

Independent Patient Choice and Procurement Panel

Review of a proposed contract award

Adult and Paediatric Orthotics and Wheelchair Service in Leicester, Leicestershire and Rutland

Case Reference: CR0010-25

18 March 2025

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1. Executive Summary

1. On 3 February 2025, AJM Healthcare (AJM), a wheelchair services provider to the NHS, asked the Independent Patient Choice and Procurement Panel (the Panel) to advise on the selection of a provider by Leicester, Leicestershire and Rutland Integrated Care Board (LLR ICB) for its Adult and Paediatric Orthotics and Wheelchair Service in Leicester, Leicestershire and Rutland (the Orthotics and Wheelchair Service). The Panel accepted AJM's request on 5 February 2025 in accordance with its case acceptance criteria.
2. Opcare Limited (Opcare) is the existing provider of the Orthotics and Wheelchair Service. The orthotics element of the service (the orthotics service) includes diagnosis, treatment and fitting of orthoses, and repair and maintenance. The wheelchair element of the service (the wheelchair service) includes assessment of patient needs, provision of wheelchairs and associated specialist seating, and repair and maintenance.
3. With Opcare's contract for the Orthotics and Wheelchair Service due to expire on 26 October 2025, LLR ICB considered whether it could award a new contract under the Provider Selection Regime. LLR ICB concluded that the orthotics service was a relevant health care service for the purposes of the Provider Selection Regime, but there was some uncertainty about whether this was the case for the wheelchair service.
4. Given this uncertainty, LLR ICB considered the mixed procurement provisions of the PSR regulations. A mixed procurement is where a commissioner procures, as part of a single contract, both relevant health care services and other goods or services. Under the PSR regulations, contracts for mixed procurements can be awarded under the Provider Selection Regime, but only if they meet certain conditions.
5. LLR ICB concluded that in the event that the provider selection process for the Orthotics and Wheelchair Service was classified as a mixed procurement, due to the wheelchair service not being a relevant health care service, it was still able to award a new contract under the Provider Selection Regime. Following this conclusion, LLR ICB decided to award a new contract to Opcare under the PSR Regulations using Direct Award Process C.
6. On 18 December 2024, LLR ICB published a Contract Notice on the Find a Tender Service announcing this intention. On 2 January 2025, AJM made representations to LLR ICB about its provider selection process. In response, LLR ICB reviewed its contract award decision and wrote to AJM on 27 January 2025 confirming its decision to award the contract to Opcare as originally intended.
7. AJM, in its representations to the Panel, suggests that LLR ICB incorrectly assessed the mixed procurement provisions of the PSR regulations. It believes that LLR ICB should have concluded that it was unable to select a provider under the Provider Selection Regime, and should have instead selected a provider under the Public Contracts Regulations.
8. The Panel's assessment focuses on whether the wheelchair service is a relevant health care service for the purposes of the PSR regulations and, as a result, whether

the provider selection process for the Orthotics and Wheelchair Service is a mixed procurement.

9. The Panel's findings are as follows:
 - First, any conclusion as to whether the wheelchair service is a relevant health care service depends on whether the service's characteristics are consistent with the definition of a health care service under the PSR regulations.
 - Second, the lack of CQC registration for the existing provider of the Orthotics and Wheelchair Service cannot be taken, in the circumstances of this particular case, as inferring that the wheelchair service is not a health care service.
 - Third, the service specification, pathways for patients accessing the service, and clinician involvement in delivering the service, all support a conclusion that the wheelchair service is a health care service.
 - Finally, the balance of expenditure on clinical services and other goods and services in the wheelchair service is not grounds for finding that the wheelchair service is not a health care service.
10. The Panel concludes, taking each of these findings into account, that the wheelchair service can be regarded as a health care service for the purposes of the PSR regulations. The Panel further concludes that this allows the wheelchair service to be treated as a *relevant* health care service for the purposes of the PSR regulations. This means that the Orthotics and Wheelchair Service can be regarded as only encompassing relevant health care services.
11. As a result, the requirements of the mixed procurement provisions of the PSR regulations, in determining whether a contract can be awarded under the Provider Selection Regime, do not apply to the new contract for the Orthotics and Wheelchair Service. It follows that any question of whether LLR ICB correctly applied the mixed procurement provisions falls away.
12. Given this conclusion, the Panel finds that there has been no breach of the PSR regulations and there is no reason to advise LLR ICB against continuing with the proposed contract award as originally intended.

2. Introduction

13. On 3 February 2025, AJM Healthcare (AJM), a wheelchair services provider to the NHS,¹ asked the Independent Patient Choice and Procurement Panel (the Panel) to advise on the selection of a provider by Leicester, Leicestershire and Rutland Integrated Care Board (LLR ICB) for its Adult and Paediatric Orthotics and Wheelchair Service in Leicester, Leicestershire and Rutland (the Orthotics and Wheelchair Service).
14. The Panel accepted AJM's request on 5 February 2025 in accordance with its case acceptance criteria. These criteria set out both eligibility requirements and the

¹ Further information on AJM can be found on its website at <https://www.ajmhealthcare.com/>.

prioritisation criteria the Panel will apply when it is approaching full caseload capacity.² AJM's request met the eligibility requirements, and as the Panel was not approaching full capacity, there was no need to apply its prioritisation criteria.

15. 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;
 - Alison Tonge, Case Panel Member; and
 - Sally Collier, Case Panel Member.³
16. The Case Panel's review has been carried out in accordance with the Panel's Standard Operating Procedures ("procedures").⁴
17. This report, which provides the Panel's assessment and advice to LLR ICB, 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 events leading up to, and including, the selection of a provider for the Orthotics and Wheelchair Service;
 - Section 5 sets out the concerns raised by AJM;
 - Section 6 sets out the issues considered by the Panel and its assessment of these issues; and
 - Section 7 sets out the Panel's findings and advice to LLR ICB.⁵
18. The Panel would like to record its thanks to both LLR ICB and AJM for their assistance and cooperation during this review.

3. Role of the Panel

19. The PSR regulations, issued under the Health and Care Act 2022, put into effect the Provider Selection Regime for NHS and local authority commissioning of health care services. The PSR regulations came into force on 1 January 2024.⁶
20. 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.

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.

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/>.

21. 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 once a commissioner has completed a review of its original decision.
22. 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 this review

23. LLR ICB is one of 42 ICBs in the NHS in England. It is a statutory body responsible for planning health services to meet the health needs of the Leicester, Leicestershire and Rutland population and managing the budget for the provision of NHS services to this population.⁷
24. Opcare Limited (Opcare) is the existing provider of the Orthotics and Wheelchair Service.⁸ The orthotics element of the service (the orthotics service) includes diagnosis, treatment and fitting of orthoses, and repair and maintenance. The wheelchair element of the service (the wheelchair service) includes assessment of patient needs, provision of wheelchairs and associated specialist seating, and repair and maintenance.⁹
25. With Opcare's contract due to expire on 26 October 2025, LLR ICB considered whether it was able to award a new contract for the Orthotics and Wheelchair Service under the Provider Selection Regime. LLR ICB concluded that the orthotics service was a relevant health care service for the purposes of the Provider Selection Regime, but there was some uncertainty about whether this was the case for the wheelchair service.
26. Given this uncertainty, LLR ICB considered the mixed procurement provisions of the PSR regulations. A mixed procurement is where a commissioner procures, as part of a single contract, both relevant health care services and other goods or services. Under the PSR regulations, contracts for mixed procurements can be awarded under the Provider Selection Regime, but only if they meet certain conditions. LLR ICB concluded that in the event that the provider selection process for the Orthotics and Wheelchair Service was classified as a mixed procurement, due to the wheelchair service not being a relevant health care service, it was still able to award a new contract under the Provider Selection Regime.
27. Following this conclusion, LLR ICB assessed whether it could award Opcare a new contract for the Orthotics and Wheelchair Service under Direct Award Process C of the PSR regulations. LLR ICB considered Opcare's suitability and ability to continue providing the service. It concluded that the proposed contract was not changing materially, and that Opcare was likely to satisfy the proposed contract to a sufficient

⁷ Further information on LLR ICB can be found on its website at <https://leicesterleicestershireandrutland.icb.nhs.uk/>.

⁸ Opcare is a provider of prosthetic, orthotics, posture and mobility services. Further information on Opcare can be found on its website at <https://opcare.co.uk/>.

⁹ LLR ICB, *Integrated Orthotic Services & Integrated Wheelchair and Posture Services service specifications*, 2018/19.

standard. As a result, LLR ICB decided to award the new contract to Opcare under Direct Award Process C.¹⁰

28. On 18 December 2024, LLR ICB published a Contract Notice on the Find a Tender Service announcing this intention. The new contract is intended to commence on 1 October 2025 and has a 3-year duration with the option of a 2-year extension. It has an indicative value of £31.5 million across the full term (including the 2-year extension).¹¹
29. On 2 January 2025, prior to the expiry of the standstill period, AJM made representations to LLR ICB about the provider selection process. In response, LLR ICB reviewed its contract award decision and wrote to AJM on 27 January 2025 confirming its decision to award the contract to Opcare as originally intended.
30. On 3 February 2025, following receipt of LLR ICB's response, AJM requested that the Panel review LLR ICB's provider selection decision. The Panel accepted AJM's request on 5 February 2025. On being made aware of this, LLR ICB 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 AJM Healthcare

31. The concerns raised by AJM regarding the provider selection process were as follows:

“The ICB has incorrectly applied the mixed procurement test, i.e. the main subject-matter of the procurement is not relevant health care services. Per the ICB's correspondence, the contract value is comprised of:

- 41% orthotics (in scope)
- 47% wheelchairs (not in-scope, as the majority of spending relates to medical equipment procurement and maintenance)
- 12% workforce and corporate costs

The ICB has erroneously allocated the 12% workforce and corporate costs entirely to the orthotics element. A proportioned split of the workforce and corporate costs results in an overall split of circa 46.6% orthotics and 53.4% wheelchairs, and an equal split is much the same. Therefore, this procurement primarily relates to not in-scope services.”

6. Panel Assessment

32. AJM, in its representations to the Panel, suggests that LLR ICB incorrectly assessed the mixed procurement provisions of the PSR regulations. It believes that LLR ICB should have concluded that it was unable to select a provider under the Provider Selection Regime, and should have instead selected a provider under the Public Contracts Regulations.¹²

¹⁰ LLR ICB, *Decision making record, Orthotics & Wheelchairs*, 12 December 2024.

¹¹ LLR ICB, *Contract Award Notice on Find a Tender Service*, 18 December 2024.

¹² The consequence of LLR ICB selecting a provider under the Public Contracts Regulations is that it would have been required to conduct a competitive selection process. Under the PSR regulations LLR ICB was able to directly award the contract to Opcare.

33. The Panel’s assessment focuses on whether the wheelchair service is a relevant health care service for the purposes of the PSR regulations and, as a result, whether the provider selection process for the Orthotics and Wheelchair Service is a mixed procurement.¹³
34. The following points are considered in assessing whether the wheelchair service is a relevant health care service for the purposes of the PSR regulations:
 - first, the definition of “relevant health care services” under the PSR regulations and the application of its CPV code requirements to wheelchair services (Section 6.1);
 - second, the Care Quality Commission (CQC) registration status of Opcare and AJM (Section 6.2);
 - third, the service specification for the wheelchair service, including patient pathways and clinician involvement in service delivery (Section 6.3); and
 - finally, the share of expenditure on clinical services and other goods and services in the wheelchair service (Section 6.4).

6.1 Definition of relevant health care services in the PSR regulations

35. The PSR regulations apply “where a relevant authority procures relevant health care services for the purposes of the health service in England, whether alone or as part of a mixed procurement” (Regulation 3).
36. Relevant health care services are defined in the PSR regulations as meaning “health care services which fall within one or more of the CPV [common procurement vocabulary] codes specified in the table in Schedule 1”. The PSR regulations also refer to the definition of health care services at s.150 of the Health and Social Care Act 2012, which says that “‘health care’ means all forms of health care provided for individuals, whether relating to physical or mental health”.
37. The PSR statutory guidance says “health care services subject to this regime only includes those services that provide health care (whether treatment, diagnosis or prevention of physical or mental health conditions) to individuals (i.e. patients or service users) or groups of individuals (e.g. where treatment is delivered to a group such as in the form of group therapy). The PSR, however, only covers ‘relevant’ health care services, defined by the CPV codes set out in Schedule 1 to the Regulations”.¹⁴
38. Given the above, there are two elements to any consideration of whether the wheelchair service is a “relevant health care service” for the purposes of the PSR regulations:
 - first, whether the wheelchair service meets the definition of a health care service as set out in the PSR regulations and related guidance; and
 - second, whether the wheelchair service falls within one of the CPV codes set out in Schedule 1 of the regulations.

¹³ It is common ground between the parties that the orthotics element of the Orthotics and Wheelchair Service is a health care service.

¹⁴ PSR Statutory Guidance, p.6.

39. Turning to the issue of CPV codes first, by way of background, CPV codes were introduced in the European Union, including the UK, in 1993 as a classification system to standardise the way that public sector contracting authorities, not just in health care, describe contracts. The intention was to make it easier for suppliers to search for contract opportunities that may be of interest. The use of CPV codes in contract notices was made mandatory in 2006.¹⁵
40. Each CPV code contains nine digits and a short title. The first two digits of the code identify a division, the first three digits a group, the first four digits a class and the first five digits a category. The remaining three digits give a greater degree of precision within each category. (The ninth digit is a verification digit.)¹⁶ There are more than 9,000 CPV codes in total.
41. Schedule 1 of the PSR regulations contains 67 CPV codes, including one group-level code “85100000-0: Health services”, several class-level codes, and many detailed codes, such as “85111600-6: Orthotic services”. LLR ICB used two CPV codes in the procurement notices for its Orthotics and Wheelchair Service, namely “85111600: Orthotic services” as the main code and “85100000: Health services” as an additional code.
42. The Panel notes that there is no specific CPV code for wheelchair services either in the PSR schedule or more generally. To the extent that CPV codes refer to wheelchairs, nearly all of these codes fall within the category code “33193000-9: Invalid carriages, wheelchairs and associated devices”, which falls within the wider class code “33190000-8: Miscellaneous medical devices and products”.¹⁷
43. The Panel’s view, based on where CPV codes that reference wheelchairs are located in the CPV classification system, is that these codes refer to the purchase of wheelchairs as standalone products (e.g. when a hospital buys wheelchairs for transporting patients on its premises).¹⁸
44. The PSR statutory guidance recognises that specific codes may not always be available for health care services that fall within the scope of the PSR regulations. However, it also says that “Relevant authorities must use the most specific CPV code they can, rather than an overarching one ... However, as the list of CPV codes does not cover all types of health care services, relevant authorities may in some situations use the overarching parent code for ‘health services’ when a more detailed CPV code is not available. If a more detailed CPV code is available, but not included in the list below [i.e. in the PSR schedule], then the service is out of scope”.¹⁹
45. The Panel’s view is that those CPV codes which refer to wheelchairs, and are not in the PSR schedule, do not encompass services that involve the assessment of the

¹⁵ Ramboll, *Review of the Functioning of the CPV Codes/System*, Final Report, December 2012.

¹⁶ European Union, *EU tenders, Common procurement vocabulary (CPV)*, <https://ted.europa.eu/en/simap/cpv>.

¹⁷ These CPV codes are: 33193000-9: Invalid carriages, wheelchairs and associated devices; 33193100-0: Invalid carriages and wheelchairs; 33193120-6: Wheelchairs; 33193121-3: Motorised wheelchairs; 33193200-1: Parts and accessories for invalid carriages and wheelchairs; 33193220-7: Parts and accessories for wheelchairs; 33193221-4: Wheelchair cushions; 33193222-1: Wheelchair frames; 33193223-8: Wheelchair seats; 33193224-5: Wheelchair wheels; and 33193225-2: Wheelchair tyres.

¹⁸ One further CPV code to reference wheelchairs is “50421100-3: Repair and maintenance services of wheelchairs”. This falls within the wider class code “50420000: Repair and maintenance services of medical and surgical equipment”. The Panel’s view is that, as with other CPV codes that reference wheelchairs, this code does not encompass wider services for patients with longer-term mobility requirements whose needs must be assessed when being supplied with a wheelchair.

¹⁹ PSR Statutory Guidance, Annex A, p.34.

wheelchair requirements for patients with longer-term mobility needs and the supply of bespoke wheelchairs to these patients (i.e. services akin to that provided by LLR ICB's wheelchair service). As a result, the Panel does not consider that the presence of CPV codes that refer to wheelchairs and sits outside the PSR schedule is sufficient to conclude that LLR ICB's wheelchair service is not a relevant health care service.

46. The Panel's view is that any conclusion as to whether the wheelchair service is a relevant health care service depends on whether the service's characteristics are consistent with the definition of a health care service under the PSR regulations. If this assessment concludes that the wheelchair service is a health care service, then the use of the parent CPV code for health services will be appropriate, allowing the wheelchair service to be treated as a *relevant* health care service for the purposes of the PSR regulations.

6.2 CQC registration status of Opcare and AJM Healthcare

47. The Panel has previously said that it generally expects services falling within the scope of the PSR regulations (other than prevention services arranged by local authorities) to be supplied by CQC registered providers.²⁰

48. This is based on the PSR Statutory Guidance which says:

"In scope health care services included services provided by NHS providers, other public bodies, local authorities, and providers within the voluntary, community and social enterprise (VCSE) and independent sectors. In broad terms, these are services arranged by the NHS such as hospital, community, mental health, primary healthcare, palliative care, ambulance and patient transport services for which the provider requires Care Quality Commission (CQC) registration.

"This definition purposefully excludes non-health care or health-adjacent services from being arranged under the regime. This means, for example, that business consultancy, catering, administrative services, patient transport services that do not require CQC registration or other services that may support health care infrastructure, but do not provide health care directly to people, must not be arranged under the regime (other than when legitimately part of a mixed procurement)".²¹

49. The Panel notes that neither Opcare, the incumbent provider, nor AJM are registered with the CQC. LLR ICB told the Panel that its previous provider of wheelchair services, prior to 2018, had been registered with the CQC. When Opcare, which is not CQC registered, took over the contract, LLR ICB's predecessor (Leicester City Clinical Commissioning Group) sought assurance from Opcare on this issue. Opcare pursued the matter with the CQC, which confirmed that registration was not required for wheelchair (and orthotics) services.²²

50. The Panel notes that the clinicians who provide LLR ICB's wheelchair service are primarily occupational therapists and physiotherapists and CQC guidance says, in relation to occupational therapists and physiotherapists, "if you are one of these

²⁰ Independent Patient Choice and Procurement Panel, *Review of a proposed contract award: All Age Continuing Care (AACC) Service for Staffordshire and Stoke-on-Trent*, September 2024, paras 66-79.

²¹ PSR Statutory Guidance, p.7.

²² LLR ICB, *Response to Panel questions*, 17 February 2025.

professionals and you run a standalone treatment service, you do not need to register for treatment of disease, disorder or injury”.²³

51. As a result, the Panel’s view is that, in the circumstances of this case, the lack of CQC registration for the provider of LLR ICB’s Orthotics and Wheelchair Service cannot be taken as inferring that the wheelchair service is not a health care service.

6.3 Service specification, patient pathways and clinical workforce

52. In further assessing whether LLR ICB’s wheelchair service could reasonably be regarded as a health care service, the Panel considered the ICB’s service specification, pathways for patients accessing the service, and clinician involvement in delivering the service.
53. In relation to the service specification, LLR ICB told the Panel that “The services are provided as part of a health service ... [and] the service consists of the provision of health care to individuals or groups of individuals, evidenced by the service specifications”.²⁴
54. LLR ICB also told the Panel that “the service specification is based on the NHS England Model Service Specification for Wheelchair and Posture Services, which relies upon Healthcare Standards for NHS-Commissioned Wheelchair Services”.²⁵ These standards describe “the minimum national standards and best practice that have been agreed for NHS Wheelchair and Seating Services throughout the UK”, and describe the definition of the services as the provision of “essential mobility and associated postural management based on the holistic needs of the referred client”.²⁶
55. The Panel identified several elements in the LLR ICB’s service specification that support a conclusion that its wheelchair service is a health care service. These elements, set out below, show that the service includes both diagnostic (i.e. patient assessment) and treatment elements (i.e. the supply of a bespoke wheelchair that enables patient mobility) as per the definition of a health care service set out in paragraph 36.
 - Outcomes for the wheelchair service are identified as including a “timely, standardised, holistic assessment process”. The aim of the wheelchair service is described as including “timely access to appropriate assessment”.
 - The scope of the wheelchair service includes maintaining “up to date records on assessment, provision, reassessment” and the provider must be able to demonstrate offering a Personal Wheelchair Budget “to all patients being assessed”.
 - In relation to children using the service, the specification says “chairs will be tailored to the individual needs of the child ... The Provider will clinically assess

²³ CQC, *Scope of registration, Treatment of disease, disorder or injury*, <https://www.cqc.org.uk/guidance-providers/scope-registration/regulated-activities/treatment-disease-disorder-or-injury>.

²⁴ LLR ICB, *Response to Panel questions*, 17 February 2025.

²⁵ Panel meeting with LLR ICB, 27 February 2025.

²⁶ National Wheelchair Managers Forum, *Healthcare Standards for NHS-commissioned Wheelchair Services*, 2016, available at <https://www.wheelchairmanagers.org.uk/downloads/Healthcare-Standards-NHS-Commissioned-Wheelchair-Services-Final-April-2015.pdf>.

the seating and postural needs of the children and young people ... The Provider will have expert knowledge in assessment of complex postural needs”.

- In relation to staffing the service, “The Provider must offer assessments by appropriate skilled and experienced practitioners particularly for Service Users with complex needs requiring bespoke equipment”. Further, “the Provider will triage referrals with a multi-disciplinary team of occupation therapists, wheelchair technicians and physiotherapists” and “the prescription that generates the product order is produced by an appropriately trained and authorised clinician”.²⁷

56. LLR ICB told the Panel, in relation to staffing, that services are “provided by a combination of clinical (HCPC-registered occupational therapists and physiotherapists) and technical staff, all of whom work to clinically-determined triage, assessment and prescribing protocols and clinical governance standards”. It said that the staffing ratio of clinical versus technical staff “is 2:3 for Wheelchair services”, and that “48% of patients have medium, high or specialist needs, which rely heavily on registered clinicians”.²⁸

57. In relation to patient pathways, the Panel notes that the service specification identifies a wide range of clinicians who can make referrals to the wheelchair service, including GPs and other primary care professionals, occupational therapists, physiotherapists, community nurses, rehabilitation teams, community paediatricians, hospital inpatient teams. Referrals can also be made by appropriately qualified social care staff.²⁹ Data supplied by LLR ICB shows that the vast majority of referrals are from clinicians, with two thirds of referrals from GPs, occupational therapists, physiotherapists and allied healthcare professionals. Very few referrals are from non-clinical professionals.³⁰

58. The Panel’s view is that these three factors, namely the service specification, pathways for patients accessing the service, and clinician involvement in delivering the service, all support a conclusion that the wheelchair service is a health care service. In particular: (i) the service specification shows that patients have their needs assessed (which is akin to a diagnosis), and that treatment is being provided, through the supply of a wheelchair specifically tailored to their needs; (ii) clinically qualified and registered staff deliver assessments and prescribe the wheelchair needed by each patient; and (iii) patient pathways for accessing the service are primarily clinical in nature with referrals sourced from other clinicians.

6.4 Balance of expenditure on goods and services

59. AJM told the Panel that the wheelchair service was “not in-scope, as the majority of spending relates to medical equipment procurement and maintenance”. LLR ICB told the Panel that approximately 80% of expenditure in the portion of the Orthotics and Wheelchair Services contract which can be directly attributed to the wheelchair service related to equipment,³¹ reflecting the high cost of wheelchairs.

²⁷ LLR ICB, *Service Specifications: “Integrated Orthotic Services for adults and children”; “Integrated Wheelchair and Posture Services for children, young people and adults”*, 2018/19.

²⁸ Panel meeting with LLR ICB, 27 February 2025.

²⁹ LLR ICB, *Service Specifications: “Integrated Orthotic Services for adults and children”; “Integrated Wheelchair and Posture Services for children, young people and adults”*, 2018/19.

³⁰ LLR ICB, *Response to Panel questions*, 13 March 2025.

³¹ LLR ICB, *Response to Panel questions*, 17 February 2025.

60. The Panel also notes that approximately 68% of expenditure in the portion of the Orthotics and Wheelchair Services contract which can be directly attributed to the orthotics service related to equipment.³² The Panel also considers it likely that there are other health care services where a majority of expenditure is on medical equipment or analogous items, such as drugs or clinical supplies.
61. The Panel's view is that the share of expenditure on equipment is not sufficient to determine whether a service is a health care service. The starting point must be an assessment of whether a service meets the definition of a health care service as set out in the PSR regulations. That is, whether it involves the delivery of treatment, diagnosis or prevention of physical or mental health conditions to individuals or groups of individuals.
62. Where a large proportion of a service's expenditure is on equipment, then it may be appropriate to assess whether this equipment could be procured separately from the service in question. The Panel notes that, in theory, it might be possible for LLR ICB to procure in separate parts: (i) an assessment service for patients needing wheelchairs; and (ii) the wheelchairs to be supplied to patients through this assessment service. However, the Panel's view is that such an arrangement is likely to involve considerable practical difficulties. Moreover, in reviewing recent wheelchair-related procurements in the NHS, the Panel has not found any instances of such an arrangement.³³
63. For this reason, the Panel considers that the balance of expenditure on clinical services and other goods and services in LLR ICB's wheelchair service is not grounds for finding that the wheelchair service is not a health care service.

7. Panel Advice

64. In summary, the Panel's findings on the provider selection process carried out by LLR ICB for the Orthotics and Wheelchair Service are as follows:
 - First, any conclusion as to whether the wheelchair service is a relevant health care service depends on whether the service's characteristics are consistent with the definition of a health care service under the PSR regulations.
 - Second, the lack of CQC registration for the existing provider of the Orthotics and Wheelchair Service cannot be taken, in the circumstances of this particular case, as inferring that the wheelchair service is not a health care service.
 - Third, the service specification, pathways for patients accessing the service, and clinician involvement in delivering the service, all support a conclusion that the wheelchair service is a health care service.
 - Finally, the balance of expenditure on clinical services and other goods and services in the wheelchair service is not grounds for finding that the wheelchair service is not a health care service.

³² LLR ICB, *Response to Panel questions*, 17 February 2025.

³³ The Panel identified ten wheelchair services related procurements by ICBs between 2023 and 2025. Each wheelchair service that was procured was an integrated service that included both an assessment of patient needs and the supply of an appropriate wheelchair to meet those needs.

65. The Panel concludes, taking each of these findings into account, that the wheelchair service can be regarded as a health care service for the purposes of the PSR regulations. The Panel further concludes that, for the reasons set out in paragraphs 42 to 45, the wheelchair service is a *relevant* health care service under the PSR regulations. This means that the Orthotics and Wheelchair Service can be regarded as only encompassing relevant health care services.
66. As a result, the requirements of the mixed procurement provisions of the PSR regulations, in determining whether a contract can be awarded under the Provider Selection Regime, do not apply to the new contract for the Orthotics and Wheelchair Service. It follows that any question of whether LLR ICB correctly applied the mixed procurement provisions falls away.
67. Given this conclusion, the Panel finds that there has been no breach of the PSR regulations and there is no reason to advise LLR ICB against continuing with the proposed contract award as originally intended.