or breakdown was provided. IDMG, however, noted that these aggregate costs were inclusive of various items including “set up, service management, contract management and reporting, rota management, performance

<sup>18</sup> LUHFT, Schedule 2 – The Services, A – Service Specifications, p.3.

<sup>19</sup> LUHFT, Clarification questions tracker - Same Day Urgent Care Unit– Reference C285448

<sup>20</sup> LUHFT, *Response to additional information request*, 14 August 2024

<sup>21</sup> LUHFT, *Procurement portal message to IDMG and PC24*, 4 June 2024.

management and reporting ... patient satisfaction surveys and system licences for the teams e.g. Adastra". IDMG also clarified that its costs did not include "consumables, medicines and prescribing costs, premises and associated facilities maintenance, [and] equipment and furniture" as it understood these would be provided by LUHFT.<sup>22</sup>

64. LUHFT requested further clarification on 5 June. Two of the clarification questions asked by LUHFT, and the IDMG responses were as follows:

- First, LUHFT asked "Can you also clarify if every member will require system licences?"

IDMG, in its response, sought further information on what was means by "system licences", but said that "if the Trust decides to utilise Adastra as their system of choice for SDUCU, then we would need to understand indicative costs before committing to covering Adastra licences for our clinical workforce".

- Second, LUHFT asked "The following are expected to be under management costs. Can you confirm please? Service management, Contract management and reporting, Rota management, Performance management and reporting, Governance and compliance".

IDMG responded saying "We can confirm all the above is fully included in our management costs which are built into the overall costs we have provided. There will be no additional costs incurred by the Trust. Furthermore, we include the below in our pricing: ... Named Service Delivery Manager; Named Senior Rota Manager; Named billing and finance contact for all financial / billing queries ..."<sup>23</sup>

65. Notwithstanding IDMG's reference to its pricing including a service delivery manager, a senior rota manager and a billing and finance contact, LUHFT told us that "There were no admin or receptionist staff costed in IDMG's price, as confirmed by the breakdown provided and therefore, we did not need to ask them to exclude this from their price and confirm a new price to us. If this had been included in the price, we would have asked them to exclude this support and provide us with an updated price for us to consider".<sup>24</sup>

### **6.2.2 Clarification and resubmissions of PC24's pricing proposal**

66. LUHFT requested an amended pricing proposal at PC24's presentation to the Evaluation Panel on 4 June. Later that day, PC24 submitted its amended pricing proposal saying "following this afternoon's presentation, please find attached the amended financial schedule as per the discussions".<sup>25</sup> This resubmitted pricing proposal reduced the total cost of PC24's proposal by 6%.

67. LUHFT responded on 5 June requesting a further clarification, saying:

"Can you clarify the following please? Receptionist costs have still been included, but the Trust uses its own systems to book patients in. Is a receptionist required?"

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<sup>22</sup> IDMG, *Procurement portal message to LUHFT*, 4 June 2024.

<sup>23</sup> IDMG, *Procurement portal message to LUHFT*, 6 June 2024.

<sup>24</sup> LUHFT, *Response to additional information request*, 14 August 2024

<sup>25</sup> PC24, *Procurement portal message to LUHFT*, 4 June 2024.

If follow ups are required, can they be done remotely? Also, is Receptionist/Care Co-ordinator a dual role or two separate roles?

“Can you also clarify what’s included in Central Overheads and Insurance please? The overall non-pay budget would also require an explanation. Please clarify what’s included in the Training budget, IT costs, consumables etc. As previously indicated, IT access and consumables will be provided by the Trust”.<sup>26</sup>

68. PC24 responded on 7 June, saying “Please find attached a further revised schedule for the SDUCU”.<sup>27</sup> This second resubmission reduced the total cost of PC24’s proposal by 19% compared to its original submission. LUHFT’s explanation to the Panel for PC24’s pricing resubmissions was that these “removed the non-essential, non-clinical posts and adjusted their pricing accordingly”.<sup>28</sup>
69. LUHFT completed its scoring of the pricing proposals following these resubmissions, with PC24 scoring the full 20 points as the lowest priced bid, while IDMG scored 17.8 points.<sup>29</sup>

### **6.2.3 Panel assessment and finding**

70. The Panel finds that PC24 was given the opportunity to amend its pricing proposal so as to remove costs no longer considered necessary by LUHFT, but no such opportunity was given to IDMG. LUHFT’s explanation that IDMG’s response gave it assurance that no non-clinical posts were included in its pricing proposal is not consistent with the detail of IDMG’s response, which indicates that it did contain such costs.
71. The Panel notes that PC24’s clearer presentation of its costs, and IDMG’s failure to provide a more detailed cost breakdown, may have assisted PC24 in gaining the opportunity of revising its submission, and contributed to IDMG’s loss of this opportunity. However, this does not provide any mitigation in our assessment of whether or not LUHFT acted fairly. Moreover, LUHFT could have required bidders to provider set out their proposed costs in a common template, which would have addressed these issues.
72. The Panel notes, more generally, that the lack of a common template constrained LUHFT’s ability to assure itself that the bidders’ pricing proposals were comparable. LUHFT told the Panel that it gained assurance from a finance professional within the Trust that the pricing submissions were sufficiently comparable.<sup>30</sup> However, the Panel has not seen evidence of this assurance within LUHFT’s decision making documentation.
73. The Panel reviewed the detail of PC24’s changes to its pricing submission during the procurement process.

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<sup>26</sup> LUHFT, *Procurement portal message to PC24*, 5 June 2024.

<sup>27</sup> PC24, *Procurement Portal message to LUHFT*, 7 June 2024.

<sup>28</sup> LUHFT, *Response to additional information request from the Panel*, 14 August 2024.

<sup>29</sup> See LUHFT, *Letter to IDMG*, 27 June 2024.

<sup>30</sup> LUHFT, *Meeting with the Panel*, 29 August 2024.



- PC24's first resubmission on 4 June reduced non-clinical pay costs by 32%, while keeping other costs constant, and delivered an overall reduction in its costs, compared to its original proposal, of 6%.
  - PC24's second resubmission on 7 June reduced non-clinical pay costs by a further 87%, while also reducing clinical pay costs by 2%, and non-pay costs by 25%. The reduction in non-pay costs included a reduction in the cost of central overheads, medical consumables, and training and support to staff.
74. PC24's resubmissions of its pricing proposal resulted in an overall reduction in its proposed price by around 20%. Two issues arise from this.
- First, whether PC24's resubmissions went beyond the adjustments requested by LUHFT, and in effect amounted to PC24 changing its submitted bid in contravention of the tender conditions (see paragraph 57). The Panel notes that some of the changes to non-pay costs may have been related to the reduction in non-clinical staff. However, the reduction in medical consumable costs, for example, does not appear to be related to the number of non-clinical staff. Moreover, the reduction in the clinical pay costs does not appear to be related to the reduction in non-clinical staff. There is no evidence in LUHFT's documentation that it assured itself on this issue. The Panel's finding, on balance, is that the evidence shows that PC24's second resubmission did go beyond the adjustments requested by LUHFT.
  - Second, whether PC24's downward price adjustment of 20% resulted in a mismatch between its pricing proposal and the non-price elements of its proposal. LUHFT told the Panel that "following the removal of the non-required elements from PC24, it was noted that there had been a significant reduction in PC24's overall costings. As a result both submissions were fully reviewed and it was determined that both contained the appropriate skill mix for the delivery of the required service".<sup>31</sup> The Panel is surprised that it was possible for PC24 to have offered such a major reduction in its costs without any impact on any other part of its proposal. The Panel has decided that no conclusion on this matter is necessary given its other findings on PC24's changes to its pricing proposal.
75. In conclusion, the Panel finds that LUHFT in its handling of the clarification and resubmission of the bidders' pricing proposals did not act fairly and as a result breached its obligations under the PSR regulations. This breach arises from LUHFT: (i) not providing IDMG with the same opportunity that it gave PC24 to clarify and resubmit its pricing proposal in relation to non-clinical staffing costs; and (ii) accepting a revised pricing proposal from PC24 that made changes beyond the matters on which LUHFT was seeking clarification.

### **6.3 LUHFT's evaluation of PC24's response to Question 7.2**

76. This section considers whether LUHFT acted fairly and transparently as required under the PSR regulations in its scoring of PC24's response to Question 7.2. IDMG's concern is that PC24 "could not have provided a service model with the correct level of

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<sup>31</sup> LUHFT, *Letter to the Panel*, 2 September 2024.

staffing ... The feedback to the winning provider (included below) shows they cannot have submitted a model that complied and understood the requirement. I would suggest this would require a score of 0 rather than a 2 based on the scoring criteria" (see paragraph 36).

77. The feedback referenced by IDMG was as follows "winning provider lacks an understanding of the model there will not be a second clinical navigator provided by ED. This role will be undertaken by ACPs in SDUCU Mersey Care or the successful provider. The process for booking patients in this response was for PC24 to undertake this, however, the process is for all patients to be booked on the LUHFT system. This triage would have to be undertaken by a registered nurse not a HCA".
78. As noted in Section 6.2, the Panel is surprised that PC24 was able to offer a 20% reduction in its pricing with no implications for, or impact on, any other part of its proposal, including its response to Question 7.2.
79. At the same time, in relation to the specific points made by IDMG, the Panel considers that PC24 did not submit a service model with the incorrect level of staffing or that was inconsistent with the requirement set out in the service specification. The level of clinical staffing proposed by PC24 was consistent with the service specification with adjustments to PC24's non-clinical staffing made at the request of LUHFT. The implications of LUHFT's requests in relation to PC24's proposed staffing arrangements are dealt with in Section 6.2.
80. As a result, the Panel finds that LUHFT's evaluation of PC24's response to Question 7.2 did not breach its obligations under the PSR regulations.

#### **6.4 The role of the bidders' presentations in LUHFT's evaluation**

81. This section considers whether LUHFT acted fairly and transparently as required under the PSR regulations in relation to the role played by the bidders' presentations on 4 June, and their contribution to the evaluation of the bidders' submissions.
82. The Mini Competition document stated that bidders would be required to provide a presentation via MS Teams, and that the presentation would be "for information only" and would not be scored or weighted. However, LUHFT told the Panel that "it was implicit that the information provided on questions 7.2 to 7.9 and the answers provided to our questions [asked during the presentations] could be taken into account in assessing the offers received in accordance with the contract award criteria".<sup>32</sup>
83. The Panel notes that LUHFT's reasons for the score awarded to PC24 for its answer to Question 7.8 includes a reference to PC24's presentation: "[...] with demonstrable information provided at presentation that supported this further".<sup>33</sup>
84. In contrast, IDMG told the Panel that it believed its presentation was not taken into account in the scoring of its answers. IDMG said that the reasons provided by LUHFT for certain scores awarded to IDMG answers include references to, for example, a lack of clarity or information on its CQC status and the auditing of its supply chain. IDMG

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<sup>32</sup> LUHFT, *Response to the Panel's Additional Information Request*, 14 August 2024.

<sup>33</sup> LUHFT, *Letter to IDMG*, 27 June 2024.

told the Panel that both of these issues were discussed in detail at their presentation, prior to the scoring of their proposal.<sup>34</sup>

85. It is difficult for the Panel to evaluate in greater detail IDMG's specific concerns in relation to the impact of its presentation on the scoring of its proposal because LUHFT told us that its Evaluation Panel did not take notes during the presentations. LUHFT also told us that it did not secure copies of the presentations at either meeting with the bidders.<sup>35</sup> Based on the scoring answers we have seen, it is apparent that PC24's presentation was taken into account notwithstanding the approach in the Mini Competition document.
86. Further, the Panel did not see a methodology for how the presentations would be used to inform the scoring in a consistent way. LUHFT's comments about the lack of any notes from the presentations and not retaining copies of the presentations reinforces these concerns. As a result, the Panel finds that LUHFT did not act fairly or transparently in its treatment of the presentations made by the bidders, and as a result, breached its obligations under the PSR regulations.

## **7. Panel Advice**

87. In summary, the Panel's findings on the provider selection process carried out by LUHFT for the SDUCU services are as follows:
- First, the Panel finds that LUHFT, by adversely taking account of IDMG's CQC registration for an unrelated service when evaluating IDMG's response to Question 7.2, did not act fairly and as a result breached its obligations under the PSR regulations.
  - Second, the Panel finds that LUHFT in its handling of the clarification and resubmission of the bidders' pricing proposals did not act fairly and as a result breached its obligations under the PSR regulations. This breach arises from LUHFT: (i) not providing IDMG with the same opportunity that it gave PC24 to clarify and resubmit its pricing proposal in relation to non-clinical staffing costs; and (ii) accepting a revised pricing proposal from PC24 that made changes beyond the matters on which LUHFT was seeking clarification.
  - Third, the Panel finds that LUHFT's evaluation of PC24's response to Question 7.2 did not breach its obligations under the PSR regulations.
  - Finally, the Panel finds that LUHFT did not act fairly or transparently in its treatment of the presentations made by the bidders, and as a result, breached its obligations under the PSR regulations.
88. Given these conclusions, three options are open to the Panel (in accordance with its procedures). The Panel may advise that:
- the breaches had no material effect on the LUHFT's selection of provider and the commissioner should proceed with awarding the contract as originally intended;

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<sup>34</sup> IDMG, *Meeting with the Panel*, 29 August; IDMG, *Email to the Panel*, 30 August 2024.

<sup>35</sup> LUHFT, *Response to the Panel's Additional Information Request*, 14 August 2024.

- LUHFT should return to an earlier step in the provider selection process to rectify the issues identified by the Panel; or
  - LUHFT should abandon the current provider selection process.
89. The Panel's view is that the breaches of the PSR regulations it has identified in this report have had a material effect on LUHFT's selection of a provider. However, the Panel considers that it may be possible to address its concerns by returning to an earlier step in the provider selection process.
90. As a result, the Panel's advice to LUHFT is that, at a minimum, it should start a new mini competition process with IDMG and PC24, ensuring that the information and requirements are clear and accurate. It is, however, open to LUHFT to abandon the current provider selection process if it thinks that this is necessary to ensure a fair provider selection process for the SDUCU service.