

Independent Patient Choice and Procurement Panel

Review of a proposed contract award

Drug and Alcohol Services in Bath and North East Somerset

Case Reference: CR0008-24

6 February 2025

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1. Executive Summary

1. On 13 December 2024, Developing Health & Independence Limited (DHI), a charitable provider of services, asked the Panel to advise on the selection by Bath and North East Somerset Council (B&NES Council, the Council) of a provider for its Drug and Alcohol Service.
2. B&NES Council is a unitary authority serving Bath and North East Somerset with responsibilities that include public health services. The Council is part of the local Integrated Care System (ICS), the Bath and North East Somerset, Swindon and Wiltshire (BSW) Partnership, known as BSW Together, which brings together the NHS, local government and local third sector groups.
3. BSW Integrated Care Board (ICB), as coordinating commissioner, and B&NES Council, as co-commissioner, currently have a prime provider contract with HCRG Care Group (HCRG) for a range of public health, social care and housing services. This includes most drug and alcohol services in Bath and North East Somerset.
4. HCRG's delivery of drug and alcohol services in Bath and North East Somerset is sub-contracted to DHI, local GPs and local pharmacies. Outside the HCRG contract, the Council has directly commissioned Tier 4 drug and alcohol services. Under these arrangements, local GPs and local pharmacies prescribe, dispense and supervise the consumption of controlled drugs. DHI monitors and collates local GP and local pharmacy activity for HCRG, and manages access and continuity of care for users of Tier 4 services.
5. With the HCRG contract due to expire on 31 March 2025, the Council has decided to commission all drug and alcohol services, including services for adults and children as well as shared care and Tier 4 services, under a single contract. This contract will encompass the services currently supplied by DHI, local GPs and local pharmacies, and the current providers of Tier 4 services.
6. On 5 August 2024, the Council published a Contract Notice on Find a Tender Service (FTS) inviting providers to participate in Stage 1 of the competitive process by responding to a Standard Selection Questionnaire (SQ) that it would use to evaluate applicants against the basic selection criteria. The five highest scoring applicants who met the SQ's requirements would be invited to take part in Stage 2 of the competitive process.
7. The Council received four completed SQs, which were assessed by an evaluation panel between 27 August and 6 September 2024. All four bidders met the requirements of the basic selection criteria and were invited to proceed to Stage 2 of the competitive process. The Stage 2 ITT documentation was issued on 6 September with responses due by 12 noon on 4 October. All four bidders submitted responses, including DHI and the successful bidder, Turning Point Services (TPS).
8. Bidders were asked to submit responses to three sets of questions, namely Quality, Social Value and Value (which included pricing). Submissions were scored by an evaluation panel between 7 October and 12 November 2024. TPS was selected as the successful bidder, and DHI's proposal was ranked fourth out of the four proposals.

9. The Council wrote to bidders on 13 November informing them of the outcome and published a notice of its intention to award the contract to TPS on 13 November 2024.
10. Following representations from DHI, the Panel considered seven issues in its review:
 - first, the Council's scoring of sub-criteria and the calculation of weighted scores;
 - second, the Council's scoring of responses to the social value questions and the potential exclusion of bidders with low-scoring responses to these questions;
 - third, the Council's evaluation and scoring of responses to the quality questions given DHI's concerns about the Council's feedback on the level of detail in its proposal;
 - fourth, the level of expertise available on the Council's evaluation panel;
 - fifth, stakeholder engagement in the Council's formulation of the key criteria;
 - sixth, the Council's decision to use the competitive process to select a provider; and
 - finally, the Council's consideration of service and provider sustainability issues in the provider selection process.
11. On the first issue, the Panel's view is that the Council did not err in its calculation of DHI's weighted score. As a result, the Panel finds that the Council, in calculating the overall weighted score for DHI's proposal, did not breach the PSR regulations and, in particular, the obligation to act fairly.
12. On the second issue, the Panel finds that the Council, in evaluating bidders' responses to the social value questions, correcting the scoring formula for Q7, and not excluding the successful bidder based on its response to the social value questions, did not breach the PSR regulations and, in particular, the obligation to act fairly, transparently and proportionately.
13. On the third issue, the Panel's view is that the Council put in place processes that were sufficiently robust to ensure that its evaluation delivered a consistent approach to evaluating bidders' proposals. Further, the Panel's view is that the Council's feedback to DHI about the level of detail in its proposal was not unreasonable. As a result, the Panel finds that the Council, in evaluating responses to the Quality questions, did not breach the PSR regulations and, in particular, the obligation to act fairly and transparently.
14. On the fourth issue, the Panel is not persuaded that the evaluation panel lacked the expertise needed for the Council to: (a) act fairly in reaching its provider selection decision; or (b) secure the needs of people who use its drug and alcohol services. As a result, the Panel finds that the Council, in selecting the evaluation panel, did not breach the PSR regulations and, in particular, the obligation to act fairly.
15. On the fifth issue, the Panel's view is that there is no evidence that the Council, in formulating the key criteria, breached any stakeholder engagement requirements. As a result, the Panel finds that the Council, in formulating the key criteria, did not breach the PSR regulations and, in particular, the obligation to act fairly and transparently.
16. On the sixth issue, the Panel's view is that the Council did not err when deciding that Direct Award Process C (DAPC) was not available to it. As a result, the Panel finds that the Council, in using the competitive process to select a provider did not breach

the PSR regulations and, in particular, the obligation to act fairly, transparently and proportionately.

17. On the final issue, the Panel's view is that the evidence shows that the Council considered the potential impact on other services and on providers as part of its decision-making in relation to the provider selection process for the Drug and Alcohol Service. As a result, the Panel finds that the Council, in its conduct of a competitive process, did not breach the PSR regulations and, in particular, the requirements of Regulation 11 which govern the conduct of a competitive process.
18. Given the Panel's findings that B&NES Council did not breach the PSR regulations in selecting a provider for its Drug and Alcohol Service, the Panel has found no reason to advise the Council against continuing with the proposed contract award as originally intended.

2. Introduction

19. On 13 December 2024, Developing Health & Independence Limited (DHI), a charitable provider of services,¹ asked the Panel to advise on the selection of a provider for the Drug and Alcohol Service commissioned by Bath and North East Somerset Council (B&NES Council, the Council).
20. The Panel accepted DHI's request on 16 December 2024 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 caseload capacity.² DHI's request met the eligibility requirements, and as the Panel was not approaching full capacity, there was no need to apply the prioritisation criteria.
21. 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;
 - Daria Prigioni, Case Panel Member; and
 - Sally-Ann Collier, Case Panel Member.³
22. The Case Panel's review has been carried out in accordance with the Panel's Standard Operating Procedures (procedures).⁴ The Panel aims to provide its advice within 25 working days of accepting a request. In this case, however, the Panel has taken slightly longer due to the Christmas and New Year holiday period.
23. This report, which provides the Panel's assessment and advice⁵ to B&NES Council, is set out as follows:
 - Section 3 briefly describes the role of the Panel;

¹ DHI is a charitable organisation that provides specialist services in Bath and North East Somerset, Bristol, Wiltshire, South Gloucestershire and Somerset for people who experience social exclusion or multiple disadvantage as a result of poverty, deprivation, abuse or neglect. Further information on DHI can be found on its website at <https://www.dhi-online.org.uk/>.

² 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/>.

³ 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/>.

⁴ 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/>.

⁵ 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.

- 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 Drug & Alcohol service;
 - Section 5 sets out the concerns raised by DHI;
 - 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 the Council.
24. The Panel would like to record its thanks to both the Council and DHI for their assistance and cooperation during this review.

3. Role of the Panel

25. The PSR regulations, issued under the Health and Care Act 2022, 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 2024.⁶
26. 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.
27. The Panel acts 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.
28. For each review, the Panel's assessment and advice is supplied to the commissioner and the potential provider that has requested the 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 this review

29. B&NES Council is a unitary authority serving Bath and North East Somerset with responsibilities that include public health services.⁷ The Council is part of the local Integrated Care System (ICS), the Bath and North East Somerset, Swindon and Wiltshire (BSW) Partnership, known as BSW Together, which brings together the NHS, local government and local third sector groups.⁸
30. BSW Integrated Care Board (ICB), as coordinating commissioner, and B&NES Council, as co-commissioner, currently have a prime provider contract with HCRG

⁶ 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/>.

⁷ Further information on Bath & North East Somerset Council can be found on its website at <https://www.bathnes.gov.uk/>.

⁸ Further information on BSW Together can be found on its website at <https://bswtogether.org.uk/>.

Care Group (HCRG) for a range of public health, social care and housing services. This includes most drug and alcohol services in Bath and North East Somerset.

31. HCRG's delivery of drug and alcohol services in Bath and North East Somerset is sub-contracted to DHI, local GPs and local pharmacies. Outside the HCRG contract, the Council has directly commissioned Tier 4 drug and alcohol services. Under these arrangements, local GPs and local pharmacies prescribe, dispense and supervise the consumption of controlled drugs. DHI monitors and collates this activity for HCRG, and manages access and continuity of care for users of Tier 4 services.
32. With the HCRG contract due to expire on 31 March 2025, the Council has decided to commission all drug and alcohol services, including services for adults and children as well as shared care and Tier 4 services, under a single contract. This contract will encompass the services currently supplied by DHI, as well as DHI's sub-contractor, Avon & Wiltshire Mental Health Partnership NHS Trust, local GPs and local pharmacies, and the current providers of Tier 4 services. The Council has identified a range of benefits from combining these separate drug and alcohol services into a single integrated service, including improved access, better continuity of care, greater consistency in service delivery and resource efficiency.⁹
33. On 17 April 2024, the Council published a Prior Information Notice on Find a Tender Service (FTS) announcing its intention to follow the competitive process to select a provider for the new Drug and Alcohol Services contract, and inviting providers to express interest in attending a market engagement event on 9 May 2024. The new contract is intended to commence on 1 April 2025, and have a 5-year duration with the option of a 2-year extension. It has an indicative value of £28 million across the full term (including the 2-year extension).¹⁰
34. On 5 August 2024, the Council published a Contract Notice on FTS inviting providers to participate in Stage 1 of the competitive process by responding to a Standard Selection Questionnaire (SQ) that it would use to evaluate applicants against the basic selection criteria. The five highest scoring applicants who met the SQ's requirements would be invited to take part in Stage 2 of the competitive process. The Stage 1 Invitation to Tender (ITT) documentation, including the SQ, was made available via the Council's procurement portal, ProContract.
35. The Council received four completed SQs, which were assessed by an evaluation panel between 27 August and 6 September 2024. All four bidders met the requirements of the basic selection criteria and were invited to proceed to Stage 2 of the competitive process. The Stage 2 ITT documentation was issued on 6 September 2024 with responses due by 12 noon on 4 October 2024. All four bidders submitted responses, including DHI and the successful bidder, Turning Point Services (TPS).¹¹
36. Bidders were asked to submit responses to three sets of questions, namely Quality, Social Value and Value (which included pricing). Submissions were scored by an evaluation panel between 7 October and 12 November 2024. Responses were

⁹ B&NES Council, *Rationale for combining the separate D&A services into one integrated service*, briefing to the Panel, January 2025.

¹⁰ B&NES Council, *Contract Notice published on Find a Tender Service*, 5 August 2024.

¹¹ TPS is a social enterprise, designing and delivering health and social care services across England. Further information on TPS can be found on its website at <https://www.turning-point.co.uk/>

evaluated using the scoring methodology set out in Appendix 4 to the Stage 2 ITT. TPS was selected as the successful bidder. DHI's proposal was ranked fourth out of the four proposals.

37. The Council wrote to bidders on 13 November 2024 informing them of the outcome, and published a notice of its intention to award the contract to TPS on 13 November 2024. On 25 November 2024, prior to the standstill period expiring, DHI made representations to the Council about the conduct of the provider selection process. In response, the Council wrote to DHI on 28 November 2024, setting out a summary of the issues that it would consider in reviewing its provider selection process. The review was carried out by two individuals who were not part of the Council's original evaluation panel.
38. Following its review, the Council wrote to DHI on 9 December 2024, responding to the issues raised by DHI. The Council explained that its review had found an error in the scoring of one of the Social Value questions (Question 8) and, as a result, a fresh evaluation panel had re-evaluated the responses to Question 8 for all bidders. This re-scoring, however, had not affected bidders' overall ranking. The Council went on to say "We have reviewed the decision to award this contract, taken into account your representations and the impact of question 8 re-evaluation. The outcome of the procurement is unaffected, and the Council has made a further decision to enter into the contract as intended and does not intend to make any subsequent further decisions".¹²
39. On 13 December 2024, prior to the expiry of the standstill period, DHI asked the Panel to review the Council's provider selection decision. The Panel accepted this request on 16 December 2024. On being made aware of this, the Council confirmed that it would hold the standstill period open for the duration of the Panel's review, as required by the PSR regulations.

5. Representations by DHI

40. DHI's concerns about the provider selection process for the Drug and Alcohol Services contract, as summarised in its submission to the Panel, were as follows:

"General Scoring Concerns: DHI has serious concerns about the evaluation process, which we believe warrants a re-evaluation of all questions by experienced and independent evaluators.

"The Council has admitted that the evaluators failed to consider relevant and/or took into account irrelevant factors when scoring Question 8, necessitating a re-evaluation by a fresh panel. This admission aligns with our overall concerns regarding inconsistency, the inexperience of evaluators, and potential manifest errors in other aspects of the evaluation.

"If a manifest error in scoring was identified in Question 8, in which the council admits the evaluators failed to consider relevant factors and/or took into account

¹² B&NES Council, *Further Decision letter*, 9 December 2024.

irrelevant factors, we believe this strongly suggests similar errors may have arisen across other questions.

“Further, the Council acknowledges that an adjustment was made to the scoring methodology for Question 7 during the procurement process, citing an error in how weightings were applied. It is not clear what this adjustment is as the information they have provided does not appear to show any change, so questions remain as to what adjustment has and/or should be made. Further, the Council has not provided evidence to confirm whether this adjustment was communicated to all bidders at the time or if it impacted the overall procurement. The lack of transparency surrounding this adjustment raises concerns about compliance with the PSR principles of fairness and transparency.

“It is clear there have been errors and issues in the evaluation of bids and this undermines confidence in the overall process and we remain concerned there are other instances and areas of breaches that have not been addressed.

“Additionally, DHI is not satisfied with the Council’s feedback repeatedly citing a ‘lack of detail’ but fails to satisfactorily explain why responses were allegedly insufficient to meet higher scoring criteria. Further, the Council has not adequately addressed DHI’s concerns with respect to why similar elements in the successful bidder’s proposal appeared to have been scored more favourably, highlighting inconsistencies in the application of evaluation criteria.

“Social Value Concerns: Our quantitative social value impact score of 1124 far exceeds the successful bidder’s score of 172. The successful bidder’s exceptionally low quantitative impact score raises questions about whether their qualitative commitments were substantial enough to warrant the score they received. This disparity appears inconsistent with the principle of proportionality under PSR suggesting a lack of consideration of the social value key criteria of Regulation 5.

“We remain unsatisfied with the Council’s response regarding compliance with the Public Services (Social Value) Act 2012. While the Council acknowledges the importance of social value, their evaluation and scoring of the bids do not appear to adequately reflect the Act’s requirements to consider how the procurement might improve economic, social, and environmental well-being in the relevant area.

“Further, the Council’s refusal to provide full evaluation notes or moderation records significantly impedes our ability to assess the fairness of the evaluation process. While some limited feedback has been disclosed, the absence of detailed evaluation and moderation notes prevents a full understanding of how scoring decisions were applied.

“Finally, treating DHI as an arms-length subcontractor is inconsistent with established practice. Having held a direct contract with the council (2003 – 2017) before it was passed to HCRG (then Virgin Care) as Prime Provider for the delivery of social care and public health services for the council; contract negotiations with DHI were led by both Public Health’s (their Deputy Director) and Virgin Care with a clear auditable trail. The contract was not handed to Virgin/HCRG to take forward in isolation, and DHI is frequently treated like a contractor to the council.”¹³

¹³ DHI, *Pro forma submission to the Panel*, 13 December 2024.

41. DHI had several further concerns that were raised in its earlier representations to the Council and which it also wished the Panel to review. As a result, this report refers to these earlier representations as appropriate.

6. PSR regulations relevant to the competitive process

42. DHI has suggested that its concerns amount to a breach by the Council of the PSR regulations in relation to the general obligations on commissioners (as set out in Regulation 4) and the application of the key criteria (as set out in Regulation 5). This section provides a summary of the key provisions of the PSR regulations relevant to the competitive process, and provides a ready reference to the regulations discussed in this report.
43. The four parts of the PSR regulations most relevant to this review are as follows:
- 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 key criteria which a relevant authority must consider when applying the Competitive Process (Regulation 5). These five key criteria are: (a) quality and innovation; (b) value; (c) integration, collaboration and service sustainability; (d) improving access, reducing health inequalities and facilitating choice; and (e) social value.
 - Third, the PSR regulations set out the circumstances in which a relevant authority may use the Competitive Process (Regulation 6(5)). This states that “Where (a) the relevant authority is not required to follow Direct Award Process A or Direct Award Process B, (b) the term of an existing contract is due to expire and the relevant authority proposes a new contract to replace that existing contract at the end of its term, (c) the considerable change threshold is not met (see paragraphs (10) to (12)), (d) the relevant authority is of the view that the existing provider is satisfying the existing contract and will likely satisfy the proposed contract to a sufficient standard, and (e) the procurement is not to conclude a framework agreement, the relevant authority must follow one of Direct Award Process C, the Most Suitable Provider Process or the Competitive Process, such choice being at the discretion of the relevant authority”.
 - Finally, the PSR regulations set out the process that relevant authorities must follow when using the Competitive Process (Regulation 11). This states that “Where the relevant authority follows the Competitive Process, the process is that the relevant authority follows the steps set out in this regulation”. (2) Step 1 is that the relevant authority determine the contract or framework award criteria, taking into account the key criteria and applying the basic selection criteria; (3) ...; (4) ...; (5) Step 3 is that the relevant authority assess any offers received in

accordance with the contract or framework award criteria; (6) ...; (7) Step 4 is that the relevant authority makes a decision as to the successful provider ...”.

44. The Provider Selection Regime Statutory Guidance “sits alongside the Regulations to support organisations to understand and interpret the PSR regulations”.¹⁴ Reference is made to relevant provisions of the statutory guidance in the Panel’s assessment of the issues in Section 7.

7. Panel Assessment

45. This section sets out the Panel’s assessment of the representations made by DHI and its findings on whether the Council complied with the PSR regulations in relation to each matter. The Panel’s assessment is set out in seven parts that address the following issues:

- first, the Council’s scoring of sub-criteria and the calculation of weighted scores (Section 7.1);
- second, the Council’s scoring of responses to the social value questions and the potential exclusion of bidders with low-scoring responses to these questions (Section 7.2);
- third, the Council’s evaluation and scoring of responses to the quality questions given DHI’s concerns about the Council’s feedback on the level of detail in its proposal (Section 7.3);
- fourth, the level of expertise available on the Council’s evaluation panel (Section 7.4);
- fifth, stakeholder engagement in the Council’s formulation of the key criteria (Section 7.5);
- sixth, the Council’s decision to use the competitive process to select a provider (Section 7.6); and
- finally, the Council’s consideration of service and provider sustainability issues in the provider selection process (Section 7.7).

7.1 Sub-criteria scoring and calculation of weighted scores

46. This section sets out the Panel’s assessment of DHI’s concerns about the Council’s sub-criteria scoring and calculation of weighted scores.
47. DHI’s submission to the Panel said that “it is clear there have been errors and issues in the evaluation of bids and this undermines confidence in the overall process”. This followed DHI’s representations to the Council where DHI said that it had identified several discrepancies which it believed suggested “fundamental errors in the calculation of weighted scores and/or the evaluation process undertaken by the Council”.¹⁵
48. DHI further said in its representations to the Council that its weighted scores for Question 2 and Question 4 were “mathematically impossible” under the Council’s scoring methodology, and that this “suggests either a computational error, a misunderstanding of the weighting formula and/or errors in the evaluation process”. By

¹⁴ NHS England, *The Provider Selection Regime: statutory guidance*, 21 February 2024, p.2.

¹⁵ DHI, *Representations letter to the Council*, 25 November 2024.

way of example, DHI noted that for Q2 it had been awarded a weighted score of 5.34% whereas it believed that the only possible scores, under the scoring methodology, were: 0.00%, 2.00%, 4.00%, 6.00%, 8.00%, or 10.00%. DHI went on to say that these errors “reveal a fundamental failure to apply the prescribed scoring and weighting methodology, resulting in scores that fall outside the allowable ranges”.

49. DHI’s representations to the Council further stated that it had “no confidence that the scores as set out in the Award Letter are correct or whether the evaluation and scoring has been undertaken in accordance with the ITT or the Council’s obligations more generally”. DHI believed that the process lacked transparency, fairness and amounted to procedural unfairness, irrationality and/or breached legitimate expectations as to how the procurement would be conducted.
50. The Council, in responding to DHI, said that “there has not been an error made in calculating the scores and that the calculations are accurate. The calculations have been made in accordance with the Scoring Methodology provided with the Invitation to Tender”.¹⁶
51. The Panel notes that the Council’s Stage 2 tender documentation stated the following:

“Individual scored Method Statement questions will be weighted to account for their level of importance. Each of these will be scored out of 5 [...] with a weighting applied to that score to produce a weighted score e.g. if a question is weighted as 20% and scored as 5/5 then the weighted score would be 20/20. If the score were 4/5, then the weighted score would be 16/20. All weighted scores are added together to achieve a total weighted score for the scored questions ...

“Submitted Tenders will be evaluated by officers of the Council using the published award criteria and weightings (05 Volume 1 Appendix 4 D&A Scoring Methodology)”.¹⁷
52. The Panel also notes that the Scoring Methodology and calculation template shared with bidders showed that most of the ITT questions had multiple sub-criteria, and these sub-criteria had weightings that added up to 100% for each question.¹⁸ A further formula calculated the final weighted score for the response to each question according to the overall weighting for that question.
53. In relation to Q2 – which DHI referenced in its submission – there were three sub-criteria weighted at 33%, 33% and 34% respectively of an overall 10% that was available for the answer to this question. A score of, for example, 3 out of 5, 2 out of 5, and 3 out of 5 against these sub-criteria would produce a weighted score of 5.34% using the Council’s scoring methodology and calculation template.¹⁹ That is, it is mathematically possible to arrive at weighted scores other than 0.00%, 2.00%, 4.00%, 6.00%, 8.00%, or 10.00% for the answer to Q2 and similarly for Q4.

¹⁶ B&NES Council, *Further Decision letter*, 9 December 2024.

¹⁷ B&NES Council, *Stage 2 Invitation to Tender Volume 1 (Guidance Document)*, 6 September 2024.

¹⁸ B&NES Council, *Stage 2 Volume 1 Appendix 4 D&A Scoring Methodology*, 6 September 2024.

¹⁹ Setting out this calculation in more detail, for sub-criteria (a) a score of 3/5 is the equivalent of 6/10 (given the 10% weighting for the question) and multiplying this by the sub-criteria weighting of 33% gives a score for this sub-criteria answer of 1.98%. Similarly, the scores for sub-criteria (b) and (c) are 4/10 and 6/10 respectively, which equates to 1.32% and 2.04% when applying the sub-criteria weightings. Adding the three sub-criteria scores together gives an overall score of 5.34% for the answer to Question 2.

54. Given this, the Panel's view is that the Council has not erred in its calculation of DHI's weighted score. As a result, the Panel finds that the Council, in calculating the overall weighted score for DHI's proposal, did not breach the PSR regulations and, in particular, the obligation to act fairly.

7.2 Scoring of responses to the Social Value questions

55. This section sets out the Panel's assessment of DHI's concerns about the scoring of responses to the Social Value Questions (Q7 and Q8), its further concerns about the scoring of responses to Q7, and its concern that the Council should have excluded the successful bidder based on its response.

56. By way of background, Question 7 on social value was as follows:

Q7 - Social Value Activities Return (overall weighting 2.5%):

"Please complete the Social Value Activities Return – 09 Volume 2 Appendix 2 Social Value Activities Return" (RA09)

Each Bidder's response to this return produced a quantitative 'total impact score', which would be evaluated as follows:

The Bidder submitting the highest impact score (aggregate tariff) will score the maximum available score for the quantitative element of the Social Value scoring. All other Bidders will be scored in relation to the highest impact score as follows:

*(Bidders Social Value Activities Impact Score / Highest Bidders Social Value Activities Impact Score) * Weighting for this question"*

57. Question 8 on social value was as follows:

Q8 - Managing and Monitoring Social Value (overall weighting 2.5%):

"Please set out how your Social Value offer will be managed and monitored and how will you ensure its delivery" (max 500 words)

The question further noted that "the successful Bidder will work with the Council to agree delivery of the Social Value as set out in the Social Value Activities Return" and stated that the Council would be looking for evidence of the following in the bidder's response:

Robust proposals in place to ensure the delivering of the Social Value measures set out in the Social Value Activities Return and to ensure that these are monitored throughout the contract term (100%)"²⁰

58. While answers to Q7 produced a quantitative 'total impact score', scoring of bidder responses to Question 8 was on a 0-5 scale as set out in the table below.

²⁰ B&NES Council, *Stage 2 Invitation to Tender Volume 2 (Response Document)*, 6 September 2024.

Score	Definition	
0	The supporting Social Value information was omitted or fundamentally failed to meet the relevant Social Value measures. Insufficient evidence to demonstrate that the relevant submission requirements or the Authority's requirements can be met.	Unacceptable
1	The supporting Social Value information is adequate but there is insufficient evidence to demonstrate that the relevant Social Value offer can be met. Significant omissions, serious and/or many concerns.	Major reservations
2	The supporting Social Value information has some minor omissions in respect of the relevant Social Value measures. The supporting Social Value information satisfies the basic minimum requirements in some respects but is unsatisfactory in other respects and raise some concerns.	Some Reservations
3	The supporting Social Value information submitted provides some good evidence to meet the relevant Social Value commitments offered in the Authority's view. It is satisfactory in most respects and there are no major concerns.	Satisfactory
4	The supporting Social Value information submitted provides, in the Authority's view, good evidence that all the Social Value commitments offered can be met. Full and robust response, any concerns are addressed so that the proposal gives confidence.	Good
5	The supporting Social Value information submitted provides strong evidence, in the Authority's view, that all the Social Value commitments offered can be met and the proposal is outstanding. Provides full confidence and no concerns.	Outstanding

Source: B&NES Council, *Stage 2 Invitation to Tender Volume 1 (Guidance Document)*, 6 September 2024.

7.2.1 Consistency in scoring responses to the Social Value questions

59. DHI told the Panel that it had concerns about the Council's scoring of the responses to the two social value questions, saying that "the successful bidder's exceptionally low quantitative impact score [i.e. its score for Q7] raises questions about whether their qualitative commitments were substantial enough to warrant the score they received [for Q8]". DHI said that "this disparity appears inconsistent with the principle of proportionality under PSR suggesting a lack of consideration of the social value key criteria under Regulation 5" (see paragraph 40).²¹
60. Further, in its representations to the Council, DHI said that it did not believe that the successful bidder's weighted score of 1.5% for Question 8 was "reasonable in light of its low quantitative score [for Q7] of just 0.38% (calculated on a comparative basis, unlike the qualitative element), particularly given the significant disparity in impact scores and the correlation between the quantitative and qualitative elements of the Social Value evaluation".²²

²¹ Regulation 5 describes the social value key criteria as follows: "(e) social value, that is whether what is proposed might improve economic, social and environmental well-being in the geographical area relevant to a proposed contracting arrangement".

²² DHI, *Representations letter to the Council*, 25 November 2024.

61. DHI told the Council that “inconsistency in scoring across the two Social Value questions for each bidder raises serious concerns about the fairness and transparency of the evaluation process. It suggests an inconsistent application of the scoring criteria, where calculations may not have been maintained correctly or were improperly applied, or that evaluators have not taken the full detail of ... [DHI’s] bid submission into account. This indicates that there has been irrationality in the scoring of bids”.²³
62. The Council, in responding to DHI, said that “The quantitative section [i.e. Q7] is purely a percentage score based on the amount of social value a bidder commits to in the Social Value Activities Return, which is calculated on a comparative basis. The qualitative element [i.e. Q8] on the other hand focused on the delivery of the social value measures and monitoring of these commitments. It is therefore perfectly plausible to score highly on the quantitative element, purely by offering the highest amount of social value measures of all the bidders but still scoring a low score on the qualitative element by not providing assurance around how this would be delivered and monitored”.²⁴
63. The Council further said that it had reviewed the social value qualitative scores ([i.e. the scores for] Q8) and that its review “indicates that the [evaluation] panel passed comment on the nature of the proposals and took this into account in their evaluation of this criterion. The focus of the evaluation panel should have been around the delivery of the measures and monitoring of the deliverables. The Council has therefore re-run the scoring of the Social Value qualitative element for all bidders, with a fresh evaluation panel, ensuring that the award criteria and scoring matrix are applied as set out in the ITT. All bidders will be notified of this and of the impact on scoring”. The re-scoring of the answers to this question did not affect bidders’ overall ranking.²⁵
64. The Panel’s view is that there was no inconsistency in the Council’s scoring across the two social value questions, and that it is possible, as explained by the Council, for bidders to have scored well in the response to Q7 and poorly in the response to Q8. The Panel does not consider that any such disparity is evidence of inconsistency with the principles of fairness, transparency and proportionality under the PSR or a lack of consideration of the social value key criteria. As a result, the Panel finds that the Council, in evaluating bidders’ responses to the social value questions, did not breach the PSR regulations and, in particular, the obligation to act fairly, transparently and proportionately.

7.2.2 Calculating the score for responses to Q7

65. DHI told the Panel that “the Council acknowledges that an adjustment was made to the scoring methodology for Question 7 during the procurement process, citing an error in how weightings were applied. It is not clear what this adjustment is as the information they have provided does not appear to show any change, so questions remain as to what adjustment has and/or should be made. Further, the Council has not provided evidence to confirm whether this adjustment was communicated to all bidders at the time or if it impacted the overall procurement. The lack of transparency surrounding

²³ DHI, *Representations letter to the Council*, 25 November 2024.

²⁴ B&NES Council, *Further decision letter*, 9 December 2024.

²⁵ B&NES Council, *Post SV Re-Eval.xlsx*.

this adjustment raises concerns about compliance with the PSR principles of fairness and transparency” (see paragraph 40).

66. The report from the Council’s internal review, following DHI’s initial representations, said that the scoring methodology document “was issued with the tender pack. On the Quality Questionnaire tab, cell H15 was set up for a score of 0-5 and cell I15 then applied a 50% weighting to the score entered in cell H15. This calculation was incorrect as the score for this element had been calculated out of 2.5, rather than out of 5, on the Pricing & Social Value tab. The formula was therefore adjusted to ensure that the question was given the weighting stated in the Invitation to Tender. This adjustment did not change the published weightings but ensured that they were accurately applied”.²⁶
67. The Council’s evaluation records include a note in the scoring matrices of the bidders, which says: “the published Scoring Methodology applied a 50% weighting against this score, which was not needed and not mathematically correct as the score had already been calculated out of 2.5%. The weighting in cell I16 has been removed for all bidders”.²⁷
68. The Panel’s view, having reviewed the relevant tender documents,²⁸ is that the Council corrected an error in its scoring formula rather than changing the scoring methodology. The corrected formula is in line with the scoring methodology set out in the ITT. As a result, the Panel finds that the Council did not breach the PSR regulations in correcting the scoring formula for Q7 and, in particular, the obligation to act fairly and transparently.

7.2.3 The Council’s ability to exclude low scoring bidders

69. DHI, in its representations to the Council, said that the Council had erred by not exercising its discretion to exclude the successful bidder for “failing to meet the acceptable standard for this [the social value] element of the Procurement”. DHI said that “The Successful Bidder received a weighted score of 0.38% in the quantitative Social Value scoring in Question 7, which equates to a score of either 0 or 1”, and that “Despite this, the Council has either not given due consideration to, or has chosen not to, exercise its right to exclude the bidder at this stage, allowing their bid to progress further in the evaluation process”. DHI said that the Council’s decision “raises concerns about the application of the evaluation process and adherence to the principles of transparency, fairness and proportionality under the PSR 2023”.²⁹
70. The Council, in responding, stated that “The Invitation to Tender provision relating to scores of 0 or 1, and the right to exclude bidders from further consideration, related to the scoring of qualitative questions using the 0-5 scoring matrix, as detailed under the heading of Quality Questionnaire Evaluation. The evaluation of the Social Value section, both qualitative and quantitative, was covered under the heading of Social

²⁶ B&NES Council, *Review of Drug and Alcohol Community Service – under PSR Regulations Contract Reference: DN719522*, 6 December 2024.

²⁷ B&NES Council, *Evaluation records*, November 2024.

²⁸ B&NES Council, *Appendix 4 D&A Scoring Methodology*, 6 September 2024.

²⁹ DHI, *Representations letter to the Council*, 25 November 2024.

Value Evaluation”. The Council noted that the social value section “was not subject to the same provision”.³⁰

71. The Panel notes that the ‘Quality Questionnaire Evaluation’ section for Q1-Q6 of the tender states that “if the tenderer receives a score of either 0 or 1 on any question or criteria, the Authority reserves the right to exclude that bidder from further consideration”. The Panel also notes that the ‘Social Value Evaluation’ section for Q7 and Q8 does not include same provision for excluding low scoring bidders.
72. The Panel’s view is that the Council did not have the ability to exclude bidders who received low scores for their responses to the social value questions, and as a result, it did not err in not excluding the successful bidder on the basis of its response to these questions. As a result, the Panel finds that the Council, in not excluding the successful bidder based on its response to the social value questions, did not breach the PSR regulations and, in particular, the obligation to act fairly, transparently and proportionately.
73. Additionally, DHI told the Panel that it had concerns about the Council’s compliance with the Public Services (Social Value) Act 2012 (PSA). DHI’s representations to the Council said that “appointing a provider with minimal Social Value commitments raises concerns about whether the Council has fully complied with its obligations under the PSA to proportionately and reasonably consider the economic, social, and environmental benefits for local communities”. The Panel notes that compliance with the PSA does not fall within the scope of the Panel’s responsibilities. As a result, this issue is not considered further in this report.

7.3 Evaluation and scoring of responses to the Quality questions

74. This section sets out the Panel’s assessment of DHI’s concerns about the Council’s evaluation and scoring of responses to the Quality questions.
75. The Key Award Criteria for the Quality questions (Q1-Q6) were set out as follows:

Key Award Criteria	Q No.	Weighting
Quality and Innovation		45%
Service Delivery Model	1	25%
Service Penetration	2	10%
Staff Training	3	10%
Improving access, reducing inequalities and facilitating choice		15%
Measuring Outcomes / Service Improvement	4	15%
Integration, collaboration and sustainability		25%
Governance	5	15%
Mobilisation	6	10%

Source: B&NES Council, Stage 2 ITT Volume 2 (Response Document), 6 September 2024.

76. The scoring of bidders’ responses to the Quality questions was on a 0-5 scale against criteria set out below:

³⁰ B&NES Council, *Further decision letter*, 9 December 2024.

Score	Criteria
0	No response and/or evidence is unacceptable or non-existent, or there is a failure to properly address any issue. The Authority does not have any confidence in the Bidder's experience, capacity and ability to meet its requirements.
1	The response and/or the evidence are deficient (or not relevant) in the majority of areas and the Authority has a low level of confidence in the Bidder's experience, capacity and capability to meet its requirements.
2	Large portions of the response are not satisfactory and/or are not supported by a satisfactory level of evidence and the Authority has limited confidence in the Bidder's experience, capacity and capability to meet its requirements.
3	The response is satisfactory and supported by an acceptable standard of relevant evidence but with some reservations/issues not addressed. The Authority is satisfied with the Bidder's experience, capacity and capability to meet its requirements.
4	The response is comprehensive and supported by a good standard of relevant evidence and provides the Authority with a good standard of confidence in the Bidder's experience, capacity and capability to meet its requirements.
5	The standard of the response is very high, and the relevance of the response and the supporting evidence is very comprehensive and provides the Authority with a very high level of confidence in the Bidder's experience, capacity and capability to meet the Authority's requirements.

Source: B&NES Council, Stage 2 ITT Volume 1 Guidance Document.

77. The Council's tender documentation also set out sub-criteria and weightings for each of the Quality questions.³¹
78. DHI told the Panel that it was "not satisfied with the Council's feedback repeatedly citing a 'lack of detail' but fails to satisfactorily explain why responses were allegedly insufficient to meet higher scoring criteria. Further, the Council has not adequately addressed DHI's concerns with respect to why similar elements in the successful bidder's proposal appear to have been scored more favourably, highlighting inconsistencies in the application of evaluation criteria" (see paragraph 40).
79. This followed on from DHI's earlier representations to the Council where it suggested that "the Council appears to have consistently failed to apply the scoring methodology as set out in the Award Criteria". DHI said that there were multiple instances where it was awarded a score of 3, but where it believed its response satisfied the criteria for a score of at least 4, if not 5, as a result of it consistently offering "comprehensive detail and strong supporting evidence". DHI further stated that it believed that errors in the Council's scoring could be attributed to a combination of factors, namely undisclosed criteria, inconsistency in scoring, and failure to take into account all material considerations.³²
80. The Council, in responding to DHI, stated that "The evaluation panel have considered each of the published evaluation criteria and considered the appropriate score in accordance with the scoring matrix. During this process the evaluation panel reached a balanced view on the appropriate score; the moderated score is not determined by evidence of one specific factor or the lack of. A score of 3 is awarded where, overall,

³¹ B&NES Council, *Appendix 4 D&A Scoring Methodology*, 6 September 2024.

³² DHI, *Representations letter to the Council*, 25 November 2024.

the response is satisfactory, but the panel have identified reservations / issues, which affected their level of confidence regarding the proposal”.³³

81. In considering DHI’s concerns, the Panel: (i) reviewed the Council’s processes for evaluating bidders’ proposals with particular reference to how this supported a consistent approach to scoring; (ii) asked the Council how it had ensured a robust process that delivered consistency in evaluating different bidder’s proposals; and (iii) carried out a high-level review of the proposals submitted by DHI and TPS focused on DHI’s concern that the Council’s feedback repeatedly cited a ‘lack of detail’.
82. The Council provided the Panel with a description of its evaluation process and a copy of the guidance that was supplied to evaluators. The Council told the Panel that two briefing sessions were held for evaluation panel members ahead of the evaluation, and that these briefing sessions “covered a walk through of the evaluation process and the issues highlighted in the evaluation guidance”.³⁴ The Panel notes that the evaluation guidance addressed various areas relevant to ensuring a robust evaluation process, including how proposals should be scored, and specifically referenced the importance of evaluators being consistent in their approach.³⁵
83. At its meeting with the Panel, the Council said that achieving consistency in its approach to scoring different proposals was aided by having a dedicated procurement and commissioning manager. This manager ensured that evaluation members had a consistent understanding of the scoring methodology (via the briefing sessions) and through the manager’s role in facilitating the scoring moderation meetings. As part of this role the manager would provide challenge to evaluators to ensure that they were applying the scoring methodology consistently and appropriately.³⁶
84. The Panel also conducted a high-level comparison of the DHI and TPS proposals to assess whether their level of detail was such that the Council’s feedback to DHI on the level of detail in its proposal might be considered unreasonable. The Panel’s view is that the Council’s feedback to DHI on this point was not unreasonable.
85. The Panel’s view is that the Council put in place processes that were sufficiently robust to ensure that its evaluation delivered a consistent approach to evaluating bidders’ proposals. Further, the Panel’s view is that the Council’s feedback to DHI about the level of detail in its proposal was not unreasonable. As a result, the Panel finds that the Council, in evaluating responses to the Quality questions, did not breach the PSR regulations and, in particular, the obligation to act fairly and transparently.

7.4 Evaluation panel expertise

86. This section sets out the Panel’s assessment of DHI’s concerns about the level of expertise available on the evaluation panel. DHI told the Panel that it had concerns about “the inexperience of evaluators” (see paragraph 4040) and their spread of expertise, and in particular the lack of representatives from criminal justice services. Earlier, DHI told the Council that it had “concerns about whether the bid was evaluated

³³ B&NES Council, *Further decision letter*, 9 December 2024.

³⁴ B&NES Council, *Response to Q9*, 13 January 2025.

³⁵ B&NES Council, *Scoring and Moderation Thoughts*, Guidance document for evaluators, undated.

³⁶ Meeting between the Panel and B&NES Council, 21 January 2025.

by individuals with the necessary knowledge to assess complex and specialised proposals effectively”.³⁷

87. At its meeting with the Panel during this review, DHI said that it believed the Council did not have experienced commissioners leading the procurement as HCRG had been responsible for commissioning drug and alcohol services under its prime provider contract since 2017 and, as a result, there were gaps in the Council’s knowledge of adults and young persons substance misuse commissioning and related fields.³⁸
88. The Council in responding to DHI’s initial representations said that “members of the evaluation panel were selected due to their combined experience and expertise of commissioning and the subject matter of the contract, including how it impacts the wider system” and that it was satisfied with the selection of panel members.³⁹
89. In response to questions from the Panel, the Council provided biographies of evaluation panel members, the questions assessed by each panel member and the rationale for allocating questions to panel members.⁴⁰ The Council told the Panel that it had ensured that there were varied backgrounds amongst the evaluators relevant to the key elements of the service specification, including an evaluator from Children’s Early Help services, and that the evaluators had a good understanding of the service’s aims. The Council further explained to the Panel that, notwithstanding the prime provider contract with HCRG, it had maintained in-house commissioning expertise through its strategic commissioning functions and through its direct commissioning of services outside the HCRG contract.⁴¹ (It also said that it maintained robust regular performance monitoring and a governance structure which ensured that it continued to have the required oversight around needs, outcomes and quality of services.)⁴²
90. Having reviewed evaluation panel membership and considered the way in which evaluation panel responsibilities were carried out, the Panel is not persuaded that the evaluation panel lacked the expertise needed for the Council to: (a) act fairly in reaching its provider selection decision; or (b) secure the needs of people who use its drug and alcohol services. As a result, the Panel finds that the Council, in selecting the evaluation panel, did not breach the PSR regulations and, in particular, the obligation to act fairly.

7.5 Stakeholder engagement in formulating key criteria

91. This section sets out the Panel’s assessment of DHI’s concerns about stakeholder engagement in the design and conduct of the provider selection process.
92. DHI, in its representations to the Council, said that it “questions how the Council has applied the key criteria to determine the contract award criteria in accordance with Step 1 of the Competitive Process under Regulation 11⁴³ if it has not conducted the

³⁷ DHI, *Representations letter to the Council*, 25 November 2024.

³⁸ Meeting between the Panel and B&NES Council, 21 January 2025.

³⁹ B&NES Council, *Review of Drug and Alcohol Community Service – under PSR Regulations Contract Reference: DN719522*, 6 December 2024.

⁴⁰ B&NES Council, *Drug and Alcohol Service Evaluation Panel Members*, undated.

⁴¹ Meeting between the Panel and B&NES Council, 21 January 2025.

⁴² B&NES Council, *Response to putback*, 4 February 2025.

⁴³ PSR Regulation 11(2) states that “Step 1 is that the relevant authority determines the contract or framework award criteria, taking into account the key criteria and applying the basic selection criteria”.

required engagement”.⁴⁴ DHI went on to say that “the failure to engage meaningfully with local stakeholders undermines the transparency, fairness, and overall effectiveness of the procurement process, and potentially jeopardises the success of the service for the local community”.⁴⁵

93. The Council, in responding to DHI, said that “the development of the key award criteria for the future service was led by two Public Health Development and Commissioning Managers” and summarised their experience. It explained that the key criteria were “further informed by the Health Inequalities Manager, particularly to ensure relevance around improving access, reducing inequalities and facilitating choice”.
94. The Council went on to say that the “key criteria were based on the Provider Selection Regime requirements; Quality and Innovation, Improving Access, Reducing Inequalities and Facilitating Choice, Integration, Collaboration and Sustainability, Social Value and Value”. It further said that “Due to their experience and from evidence gained from the stakeholder engagement undertaken to inform future service specification, the following criteria were agreed and weightings applied” (and the key award criteria and their weightings were then listed).⁴⁶
95. The Panel notes that commissioners are expected to develop and maintain their knowledge of relevant providers “including an understanding of their ability to deliver services” as part of their planning work.⁴⁷ However, there are no specific stakeholder engagement requirements in the PSR regulations or statutory guidance for commissioners when formulating the key criteria to be used in a competitive process. Given this, the Panel’s view is that there is no evidence that the Council, in formulating the key criteria, breached any stakeholder engagement requirements. As a result, the Panel finds that the Council, in formulating the key criteria, did not breach the PSR regulations and, in particular, the obligation to act fairly and transparently.

7.6 Choice of procurement process

96. This section sets out the Panel’s assessment of DHI’s concerns about the Council’s choice of procurement process.
97. DHI, in its representations to the Council, said that it was open to the Council to use Direct Award Process C (DAPC) instead of the competitive process. It said that it “strongly believes that choosing the competitive process over DAPC is inconsistent with the PSR’s core principles and objectives”.⁴⁸ In response, the Council said that as DHI was sub-contracted by HCRG, DHI was not the Council’s existing provider and therefore awarding the new contract to DHI under DAPC was not open to the Council.⁴⁹
98. The Panel notes that DAPC is not available where “the proposed contracting arrangements are materially different in character to the existing contract” (as per Regulation 6(10)(a)). The existing contract, for the purposes of determining whether the DAPC process is available to the Council, is the prime provider contract between

⁴⁴ DHI, *Representations letter to the Council*, 25 November 2024.

⁴⁵ DHI, *Representations letter to the Council*, 25 November 2024.

⁴⁶ B&NES Council, *Further Decision*, 9 December 2024.

⁴⁷ NHS England, *PSR Statutory Guidance*, p.9.

⁴⁸ DHI, *Representations letter to the Council*, 25 November 2024.

⁴⁹ B&NES Council, *Further Decision*, 9 December 2024.

the Council and HCRG for the delivery of public health, social care and housing services, which encompasses drug and alcohol services (see paragraph 30). (The “existing contract” is not the sub-contract between HCRG and DHI for drug and alcohol services because the Council is not a party to this contract.)

99. The Panel’s view is that the new contract for drug and alcohol services is “materially different in character” to the existing prime provider contract held by HCRG because of the wide range of services included in the prime provider contract and the more narrowly focused new contract for drug and alcohol services. Moreover, as noted by the Council, it is HCRG, not DHI, that holds the existing prime provider contract. For these reasons, DAPC was not an option that was available to the Council when selecting the provider selection process to be used for the new Drug and Alcohol Services contract. That is, the Panel’s view is that the Council did not err when deciding that DAPC was not available to it.
100. As a result, the Panel finds that the Council, in using the competitive process to select a provider did not breach the PSR regulations and, in particular, the obligation to act fairly, transparently and proportionately.

7.7 Service and provider sustainability

101. This section sets out the Panel’s assessment of DHI’s concerns about the impact of the Council’s provider selection decision on the sustainability of other services and on providers.
102. DHI told the Panel the outcome of the procurement “will have a very significant impact on the whole charity”⁵⁰ as a result of the loss in income, and that it could affect its ability to deliver community detox and supported housing services. DHI also said that the loss of this contract would result in a fractured provision of Mental Health Treatment Requirements (i.e. statutory court orders for those with a dual mental health and substance misuse issue) for patients in the criminal justice system who are returning to the community given that DHI is the current supplier of these other services.⁵¹
103. DHI, in its earlier representations to the Council, said that “the loss of this contract places DHI in a precarious position, which will have far-reaching implications for the wider community and other public services, including probation, police and health authorities. It will also affect several partner charities who rely on DHI’s facilities, often provided free of charge”.⁵²
104. Commissioners must consider five key criteria when selecting providers under the competitive process, one of which is “Integration, collaboration and service sustainability, that is the extent to which services can be provided in: (i) an integrated way (including with other health care services, health-related services or social care services); (ii) a collaborative way (including with providers and with persons providing health-related services or social care services); and (iii) a sustainable way (which

⁵⁰ DHI, *Information Sheet to the Panel*, 13 January 2025.

⁵¹ Meeting between the Panel and DHI, 21 January 2025.

⁵² DHI, *Representations letter to the Council*, 25 November 2024.

includes the stability of good quality health care services or service continuity of health care services)".⁵³

105. The PSR statutory guidance sets out additional detail on the Integration, collaboration and service sustainability criterion. It says that relevant authorities "must consider whether and how the decisions they make about which providers should provide services might impact on the stability and sustainability of the NHS locally".⁵⁴ In the following paragraphs, the Panel considers, first, the potential impact on other services (paragraphs 106106 to 110110), and second, the potential impact on providers (paragraphs 111111 to 115115).
106. In relation to the potential impact on other services, the statutory guidance says that "When assessing service sustainability, relevant authorities are expected to consider several factors, including but not limited to the:
 1. financial impact on other services;
 2. impacts on continuity of related services;
 3. potential impact on quality of other related and/or dependent services (including those arranged by other bodies) ...".⁵⁵
107. In response to the Panel's questions, the Council said that in preparing the business case for the new contract, it identified several inter-dependent, but separately commissioned, drug and alcohol services. It said that moving to a single contract for these services would, given the inter-related nature of these services, ensure their sustainability, their continuity, and the stability of service provision. The Panel notes that the Council's outline business case on substance use, dated November 2023, says that the business case was prepared "to ensure all and any interdependencies are managed".⁵⁶
108. The Council also said that the impact on the quality of drug and alcohol services from moving to a single contract was assessed in the provider selection process by asking bidders questions about their service delivery models and governance arrangements for quality assurance. The Council further said that once the new contract is in place it would monitor service quality on an ongoing basis through its quality assurance arrangements that encompass monitoring, evaluation and continuous improvement.
109. The Panel's view is that the evidence shows that the Council considered the potential impact on other services as part of its decision-making in relation to the provider selection process for the Drug and Alcohol Service.
110. The Panel also considered whether the potential impacts on other services that were identified by DHI (see paragraphs 102102 and 103103) indicated any serious flaws in the Council's assessment. The Panel's view is that the impacts identified by DHI are either unlikely to be material (e.g. any effects on other providers that use DHI facilities) or are capable of being mitigated by the Council or other commissioners (e.g. any effects on other services supplied by DHI). In this latter regard, the Council told the Panel about the financial monitoring arrangements it has in place with providers so that it has early warning of any possible impacts on other services, and the options

⁵³ PSR Regulation 5(c).

⁵⁴ NHS England, *PSR Statutory Guidance*, Annex D, p.55.

⁵⁵ NHS England, *PSR Statutory Guidance*, Annex D, p.55.

⁵⁶ B&NES Council, *Outline Business Case Substance Abuse*, November 2023, p.9.

available to it to ensure service continuity, such as taking services in-house and novating contracts to another provider.⁵⁷

111. In relation to the potential impact on providers, the statutory guidance says that “When assessing service sustainability, relevant authorities are expected to consider several factors, including but not limited to the:

...

4. stability and sustainability of other providers in the short, medium and long term;
5. impact on the ability of the wider market to provide required services in the future”.⁵⁸

112. The statutory guidance goes on to say that “Relevant authorities are expected to avoid destabilising providers through their decision making. If the proposals are likely to have a negative impact on the stability, viability or quality of other good quality services immediately or over time, relevant authorities are advised to consider whether this is justified by the wider benefits of the proposal”.⁵⁹

113. The Panel notes that the impact on providers was specifically taken into account by the Council in its assessment of risks for the outline business case. In particular, the risk of “Destabilisation of market providers and existing third-sector organisations” was scored against each of the options for commissioning the Drug and Alcohol Service that were considered in the business case.⁶⁰ The Council further told the Panel that it believed that its analysis in the lead up to its commissioning decision was reasonable and proportionate, and said that “it would not be possible, reasonable or proportionate for us have analysed the specific impact of our commissioning decision on every local provider”.⁶¹

114. The Panel’s view is that the evidence shows that the Council considered the potential impact on providers as part of its decision-making in relation to the provider selection process for the Drug and Alcohol Service.

115. The Panel also considered whether the potential impact on DHI of the Council’s provider selection decision (see paragraphs 102102 and 103103) indicated any serious flaws in the Council’s assessment. The Panel notes that the impact identified by DHI is acknowledged in the Council’s assessment of risks for the outline business case. The Panel also notes the loss of another significant contract by DHI with another Council meaning that any financial challenges faced by DHI do not solely result from the Council’s provider selection decision in relation to drug and alcohol services in Bath and North East Somerset. As a result, the Panel’s view is that the impacts identified by DHI do not indicate any serious flaws in the Council’s assessment.

116. Given the considerations set out above, the Panel finds that the Council, in its conduct of a competitive process, did not breach the PSR regulations and, in particular, the requirements of Regulation 11 which govern the conduct of a competitive process.

⁵⁷ Meeting between the Panel and B&NES Council, 21 January 2025.

⁵⁸ NHS England, *PSR Statutory Guidance*, Annex D, p.55.

⁵⁹ NHS England, *PSR Statutory Guidance*, Annex D, p.56.

⁶⁰ B&NES Council, *Outline Business Case Substance Abuse*, November 2023, p.47.

⁶¹ B&NES Council, *Response to Q7*.

8. Panel Advice

117. In summary, the Panel's findings on the provider selection process carried out by B&NES Council for its Drug and Alcohol Service are as follows:

- First, the Panel finds that the Council, in calculating the overall weighted score for DHI's proposal, did not breach the PSR regulations and, in particular, the obligation to act fairly.
- Second, the Panel finds that the Council, in evaluating bidders' responses to the social value questions, correcting the scoring formula for Q7 and not excluding the successful bidder based on its response to the social value questions, did not breach the PSR regulations and, in particular, the obligation to act fairly, transparently and proportionately.
- Third, the Panel finds that the Council, in evaluating responses to the Quality questions, did not breach the PSR regulations and, in particular, the obligation to act fairly and transparently.
- Fourth, the Panel finds that the Council, in selecting the evaluation panel, did not breach the PSR regulations and, in particular, the obligation to act fairly.
- Fifth, the Panel finds that the Council, in formulating the key criteria, did not breach the PSR regulations and, in particular, the obligation to act fairly and transparently.
- Sixth, the Panel finds that the Council, in using the competitive process to select a provider did not breach the PSR regulations and, in particular, the obligation to act fairly, transparently and proportionately.
- Finally, the Panel finds that the Council, in its conduct of a competitive process, did not breach the PSR regulations and, in particular, the requirements of Regulation 11 which govern the conduct of a competitive process.

118. Given the Panel's findings that B&NES Council did not breach the PSR regulations in selecting a provider for its Drug and Alcohol Service, the Panel has found no reason to advise the Council against continuing with the proposed contract award as originally intended.