

Independent Patient Choice and Procurement Panel

Review of a proposed contract award

Targeted Lung Healthcare Checks for Shropshire, Telford and Wrekin

Case Reference: CR0015-25

19 May 2025

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1. Executive Summary

1. On 28 March 2025, Medispace Diagnostics Limited (Medispace) asked the Panel to advise on the selection of a provider by NHS Shropshire, Telford and Wrekin Integrated Care Board (STW ICB) for its Targeted Lung Healthcare Checks service for Shropshire, Telford and Wrekin.
2. The Panel accepted Medispace's request on 2 April 2025 in accordance with its case acceptance criteria. These criteria set out both the eligibility requirements and the prioritisation criteria the Panel will apply when it is approaching full caseload capacity. Medispace's request met the eligibility requirements, and as the Panel had sufficient capacity, and no immediate prospect of reaching full capacity, there was no need to apply the prioritisation criteria.
3. Targeted Lung Health Checks (TLHC), recently renamed Lung Cancer Screening, is a new service that STW ICB is commissioning for its population, in line with the NHS England National Cancer Programme. The service involves identifying people at high-risk of having lung cancer, offering screening to these people to enable early detection and treatment, and providing on-site smoking cessation advice.
4. On 8 July 2024, STW ICB published a Prior Information Notice seeking expressions of interest from potential providers suitably qualified and experienced in TLHC or similar screening services. STW ICB received nine completed questionnaires from potential providers, following which it determined that the most appropriate procurement route was a competitive process, given the "interest and substantial market".
5. On 29 August 2024, STW ICB published a Contract Notice setting out its intention to follow the competitive process to select a provider to deliver TLHC across Shropshire, Telford and Wrekin. The contract notice stated that the contract term is envisaged for an initial period of 2 years commencing on 1 March 2025, with the option to extend for a further 2 years, with an estimated total contract value, including the extension, of approximately £8.4 million (excluding VAT).
6. STW ICB received bids from five interested providers, including Medispace. On 25 November 2024, STW ICB wrote to bidders informing them of the outcome of the tender and published a Contract Award Notice announcing that the successful bidder was Alliance Medical Limited (Alliance). Medispace's proposal was ranked fourth.
7. On 5 December 2024, Medispace made representations to STW ICB, prior to the end of the standstill period, raising concerns about the provider selection process and requesting further information. On 21 March 2025, STW ICB – having reviewed Medispace's representations – wrote to Medispace providing it with a number of documents in response to Medispace's information request, and at the same time communicating its further decision on the provider selection process, namely to proceed with the contract award to Alliance.
8. The Panel finds that STW ICB, in carrying out the provider selection process for the TLHC service in Shropshire, Telford and Wrekin, breached Regulations 12(4)(a) and 12(4)(b) by not promptly disclosing the information requested by Medispace during the representations review process and thus not affording Medispace the opportunity to explain or clarify its representations.

9. The Panel does not, however, find that STW ICB breached the PSR regulations in any other respect during the provider selection process for the TLHC service. In particular, the Panel finds that:
- first, STW ICB did not breach the PSR regulations in its evaluation of Medispace's bid, including its obligations under Regulation 4, which requires it to act fairly, and its obligations under Regulation 5, which require it to consider service quality as part of the key criteria;
 - second, STW ICB did not breach the PSR regulations in relation to the concerns labelled by Medispace as "fragmentation of the moderation process" including, in particular, its obligation under Regulation 4 to act transparently, fairly and proportionately;
 - third, STW ICB did not breach the PSR regulations in relation to the concerns labelled by Medispace as "subjective evaluation and omission of bid content" its obligations under Regulation 4, which requires it to act fairly, and its obligations under Regulation 5, which require it to consider service quality as part of the key criteria;
 - fourth, STW ICB did not breach the PSR regulations in relation to the concerns labelled by Medispace as "lack of consistent documentation" including, in particular, its obligations under Regulation 24 in relation to the keeping of records concerning its decisions in the provider selection process;
 - fifth, STW ICB did not breach the PSR regulations in relation to the concerns labelled by Medispace "limited oversight and inconsistent scoring" including, in particular, its obligations under Regulation 4 to act transparently, fairly and proportionately; and
 - finally, STW ICB did not breach the PSR regulations by not taking into account the external performance data cited by Medispace including, in particular, its obligations under Regulation 4 to act transparently, fairly and proportionately.
10. Given the Panel's conclusion that STW ICB breached its obligations under Regulations 12(4)(a) and 12(4)(b), three options are open to the Panel. The Panel may advise that:
- the breaches had no material effect on STW ICB's selection of a provider and it should proceed with awarding the contract as originally intended;
 - STW ICB should return to an earlier step in the provider selection process to rectify the issues identified by the Panel; or
 - STW ICB should abandon the current provider selection process.
11. The Panel notes that STW ICB's disclosure of the information requested by Medispace at the time of communicating its further decision on the provider selection process allowed Medispace to have its additional concerns arising from this information considered by the Panel as part of this review. The Panel has not found any breaches of the PSR regulations arising from these additional concerns. As a result, the Panel's view is that the STW ICB's breach of Regulations 12(4)(a) and 12(4)(b) have not had a material effect on STW ICB's selection of a provider.

12. As a result, the Panel's advice is that STW ICB should proceed with awarding the contract for the TLHC service in Shropshire, Telford and Wrekin as originally intended.

2. Introduction

13. On 28 March 2025, Medispace Diagnostics Limited (Medispace)¹ asked the Panel to advise on the selection of a provider by NHS Shropshire, Telford and Wrekin Integrated Care Board (STW ICB) for its Targeted Lung Healthcare Checks service for Shropshire, Telford and Wrekin.
14. The Panel accepted Medispace's request on 2 April 2025 in accordance with its case acceptance criteria. These criteria set out both the eligibility requirements and the prioritisation criteria the Panel will apply when it is approaching full caseload capacity.² Medispace's request met the eligibility requirements, and as the Panel had sufficient capacity, and no immediate prospect of reaching full capacity, there was no need to apply the 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
 - Carole Begent, 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 provides the Panel's assessment and advice to STW ICB and is set out as follows:
- Section 3 briefly describes the role of the Panel;
 - Section 4 sets out the background to the Panel's review, including the events leading up to, and including, the provider selection process;
 - Section 5 sets out the concerns raised by Medispace;
 - 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 STW ICB.⁵
18. The Panel would like to record its thanks to both STW ICB and Medispace for their assistance and cooperation during this review.

¹ Medispace is a provider of mobile MRI and CT units that can be supplied either with or without operating staff. Further information can be found on Medispace's website at <https://www.medispace.eu/site/home>.

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.

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.
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 following a commissioner's 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. NHS Shropshire, Telford and Wrekin ICB is one of 42 ICBs in the NHS in England and is part of Shropshire, Telford and Wrekin Integrated Care System (ICS). It is a statutory body responsible for planning health services to meet the health needs of the Shropshire, Telford and Wrekin population and managing the budget for the provision of NHS services to this population.⁷
24. Targeted Lung Health Checks (TLHC), recently renamed Lung Cancer Screening, is a new service that STW ICB is commissioning for its population, in line with the NHS England National Cancer Programme.⁸ The service involves identifying people at high-risk of having lung cancer, offering screening to these people to enable early detection and treatment, and providing on-site smoking cessation advice.
25. On 8 July 2024, STW ICB published a Prior Information Notice seeking expressions of interest from potential providers suitably qualified and experienced in TLHC or similar screening services. The notice stated that the market engagement exercise was "to enable the ICB to ascertain the current state of the provider market, which will influence future commissioning and procurement direction".⁹ STW ICB received nine completed questionnaires from potential providers, following which it determined that the most appropriate procurement route was a competitive process, given the "interest and substantial market".¹⁰

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 STW ICB can be found on its website at <https://www.shropshiretelfordandwrekin.nhs.uk/>.

⁸ STW ICB, *Presentation to the Panel*, 1 May 2025.

⁹ STW ICB, *Prior Information Notice*, Find a Tender Service, 8 July 2024.

¹⁰ STW ICB, *Presentation to the Panel*, 1 May 2025.

26. On 29 August 2024, STW ICB published a Contract Notice setting out its intention to follow the competitive process to select a provider to deliver TLHC across Shropshire, Telford and Wrekin. The contract notice stated that the contract term is envisaged for an initial period of 2 years commencing on 1 March 2025, with the option to extend for a further 2 years, with an estimated total contract value, including the extension, of approximately £8.4 million (excluding VAT).¹¹
27. Bidders were asked to submit their proposals by 30 September 2024, and in doing so respond to 38 questions on the key criteria. This included seven questions on quality and innovation (Questions A1-A7), two questions on value (Questions B1-B2), nineteen questions on integration, collaboration and service sustainability (Questions C1-C19), five questions on improving access, reducing health inequalities and facilitating choice (Questions D1-D5) and five questions on social value (Questions E1-E5). STW ICB received bids from five interested providers, including Medispace.
28. In evaluating and scoring bidders' proposals, STW ICB adopted the following process. Bidders' responses to each question were, as a first step, scored individually by the evaluators for each question. The evaluators for each question were then brought together to reach an agreed score for the question and an agreed rationale for that score (a process known as 'moderation'). Following this process, a "Presentation / Clarification Interview" was then held with bidders, with each bidder given the opportunity to make a presentation about their proposal. Bidders were also asked a series of questions, common to all bidders, about their proposal. After the interviews with bidders, STW ICB carried out a further moderation process for three questions where bidders' answers were re-scored taking into account the information elicited through the interviews.
29. On 25 November 2024, STW ICB wrote to bidders informing them of the outcome of the tender and published a Contract Award Notice announcing that the successful bidder was Alliance Medical Limited (Alliance).¹² Medispace's proposal was ranked fourth.
30. On 5 December 2024, Medispace made representations to STW ICB, prior to the end of the standstill period, raising concerns about the provider selection process and requesting further information. On 21 March 2025, STW ICB – having reviewed Medispace's representations – wrote to Medispace providing it with a number of documents in response to Medispace's information request, and at the same time communicating its further decision on the provider selection process, namely to proceed with the contract award to Alliance.
31. On 28 March 2025, prior to the end of the standstill period, Medispace asked the Panel to review STW ICB's provider selection decision. The Panel accepted this request on 2 April 2025. On being made aware of the Panel's acceptance decision, STW ICB confirmed it would hold the standstill period open for the duration of the Panel's review, as required by the PSR regulations.

¹¹ STW ICB, *Contract Notice*, Find a Tender Service, 29 August 2024.

¹² Alliance is a provider of diagnostic imaging services. Further information on Alliance can be found on its website at <https://www.alliancemedical.co.uk/>.

5. Representations by Medispace

32. In its submission to the Panel, Medispace said that the concerns set out in its representations to STW ICB remained unresolved and that, in addition, it had several new concerns based on the documents supplied by STW ICB with its further decision (see paragraph 30).
33. In its representations to STW ICB, Medispace said that the ICB “made numerous manifest errors in the evaluation of the bids of at least Medispace and Alliance, failed to apply the award criteria and acted non-transparently and unfairly” in relation to its evaluation of questions A1 Delivery Model, A2 Mobilisation Plan, A4 Safety of CT scans and A7 National and local quality requirements.

34. In its representations to the Panel, Medispace said that:

“Following our initial representation submitted on 5 December 2024 and the response of the local authority [STW ICB] dated 21 March 2025, we note that our concerns remain unresolved. We now submit additional observations based on moderation meeting notes which were released following the internal review by the local authority [STW ICB]. These documents were not available at the time of our initial representation and reveal significant new concerns about the conduct of the evaluation process.

We invite the Panel to assess these concerns under Regulations 2023 (SI 2023/1348) and offer guidance.

1. Fragmentation of the Moderation Process (Regulation 4)

The moderation meetings were fragmented across four dates (14, 15, 21 and 22 October 2024) with inconsistent attendance. No single moderator was present at all meetings. In some cases, such as Question A1, key participants like KL joined late but influenced final scoring.

Additionally, moderation panels varied in size—some had two evaluators (A4, A7) while others had up to five (A1). Meeting notes lack uniform structure, with inconsistent use of headings and subheadings, further undermining procedural coherence. These practices are contrary to Regulation 4(1)(b), which requires that procurement decisions be made in a transparent, proportionate, and fair manner.

2. Subjective Evaluation and Omission of Bid Content (Regulation 5)

In the evaluation of Question A1, the feedback stated: “The bid has very little detail, it reads as if it requires the GP to do all of the data extractions.” This is factually inaccurate. Our bid clearly outlined the data collection process, Medispace’s support role, and referenced our Nelson+ platform. Similar omissions and subjective remarks (e.g. “I feel ...”) are present in other questions.

These comments suggest an absence of objective assessment against the criteria required under Regulation 5, which mandates consideration of quality, innovation, and integration.

3. Lack of Consistent Documentation (Regulation 24)

Many score changes were justified through informal discussion rather than based on scoring criteria. There is no evidence of how consistency was ensured across moderation meetings, and contemporaneous records appear incomplete or inconsistent.

This falls short of Regulation 24, which requires accurate and complete documentation of all decisions made and their rationale.

4. Limited Oversight and Inconsistent Scoring (Regulation 26)

The moderation structure raises questions about whether panel members had full oversight of the bids. Evaluations appear siloed, and the order of topic discussion (e.g. Mobilisation discussed before Delivery Model) lacked strategic logic.

Such process design fails to meet the monitoring obligations under Regulation 26, which requires relevant authorities to ensure that key procurement principles and criteria are consistently applied.

Conclusion

The cumulative effect of these issues is a lack of procedural integrity. Based on the fragmentation, inconsistencies in scoring, and misrepresentation of bid content, we respectfully submit that the evaluation process was not conducted in compliance with the Provider Selection Regime 2023. We therefore request that the Panel further investigate and consider appropriate corrective action under Regulation 15 if procedural flaws are confirmed.”

35. Medispace also raised a further issue in its submission to the Panel about “Ignored Performance Data”, saying that “Market data on uptake shows Medispace outperforms Alliance”.
36. Medispace was unable to raise with STW ICB the new concerns referred to in paragraphs 32 and 34 as the documents which gave rise to these concerns were only supplied by STW ICB at the same time as its further decision on the provider selection process. As a result, the Panel has included consideration of Medispace’s new concerns in this review. STW ICB’s compliance with the PSR regulations with respect to the timing of its supply of these documents is discussed in Section 7.7 of this report.

6. PSR regulations relevant to this review

37. In its representations to the Panel, Medispace suggested that STW ICB had breached the PSR regulations in relation to the general obligations on commissioners (as set out in Regulation 4), the application of basic and key criteria (as set out in Regulation 5), the obligation to keep “accurate and complete documentation of all decisions made and their rationale” (as set out in Regulation 24), and the monitoring requirements of its compliance with the PSR regulations (as set out in Regulation 26).
38. Those parts of the PSR regulations most relevant to this review are set out below:
 - Regulation 4 sets 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”.
 - Regulation 5 sets out the key criteria which a commissioner must consider when applying the Competitive Process. 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.

- Regulation 12 sets out the obligations that apply to commissioners in relation to the standstill period after a contract award decision. It states that “(4) Where the relevant authority receives representations [during the standstill period], it must ... (b) provide promptly any information requested by an aggrieved provider where the relevant authority has a duty to record that information under regulation 24 (information requirements) ...”.
- Regulation 24 sets out the information that must be recorded by commissioners. This includes “... (d) the decision-making process followed, including the identity of individuals making decisions ... (f) where the Competitive Process was followed, a description of the way in which the key criteria were taken into account, the basic selection criteria were assessed and contract or framework award criteria were evaluated when making a decision; (g) the reasons for decisions made under these Regulations; (h) declared conflicts or potential conflicts of interest; (i) how any conflicts or potential conflicts of interest were managed for each decision ...”.
- Regulation 26 sets out monitoring requirements for commissioners, and says that a commissioner must: “(a) monitor its compliance with these regulations and (b) publish online, on a publicly available website free of charge, an annual report of the results of that monitoring including information as to how any non-compliance will be addressed”.

39. The Provider Selection Regime Statutory Guidance “sits alongside the Regulations to support organisations to understand and interpret the PSR regulations”.¹³ Reference is made to relevant provisions of the Statutory Guidance in the Panel’s assessment of the issues in Section 7.¹⁴

7. Panel Assessment

40. This section sets out the Panel’s assessment of Medispace’s representations and its findings on whether STW ICB complied with the PSR regulations in relation to:
- first, the evaluation of Medispace’s proposal and in particular its answers to questions A1 Delivery Model, A2 Mobilisation Plan, A4 Safety of CT scans and A7 National and local quality requirements (Section 7.1);
 - second, the issues raised by Medispace under the title “Fragmentation of the Moderation Process” (Section 7.2);
 - third, the issues raised by Medispace under the title “Subjective Evaluation and Omission of Bid Content” (Section 7.3)
 - fourth, the issues raised by Medispace under the title “Lack of Consistent Documentation” (Section 7.4);
 - fifth, the issues raised by Medispace under the title “Limited Oversight and Inconsistent Scoring” (Section 7.5);

¹³ NHS England, *The Provider Selection Regime: statutory guidance*, 21 February 2024, p.2.

¹⁴ The PSR Statutory Guidance was updated in April 2025. However, references to the Statutory Guidance in this report are to the February 2024 guidance as this was the version in force during this provider selection process. Where relevant, differences between the two versions of the Statutory Guidance are noted in this report.

- sixth, consideration of market performance data during the provider selection process (Section 7.6); and
- finally, the timing of its disclosure of information to Medispace (Section 7.7).

7.1 STW ICB's evaluation of Medispace's proposals

41. Medispace, in its representations to the Panel, said that the concerns it raised with STW ICB remained unresolved. These concerns related to the evaluation and scoring of Medispace's proposal, and in particular its answers to questions A1 Delivery Model, A2 Mobilisation Plan, A4 Safety of CT scans and A7 National and local quality requirements.
42. The Panel, in assessing Medispace's concerns, reviewed STW ICB's overall approach to the evaluation, and then Medispace's more specific concerns about the evaluation of its answers to the four questions set out above (i.e. A1, A2, A4 and A7).
43. This is consistent with the Panel's general approach to assessing complainants' concerns about evaluation and scoring issues. In particular, the Panel does not seek to re-evaluate bidders' answers. Instead, the Panel reviews a commissioner's overall approach to an evaluation to satisfy itself that it has been conducted in a manner that is consistent with the PSR regulations, including the obligation to act fairly. Where appropriate, the Panel supplements its overall review with an assessment of the specific issues that a complainant has raised in relation to particular questions.

7.1.1 STW ICB's overall approach to the evaluation

44. STW ICB supplied the Panel with its tender documentation and described the system it used to evaluate bids. It told the Panel that its system is fully auditable and ensures that evaluators can only access the questions assigned to them. The ICB said that questions were evaluated by appropriate experts, who carried out individual evaluations before attending moderation sessions with other evaluators for that question.¹⁵
45. In assessing STW ICB's overall approach to the evaluation, the Panel considered several aspects of the ICB's approach that related to Medispace's concerns. This included: (i) evaluator training; (ii) the process for clarifying bidders' proposals (see paragraphs 72 to 75); (iii) the role of bidder interviews in the provider selection process (see paragraph 75); (iv) the moderation process for evaluators to agree a final score and rationale for their evaluation of each answer, and (v) STW ICB's review of Medispace's representations.
46. The Panel reviewed STW ICB's evaluator training and noted that it addressed various areas relevant to ensuring a robust evaluation process, including how proposals should be scored in line with the scoring criteria and how the rationale for scores should be recorded in each evaluator's feedback.¹⁶ At the meeting with the Panel, one of STW ICB's evaluators gave a detailed example of how bidders' responses were graded to ensure fairness in line with the training.¹⁷

¹⁵ STW ICB, *Response to Panel questions*, 7 April 2025.

¹⁶ STW ICB, *Evaluator Training*, October 2024.

¹⁷ STW ICB, *Panel meeting*, 1 May 2025.

47. In relation to the moderation process, the Panel discussed with STW ICB how this was carried out. STW ICB told the Panel that it used evaluators from different ICB teams to ensure a fair appraisal. Scores and rationales were discussed at moderation sessions with reference to the scoring criteria that evaluators had been taken through during their training. A moderated score for each question was agreed together with the rationale for that score. Minutes were taken at the moderation meetings so that there was a record of key discussions.¹⁸ The Panel reviewed changes between the scores awarded by individual evaluators and the final agreed score, and the rationale supporting the agreed score, and did not observe anything that suggested a process that lacked fairness.
48. In relation to STW ICB's review of Medispace's representations, the Panel noted the composition of the ICB review panel and its independence from the original evaluation. The specific issue of the review panel's response to Medispace's information request is discussed in Section 7.7.
49. The Panel, in reviewing STW ICB's overall approach to the evaluation, did not identify any concerns about potential breaches of the PSR regulations.

7.1.2 Evaluation of Medispace's response to Question A1 – Delivery Model

50. This section sets out the Panel's assessment of Medispace's concerns about STW ICB's evaluation of responses to Question A1 – Delivery Model.
51. By way of background, the Delivery Model question was as follows:

“Please provide an overview of your proposed approach to deliver the services in alignment with the Service Specification and Standard Operating Procedure focussing on your proposed delivery model.

“This should include the key features of your service, including how you would achieve the turnaround timescales, the process for identifying the eligible cohort, reporting results electronically to both primary and secondary care, safety netting, and action proposed for non-responding patients.

“Please refer within your response to the requirement to develop with the ICB a phased implementation plan across the contract term, to ensure secondary and primary care services can provide timely responses to findings.

“Please advise how you propose managing this flexibly, addressing any access inequalities within your proposals for service delivery locations.

“If sub-contracting is an element of your proposed delivery model details should also be included.

“Your response must be no more than 5,000 words.”¹⁹
52. Scoring of responses to non-financial Key Criteria questions, including the Delivery Model question, was on a 0-5 scale as set out in the table below:

¹⁸ STW ICB, *Panel meeting*, 1 May 2025.

¹⁹ STW ICB, *Tender documentation – Annex 7 Evaluation Model*, 29 August 2024.

Score	Descriptor
5	Excellent – The response is excellent in relation to the stated requirements of the question. The details provided demonstrate that the bidder's approach fully meets the requirements of the question and provide a very high level of confidence of the bidder's skills, expertise and understanding of the requirements. The response is exemplary and comprehensive, demonstrating that the requirement can significantly be exceeded.
4	Good – The response is good in relation to the stated requirements of the question. The details provided demonstrate the bidder's approach fully meets the requirements of the question and provide a high level of confidence of the bidder's skills, expertise and understanding of the requirements. No concerns were evident with the response.
3	Acceptable - The response is acceptable in relation to the stated requirements of the question. The details provided demonstrate the bidder's approach meets the requirements of the question (with only minor omissions/concerns) but would benefit from being more detailed.
2	Poor – The response is poor in relation to the stated requirements of the question. The response provides a low level of detail and provides little evidence that the bidder has the expertise to satisfy the requirements of the question with weaknesses apparent in some areas and/or demonstrates some misunderstanding of the requirements.
1	Very poor – The response is very poor in relation to the stated requirements of the question. The response provides a very low level of detail. There is a significant lack of evidence presented to demonstrate that the bidder has the expertise to satisfy the requirements of the question.
0	Unacceptable - The response is either unacceptable as it fails to provide any evidence whatsoever that the bidder can meet the requirements set out in the question or is entirely lacking in detail or no answer has been given. The response does not comply with or has failed to demonstrate an understanding of the stated requirements of the question.

Source: STW ICB, *Tender documentation – Annex 7 Evaluation Model*, 29 August 2024.

53. Medispace was awarded a score of 2 (Poor) for its response to the Delivery Model question.

54. STW ICB, in evaluating Medispace's response, said that:

"Evaluators agreed a score of poor for the following reasons:

"Response was brief on detail. For instance it is not clear how the bidder plans to deliver CT scanning facilities/locations, whether or not they are dependent on fixed locations or a mobile delivery model.

"Heavy reliance on primary care as part of the delivery model without anticipating this might be an issue. Their method of communicating back to GPs is a risk without any mitigation.

"They state pathways are configured and can be monitored in terms of safety netting but they do not explain how they are going to do this, there does not appear to be enough detail with regards to clinical safety.

"Evaluators agreed the response would remain poor upon review following the bidder presentation/clarification interview. Whilst clarity was provided, for example, on the use of mobile scanning units concerns still remain."

55. In its representations to STW ICB, Medispace set out its concerns about STW ICB's evaluation of Medispace's response, saying:

"The Feedback that Medispace's A1 response was "brief on detail" is plainly wrong given the granular and very detailed nature of the response"

"The Feedback that Medispace's "*method of communicating back to GP's as described in the response to A1 Delivery Model appeared to be a risk without any mitigation*" is misconceived and indicates that the response has not been read or understood or evaluated fairly ..."

"The Feedback that Medispace's A1 response lacked sufficient detail on clinical safety is also plainly wrong ..."

"The Feedback that Medispace's A1 response provided no indication of locations that may be used, while correct, should not form the basis of any criticism ..."

"There is inconsistency in the evaluation in that Medispace received a score of 4 for each of Question D1 (Patient Outcomes) and D2 (Accessibility), but only a 2 on A1 ..."

"Overall, the award of a score of 2 (Poor) to Medispace and 5 (Excellent) to Alliance is indefensible and should be reassessed."²⁰

56. Medispace, in its representations to the Panel, under the heading "Subjective Evaluation and Omission of Bid Content", repeated its concerns about the evaluation of its response to the Delivery Model question, saying that:

"in the evaluation of Question A1, the feedback²¹ stated: 'The bid has very little detail, it reads as if it requires the GP to do all of the data extractions.' This is factually inaccurate. Our bid clearly outlined the data collection process, Medispace's support role, and referenced our Nelson+ platform. Similar omissions and subjective remarks (e.g. "I feel ...") are present in other questions. These comments suggest an absence of objective assessment against the criteria required under Regulation 5, which mandates consideration of quality, innovation, and integration".²²

57. The following sets out the Panel's assessment of Medispace's concerns about the evaluation of its response to the Delivery Model question, focusing on the three key points raised by Medispace, namely that: (i) STW ICB was wrong to conclude that Medispace's answer to Question A1 lacked detail; (ii) there were inconsistencies between the evaluation of Medispace's response to the Delivery Model question and its responses to other questions; and (iii) subjective remarks in the evaluators' comments reflected a lack of objectivity in the evaluators' assessment.

Evaluator's assessment that Medispace's response lacked detail

58. STW ICB, in responding to Medispace's representations that it was wrong to conclude that Medispace's response to the Delivery Model question lacked detail, said that:

"The [ICB review] panel considered the representation and concurred with the outcome that whilst significant information was provided, this was not adequate to cover this specific section of the bid and that during evaluation and moderation that the individuals

²⁰ Medispace, *Representations letter to STW ICB*, 5 December 2024.

²¹ The Panel notes that the "feedback" was part of a comment made by an individual evaluator at the moderation meeting for this question, rather than being from the final feedback communicated to Medispace in the tender outcome letter.

²² Medispace, *Pro forma submission to the Panel*, 28 March 2025.

who undertook the scoring considered this and noted the gaps against the specification. The [ICB review] panel reviewed this and noted the gaps. Conclusion – The [ICB review] panel agreed that it had all followed the process correctly and that there was no breach under PSR.”²³

59. The Panel carried out a high level review of Medispace’s answer to the Delivery Model question consistent with the approach set out in paragraph 43. The Panel notes that Medispace’s answer used 2,187 words out of the 5,000 words available,²⁴ suggesting that Medispace had an opportunity to include further detail in its response. The Panel did not identify any concerns to suggest that STW ICB’s conclusion about the level of detail included in Medispace’s response was unreasonable or that its evaluation of this answer may have been in breach of its obligation under the PSR regulations to act fairly.

Inconsistency between evaluation of Medispace’s response to the Delivery Model question and other questions

60. Medispace raised concerns that the evaluation of its answer to the Delivery Model question was inconsistent with the evaluation of its answers to other questions, and in particular Questions D1 – Patient Outcomes and D2 – Accessibility, where in both cases it was scored 4 (Good) (see paragraph 55).
61. STW ICB, in responding to Medispace’s concerns on this point, told the Panel that evaluators “only score and have access to the questions they are assigned to and have the expertise to evaluate. They do not cross-reference between the scored questions.”²⁵
62. The Panel also notes that while these questions may address similar or overlapping subject matter, there are still differences between questions that can result in different evaluation outcomes. Moreover, different evaluators for different questions bring different perspectives. This can lead to a bidder receiving different scores for questions with similar or overlapping subject matter, without either score being ‘wrong’ or giving rise to a breach of the PSR regulations.
63. The Panel further notes that so long as bidders are treated consistently in the evaluation of their answers to individual questions then, even if there are different evaluators with different perspectives evaluating other questions (including those that address similar subject matter), this will not result in any bidder deriving a scoring advantage.

Subjective remarks in evaluators’ comments

64. Medispace raised concerns that “subjective remarks (e.g. “I feel ...”) are present in [the evaluation of] other questions. These comments suggest an absence of objective assessment against the criteria required” (see paragraph 56). The Panel notes that the phrase “I feel ...” was used twice by one evaluator in relation to the Delivery Model question and several times by other evaluators in relation to other questions.

²³ STW ICB, *Representations response letter to Medispace*, 21 March 2025.

²⁴ STW ICB, Bid submission by Medispace, 30 September 2024.

²⁵ STW ICB, *Email to the Panel*, 7 April 2025.

65. Having reviewed these comments, the Panel considers that the evaluators in using this phrase were not making a subjective assessment, but were using the phrase as a way of introducing the evaluators' conclusions on a particular point. The Panel understands the point that Medispace is making, but considers the use of the phrase "I feel ..." is a drafting issue, rather than one that is indicative of a flaw in the evaluation process.

7.1.3 Evaluation of Medispace's responses to Question A2 Mobilisation Plan

66. This section sets out the Panel's assessment of Medispace's concerns about STW ICB's evaluation of responses to Question A2 – Mobilisation Plan.
67. By way of background, the Mobilisation Plan question was as follows:
- "Please provide details of your proposed mobilisation to ensure the service can commence in line with the required timescales.
- "All Providers are to provide a detailed mobilisation / implementation plan, such as a GAANT chart. The plan must detail key milestones, tasks, risks, timelines, and resource. If staff require recruitment and training before service delivery, ensure details are included to demonstrate how this will be achieved.
- "Please highlight where you are dependent on Commissioner actions.
- "Please also clearly highlight how you intend to involve Primary and Secondary Care stakeholders as part of the mobilisation.
- "Your response must be no more than 1,000 words and include a mobilisation / implementation plan."²⁶
68. Scoring of responses was on a 0-5 scale as set out in the table in paragraph 52. Medispace was awarded a score of 2 (Poor).
69. STW ICB, in evaluating Medispace's response, said that:
- "Evaluators agreed a score of 2 for the following reasons:
- "The bidder has supplied a mobilisation plan. However, there seems to be some confusion with the roles and responsibilities provided. There are also concerns with regards to the timeframes e.g. recruitment and training over the Xmas period. The level of response supplied suggests a misunderstanding of the bidder around their role in the delivery of the TLHC Service mobilisation.
- "There are many actions and responsibilities assigned to the ICB and Trust and without further evidence we are unable to gain sufficient assurance regarding the level of engagement such as currently the Trust is allocated to undertake the first PCN data search.
- "Following the bidder presentation / clarification interview the evaluation panel agreed the score would remain as poor - all of the panels concerns remain."
70. Medispace told STW ICB that:
- "Medispace has similar concerns [to those expressed in relation to Question A1] over the fairness and rationality of the award of a score of 2 for its response to Question A2. This is not reflective of the quality of the written response, the GANNT chart and the

²⁶ STW ICB, *Tender documentation – Annex 7 Evaluation Model*, 29 August 2024.

content of the clarification presentation. In particular: Extensive information was provided on both the implementation and delivery phase which is not reflected in the score and Feedback. The Feedback that there is confusion over roles and responsibilities is misplaced. It was clearly correct to indicate where collaboration with the Trust is required.

"To the extent that the ICB (wrongly) understood that this implied that Medispace was seeking to avoid responsibility this could easily have been clarified at the interview, but no attempt was made to clarify this by the ICB. Similarly, any concerns around the Christmas period could have been clarified at the interview but were not. The criticisms in relation to the Alliance Feedback appear to be more significant (e.g. the failure to provide dates in the GANNT chart and incomplete risks/mitigations) and yet Alliance was awarded a higher score (3). Medispace's GANNT chart did provide dates as well as a full risk. Overall, the score of 2 for Medispace appears to be unfair and manifestly wrong."²⁷

71. In responding to Medispace's representation, STW ICB said that:

"The [ICB review] panel considered the representation and concurred with the outcome that the response was not in line with what the ICB were expecting to see on roles and responsibilities of the bidder which were not clearly articulated in the response to this question. The [ICB review] panel also noted and agreed that within the bid put forward by the party making the representation that the risks were being pushed back on the ICB. The [ICB review] panel noted that this 2 was not in line with the expectations under the specification which impacted upon the scoring both via individual scoring and moderation. The [ICB review] panel noted that the feedback within the procurement outcome letter could have been clearer in that the scores were not a comparison between bidders and that each bid was scored on its own merit, however, this was not a breach of the PSR Regulations. Conclusion – The [ICB review] panel agreed that it had all followed the process correctly and that there was no breach under PSR."²⁸

72. The Panel asked STW ICB about the opportunities it had to seek clarification from Medispace about its proposal, and whether it could – as Medispace suggested – have sought clarification of Medispace's response to the Mobilisation Plan question.

73. STW ICB told the Panel that there were two opportunities to seek clarification from Medispace: first, by individual evaluators when undertaking their evaluation;²⁹ and second, during the Presentation / Clarification Interview that formed part of the provider selection process. STW ICB told the Panel that it is important that when seeking clarification it addressed issues in bidders' proposals that were genuinely unclear and the clarification process did not provide bidders with an opportunity, unavailable to other bidders, to supply new information that strengthened their bid.

²⁷ Medispace, *Representations letter to STW ICB*, 5 December 2024.

²⁸ STW ICB, *Representations response letter to Medispace*, 21 March 2025.

²⁹ "During the evaluation process, when evaluators are undertaking their individual evaluations, they have the ability to seek clarification on the bid submissions submitted. This is referred to within our procurements as 'Authority Clarifications'. These are raised by the evaluator within the Award System and reviewed by the procurement team and where required the commissioning/project lead. Clarifications are reviewed prior to issuing them to the bidder(s) to ensure it is clarification and not seeking new additional information on a point / topic the bidder has not even touched upon. The process of clarification is covered with evaluators in the evaluator briefing session (...) If the clarification is suitable to ask, they are issued at this stage via the Atamis System. Bidder responses to clarifications are then uploaded to Award. Award sends an automatic email to all evaluators to notify them of the response to clarifications, so they can review and take into consider within their individual evaluation" (STW ICB, *Response to Panel questions*, 5 May 2025).

74. The Panel notes, by way of example, that an evaluator sought clarification of Medispace's response to the Mobilisation Plan question, asking Medispace to "clarify if the Bidder has incorrectly used 'Trust' instead of 'ICB' in the responsible column on the Mobilisation Plan?" (to which Medispace responded "Yes, we refer [to] the ICB").
75. In relation to the Presentation / Clarification Interview, STW ICB told the Panel that these were held with all bidders. In advance of the interview, evaluators agreed the questions that would be asked of all bidders. These questions were based on common themes or points arising during the moderation meetings where it was thought that the ICB would benefit from clarification. The interview was not designed as an opportunity to ask questions specific to individual bidders' submissions given the risk that this result in bidders supplying new information.³⁰ As a result, the Panel considers that STW ICB acted fairly when not directing a specific clarification question to Medispace concerning its response to the Mobilisation Plan question.
76. The Panel also carried out a high level review of Medispace's answer to the Mobilisation Plan question consistent with the approach set out at paragraph 43. The Panel did not identify any concerns to suggest that STW ICB's evaluation of Medispace's answer lacked rationality or that it may have been in breach of its obligation under the PSR regulations to act fairly.

7.1.4 Evaluation of responses to Question A4 – Safety of CT scans

77. This section sets out the Panel's assessment of Medispace's concerns about STW ICB's evaluation of responses to Question A4 – Safety of CT Scans.
78. By way of background, the Safety of CT Scans question was as follows:

"What measures will you have in place to minimise radiation exposure to patients during imaging?"

"What protocols will you follow to ensure the accuracy and quality of low-dose CT scans?"

"Please base your answers on the total low dose CT scanning that your organisation carries out, not just in relation to TLHC activity, if applicable."

"If you are proposing sub-contracting this element in your proposed delivery model, details should be included for your subcontractor."

"Response should be no more than 500 words."³¹
79. Scoring of responses was on a 0-5 scale as set out in the table in paragraph 52. Medispace was awarded a score of 2 (Poor).
80. STW ICB, in evaluating Medispace's response, said that:

"Evaluators agreed a score of 2 for the following reasons:

"There was no mention of review of doses and procedures for auditing doses, particularly those exceeding limits."

³⁰ STW ICB, *Response to Panel questions*, 5 May 2025.

³¹ STW ICB, *Tender documentation – Annex 7 Evaluation Model*, 29 August 2024.

“No mention of staff accreditation and it was not clear the roles of the staff i.e. refer to staff not radiographers in the response.

“There was no information about the protocols just that they have them.

“The bidder provided an additional document unfortunately this exceeded the 500 word count therefore was not taken into consideration.”

81. In its representations to STW ICB, Medispace said that:

“the score of 2 awarded to Medispace is manifestly wrong and the criticisms in the Feedback are unjustified. In particular, the review of doses and auditing procedures was in fact referenced. The response [to the question by Medispace] states: *‘We are employing low-dose CT scanning protocols in line with the latest national guidelines. The equipment is calibrated regularly to ensure optimal imaging quality while minimising radiation exposure.’* And: *‘Medispace have a RPS responsible for ensuring compliance with all regulations regarding the use of radiation in medical screening. They operate in accordance with the Ionising Radiations Regulations 2017.’* Any competent evaluator would know that these regulations require regular audits. Specific reference is also made to regular quality control checks and phantom readings”.³²

82. STW ICB, in responding to Medispace’s representations, said that:

“The [ICB review] panel considered the representation and noted that whilst the ICB were subject to the bidder’s expertise, the ICB had sought specific external expertise to support them on the scoring of this element of the bid. The [ICB review] panel also noted that the ICB can only evaluate on the content provided in the bid and that the ICB cannot assume if not documented in that bid that the bidder has awareness around national guidance. If it is not included within the response to the question, this cannot be taken into account, which the [ICB review] panel concluded was the case for this element of the representation.

“The [ICB review] panel discussed if the presentation provided by the bidder changed any of the scoring and it was confirmed the presentation requested ‘present how you will set up, implement and deliver the proposed service’, however the bidder’s presentation was focused on the governance and was not possible to gain this further clarity. Conclusion – The [ICB review] panel agreed that it had all followed the process correctly and that there was no breach under PSR”.³³

83. The Panel notes that the issues raised by Medispace in relation to the evaluation of its response to the Safety of CT scans question primarily relate to its procedures for auditing doses, but that this was only one of four reasons identified by evaluators for Medispace’s score of 2. Other points made by evaluators were:

- “No mention of staff accreditation and it was not clear the roles of the staff i.e. refer to staff not radiographers in the response.”
- “There was no information about the protocols just confirmation that the bidder has them.”

³² Medispace, *Representations letter to STW ICB*, 5 December 2024.

³³ STW ICB, *Representations response letter to Medispace*, 21 March 2025.

- “The bidder did provide an additional document, but unfortunately this exceeded the 500 word count therefore was not taken into consideration.”³⁴
84. The Panel considers that it was fair of STW ICB to rely on bidders to include all relevant information in their response and, moreover, the issue cited by Medispace was one of several that resulted in it being awarded a score of 2 (Poor) for its response to the Safety of CT scans question.

7.1.5 Evaluation of responses to Question A7 – National and local quality requirements

85. This section sets out the Panel’s assessment of Medispace’s concerns about STW ICB’s evaluation of responses to Question A7 – National and local quality requirements.
86. By way of background, the National and Local Quality Requirements question was as follows:
- “Describe with practical examples how the quality and reporting requirements shall be captured and recorded. Please make specific reference to Schedule 4 and Schedule 6 Part A of the contract.
- “Please outline how you would ensure that the National and Local Quality Requirements outlined in the service specification are delivered and reported and any safeguards or remedial actions to ensure any shortfall in delivery is captured and resolved promptly. How will you ensure that the Commissioner receives regular performance updates in addition the presentation of Key Performance Indicators?
- “Please provide example templates on how you would present your data submissions, ensuring alignment where applicable with regional reporting.
- “Please respond in no more than 500 words and provide example templates on how you would present your data submissions.”³⁵
87. Scoring of responses was on a 0-5 scale as set out in the table in paragraph 52. Medispace was awarded a score of 3 (Acceptable).
88. STW ICB, in evaluating Medispace’s response said that:
- “The response is acceptable in relation to the stated requirements of the question. In order for an improved score, wider detail around how the provider would meet the quality requirements (which are based on the national quality standards) and information on how they propose patient feedback and incidents are captured.
- “The Bidder advises that Nelson+ s used to record, capture and report information.
- “There is reference to some elements of national an local quality requirements, such as audits and dashboard. It would have been good to have wider detail around the quality requirements as many of these are linked to the National Quality Standards.
- “It is advised that any shortfall in performance will be addressed by actions plans and a feedback loop.
- “It is advised the Commissioners can access data using the Power BI function.

³⁴ STW ICB, *Tender outcome letter to Medispace*, 25 November 2024.

³⁵ STW ICB, *Tender documentation – Annex 7 Evaluation Model*, 29 August 2024.

“A sample template is supplied with clear visual graphs. It is good to see areas like ethnicity data captures, there is also educational information.

“The response would have benefitted from additional information on delivery – for instance there is no information on how patient feedback and incidents are captured.

89. Medispace told STW ICB that it had:

“provided an excellent response (5 rather than the 3 awarded), showing full compliance with the national quality standards, providing example reports of Nelson+ and explaining that Nelson+ connects all screening pathways and automatically detects any deviations. By contrast, it is not understood how the Alliance response could have merited a score of 4 given that it does not have an integrated management system which means that much of the data is entered manually, thus inefficiently and prone to error.”³⁶

90. In responding to Medispace’s representation, STW ICB said that:

“The [ICB review] panel noted that the representation set out sought to compare the bidder making the representation to a different company. The [ICB review] panel agreed that it is the expectation of the bidder to sufficiently outline the relevant information in their bid of themselves and not to compare themselves with others, and that information shared outside of the procurement process is irrelevant and not applicable under PSR.

The [ICB review] panel also noted that the representation did not give any relevant information to advise the ICB were not following PSR correctly in this instance. The [ICB review] panel also noted that the bidder relied heavily on Nelson+ for their bid and presentation and as a result they did not provide the relevant information required in the bid. Conclusion – The [ICB review] panel agreed that it had all followed the process correctly and that there was no breach under PSR”.³⁷

91. The Panel notes that Medispace’s concerns about the evaluation of its response to the National and local quality requirements question set out a different view to that of STW ICB regarding the strength of its response. The Panel’s review of Medispace’s answer and the ICB’s assessment did not identify issues that suggest non-compliance with the PSR regulations.

7.1.6 Panel assessment of Medispace’s concerns regarding the evaluation of its responses to Questions A1, A2, A4 and A7

92. Medispace’s representations about the evaluation of Questions A1, A2, A4 and A7 suggest that it was “plainly wrong” and in breach of Regulation 5 (for Question A1), lacked fairness and rationality (for Question A2), manifestly wrong (for Question A4) and was incorrectly scored (for Question A7). In addition to the reference to Regulation 5, which requires commissioners to consider service quality as part of the key criteria, these concerns go to STW ICB’s obligations under Regulation 4, which requires commissioners to act fairly.

93. The Panel, in reviewing STW ICB’s overall approach to the evaluation as well as the specific concerns raised by Medispace, does not consider, consistent with the reasons and conclusions set out in paragraphs 49, 59, 62-63, 65, 75-76, 84 and 91, that STW

³⁶ Medispace, *Representations letter to STW ICB*, 5 December 2024.

³⁷ STW ICB, *Representations response letter to Medispace*, 21 March 2025.

ICB breached its obligations under the PSR regulations. As a result, the Panel finds that STW ICB did not breach the PSR regulations in its evaluation of Medispace's bid for the TLHC contract in Shropshire, Telford and Wrekin, including its obligations under Regulation 4, which requires it to act fairly, and its obligations under Regulation 5, which require it to consider service quality as part of the key criteria.

7.2 Fragmentation of the moderation process

94. This section sets out the Panel's assessment of Medispace's concerns about STW ICB's moderation process. Medispace told the Panel that:

"The moderation meetings were fragmented across four dates (14, 15, 21 and 22 October 2024) with inconsistent attendance. No single moderator was present at all meetings. In some cases, such as Question A1, key participants like KL joined late but influenced final scoring. Additionally, moderation panels varied in size – some had two evaluators (A4, A7) while others had up to five (A1). Meeting notes lack uniform structure, with inconsistent use of headings and subheadings, further undermining procedural coherence. These practices are contrary to Regulation 4(1)(b), which requires that procurement decisions be made in a transparent, proportionate, and fair manner" (see paragraph 34).

95. In relation to the moderation meetings being held across four dates, STW ICB told the Panel that:

"The moderation process was undertaken based upon diary availability, there were a large number of evaluators. Also, we received 5 bid submissions, it would be impossible to undertake moderation in 1 day ... The ordering [of the evaluation of different questions] was based upon evaluator availability and some changes needed to be made based upon availability as we progressed through the moderation process".

96. The Panel reviewed the non-redacted version of the minutes of the meeting commenced at 2pm on 22 October 2024, and notes that the meeting started by evaluating Question E1, for which KL was not an evaluator. Evaluator KL, along with another evaluator, joined at 3pm when moderation of Question A1 commenced.³⁸ As a result, the Panel is assured that all of the evaluators for Question A1, including KL, were present for the entirety of the moderation of that question.
97. The Panel considers that it is not inconsistent with a commissioner's obligations to act transparently, fairly or proportionately to: carry out an evaluation over several days; use different evaluators for different questions; use a different number of evaluators for different questions; and use different moderators for different moderation meetings. The Panel further considers that there is no requirement under the PSR regulations to use a uniform structure for meeting notes, nor is there any single correct structure for meeting notes.
98. As a result, the Panel finds that STW ICB did not breach the PSR regulations in relation to the concerns labelled by Medispace as "fragmentation of the moderation process" including, in particular, its obligation under Regulation 4 to act transparently, fairly and proportionately.

³⁸ STW ICB, *Moderation Meeting minutes*, 22 October 2024.

7.3 Subjective evaluation and omission of bid content

99. In its representations to the Panel, under the title “Subjective evaluation and omission of bid content”, Medispace repeated its concerns about the evaluation of Question A1, stating that the evaluators’ comments “suggest an absence of objective assessment against the criteria required under Regulation 5, which mandates consideration of quality, innovation, and integration (see paragraph 34).”
100. The Panel addresses the concerns that have been raised about the evaluation of Question A1 in paragraphs 50 to 65 and concludes that there has not been any breach of the PSR regulations. As a result, the Panel finds that STW ICB did not breach the PSR regulations in relation to the concerns labelled by Medispace as “subjective evaluation and omission of bid content” its obligations under Regulation 4, which requires it to act fairly, and its obligations under Regulation 5, which require it to consider service quality as part of the key criteria.

7.4 Lack of consistent documentation

101. Medispace told the Panel, under the title “Lack of consistent documentation” that “Many score changes were justified through informal discussion rather than based on scoring criteria. There is no evidence of how consistency was ensured across moderation meetings, and contemporaneous records appear incomplete or inconsistent. This falls short of Regulation 24, which requires accurate and complete documentation of all decisions made and their rationale (see paragraph 34).”
102. The concerns raised by Medispace about “score changes” relate to the moderation process by which evaluators reach an agreed score. This process is discussed at paragraph 47, including the arrangements for reaching an agreed score and the contemporaneous recording of key elements of the discussion and the rationale for the agreed score.³⁹
103. Having reviewed the moderation process and the relevant records, the Panel did not find shortcomings in the process for evaluators to reach an agreed score, inconsistencies in the moderation process or incomplete records. As a result, the Panel finds that STW ICB did not breach the PSR regulations in relation to the concerns labelled by Medispace as “Lack of consistent documentation” including, in particular, its obligations under Regulation 24 in relation to the keeping of records concerning its decisions in the provider selection process.

7.5 Limited oversight and inconsistent scoring

104. Medispace told the Panel under the title “Limited oversight and inconsistent scoring” that “The moderation structure raises questions about whether panel members had full oversight of the bids. Evaluations appear siloed, and the order of topic discussion (e.g. Mobilisation discussed before Delivery Model) lacked strategic logic. Such process design fails to meet the monitoring obligations under Regulation 26, which requires relevant authorities to ensure that key procurement principles and criteria are consistently applied” (see paragraph 34).

³⁹ STW ICB, *Email to the Panel*, 7 April 2025.

105. The Panel notes that the requirement for each question to be evaluated individually, and the use of different evaluators for different questions, means that – by design – the provider selection process does not involve, say, one or two evaluators providing oversight of the evaluation process and scoring in its entirety (as Medispace suggests should be the case). Rather, the process is designed to ensure that the answer to each question is evaluated in accordance with the evaluation criteria and this is applied consistently across bidders.⁴⁰
106. As a result, the Panel finds that STW ICB did not breach the PSR regulations in relation to the concerns labelled by Medispace “limited oversight and inconsistent scoring” including, in particular, its obligations under Regulation 4 to act transparently, fairly and proportionately.

7.6 Consideration of market performance data

107. Medispace told the Panel that STW ICB had “ignored performance data” and that “market data on uptake rates shows Medispace outperforms Alliance” (see paragraph 35). This followed Medispace’s representations to the ICB where it said that it:
- “considers that the ICB has failed to conduct a proper assessment of Alliance’s capability and has clearly failed to verify the deliverability of any of the promises provided in its response. In addition, we note that Medispace’s bid delivered best value in their financial model. If the ICB had carried out a proper assessment of Alliance’s recent track record, including taking out a full reference from SELCA / Guy’s and St Thomas’s NHSFT, it could not have assessed Alliance’s response in the way that it has. If the design and/or execution of the Procurement is such that the quality and capability of Alliance have not been properly scrutinised and assessed, this constitutes a failure to comply with the ICB’s basic obligations under regulation 4 of the Regulations.”⁴¹
108. STW ICB told the Panel that “the evaluators can only evaluate based upon what is present in the bid submission”.⁴² It further said that it could only consider information provided in response to the tender and that “the information that Medispace are referring to did not form part of the procurement process as per the tender documents issued. In our view, to take into account such information would not only be introducing undisclosed criteria, it would also not be fair and transparent.”⁴³
109. The Panel notes that PSR Statutory Guidance says that “relevant authorities must only use the information contained in the bid to assess the bid”.⁴⁴ The Panel considers that it was not possible for STW ICB to take account of information outside of bidders’ proposals in evaluating these proposals. As a result, the Panel finds that STW ICB, by not taking into account the external performance data cited by Medispace, did not breach the PSR regulations including, in particular, its obligations under Regulation 4 to act transparently, fairly and proportionately.

⁴⁰ The Panel also notes that the concerns raised by Medispace relate to issues of fairness, covered by Regulation 4 rather than Regulation 26.

⁴¹ Medispace, *Representations letter to STW ICB*, 5 December 2024.

⁴² STW ICB, *Email to the Panel*, 7 April 2025.

⁴³ STW ICB, *Panel meeting*, 1 May 2025.

⁴⁴ PSR Statutory Guidance, February 2024, p.22.

7.7 STW ICB's timing of its disclosure of information to Medispace

110. Medispace, in its representations to STW ICB on 5 December 2024, requested information from the ICB about the provider selection process pursuant to Regulation 24. STW ICB responded to this information request on 21 March 2025, at the same time as communicating its further decision on the provider selection process, and provided Medispace with several documents including minutes of relevant moderation meetings, the identity of decision makers in the provider selection process and information on conflicts of interest (see paragraphs 30 and 36).
111. Regulation 12(4)(b) states that where the relevant authority receives representations, it must “provide promptly any information requested by an aggrieved provider where the relevant authority has a duty to record that information under regulation 24 (information requirements)”.
112. The Panel considers that the three and a half month delay between Medispace's request for information and STW ICB's response does not meet the requirement that Regulation 12 places on commissioners to “promptly” provide any information that has been requested. Moreover, the delay in the provision of this information, and its eventual supply when STW ICB communicated its further decision on the provider selection process, meant that Medispace was not afforded “further opportunity to explain or clarify the representations made” as required under Regulation 12(4)(a).
113. As a result, the Panel finds that STW ICB, by not promptly disclosing the information requested by Medispace during the representations review process, breached Regulations 12(4)(a) and 12(4)(b).

8. Panel Advice

114. In summary, the Panel finds that STW ICB, in carrying out the provider selection process for the TLHC service in Shropshire, Telford and Wrekin, breached Regulations 12(4)(a) and 12(4)(b) by not promptly disclosing the information requested by Medispace during the representations review process and thus not affording Medispace the opportunity to explain or clarify its representations.
115. The Panel does not, however, find that STW ICB breached the PSR regulations in any other respect during the provider selection process for the TLHC service. In particular, the Panel finds that:
 - first, STW ICB did not breach the PSR regulations in its evaluation of Medispace's bid, including its obligations under Regulation 4, which requires it to act fairly, and its obligations under Regulation 5, which require it to consider service quality as part of the key criteria;
 - second, STW ICB did not breach the PSR regulations in relation to the concerns labelled by Medispace as “fragmentation of the moderation process” including, in particular, its obligation under Regulation 4 to act transparently, fairly and proportionately;
 - third, STW ICB did not breach the PSR regulations in relation to the concerns labelled by Medispace as “subjective evaluation and omission of bid content”

its obligations under Regulation 4, which requires it to act fairly, and its obligations under Regulation 5, which require it to consider service quality as part of the key criteria;

- fourth, STW ICB did not breach the PSR regulations in relation to the concerns labelled by Medispace as “lack of consistent documentation” including, in particular, its obligations under Regulation 24 in relation to the keeping of records concerning its decisions in the provider selection process;
- fifth, STW ICB did not breach the PSR regulations in relation to the concerns labelled by Medispace “limited oversight and inconsistent scoring” including, in particular, its obligations under Regulation 4 to act transparently, fairly and proportionately; and
- finally, STW ICB did not breach the PSR regulations by not taking into account the external performance data cited by Medispace including, in particular, its obligations under Regulation 4 to act transparently, fairly and proportionately.

116. Given the Panel’s conclusion that STW ICB breached its obligations under Regulations 12(4)(a) and 12(4)(b), three options are open to the Panel. The Panel may advise that:

- the breaches had no material effect on STW ICB’s selection of a provider and it should proceed with awarding the contract as originally intended;
- STW ICB should return to an earlier step in the provider selection process to rectify the issues identified by the Panel; or
- STW ICB should abandon the current provider selection process.

117. The Panel notes that STW ICB’s disclosure of the information requested by Medispace at the time of communicating its further decision on the provider selection process allowed Medispace to have its additional concerns arising from this information considered by the Panel as part of this review. The Panel has not found any breaches of the PSR regulations arising from these additional concerns. As a result, the Panel’s view is that the STW ICB’s breach of Regulations 12(4)(a) and 12(4)(b) have not had a material effect on STW ICB’s selection of a provider.

118. As a result, the Panel’s advice is that STW ICB should proceed with awarding the contract for the TLHC service in Shropshire, Telford and Wrekin as originally intended.