Independent Patient Choice and Procurement Panel

Review of a proposed contract award

Non-Emergency Patient Transport Services in Humber and North Yorkshire

Case Reference: CR0016-25

25 June 2025

Contents

1. Executive Summary

1. On 7 April 2025, EMED Group (EMED) asked the Panel to advise on the selection of a provider by Humber and North Yorkshire Integrated Care Board (HNY ICB) for its Non-Emergency Patient Transport Services (NEPTS) in Humber and North Yorkshire. The Panel accepted EMED's request on 10 April 2025 in accordance with its case acceptance criteria.

2. NEPTS in the Humber and North Yorkshire ICB area, with the exception of North East Lincolnshire, are supplied by Yorkshire Ambulance Service (YAS). NEPTS cater for patients whose illness means they are unable to travel to hospital without assistance or for whom travelling could cause their condition to deteriorate.

3. YAS operates a lead provider model for NEPTS, using its own staff and vehicles to transport patients with higher mobility needs, while using other providers, such as taxi services, to cater for patients with lesser mobility needs. As well as NEPTS, YAS also supplies emergency ambulance services and NHS 111 services in the HNY ICB area.

4. YAS has three contracts for NEPTS with HNY ICB. These three contracts were originally entered into with the Clinical Commissioning Groups (CCGs) that previously served the HNY ICB area. The three contracts are: (i) the East Riding of Yorkshire contract (the East Riding contract); (ii) the Vale of York, Scarborough Harrogate, Hambleton, Richmondshire & Whitby contract (the Vale of York contract); and (iii) the Hull & North Lincolnshire contract (originally awarded as two separate contracts that were merged in 2022). All three contracts were inherited by HNY ICB when it took over the former CCGs' responsibilities.

5. The Vale of York and East Riding contracts were awarded by competitive tender in 2017 and 2018, respectively. YAS was awarded the Hull contract in 2019 following a competitive tender, and was directly awarded the North Lincolnshire contract in 2020 following the failure of the previous provider.

6. With the three NEPTS contracts due to expire on 31 March 2025, HNY ICB assessed whether a new contract should be awarded to YAS using Direct Award Process C under the PSR regulations. HNY ICB told the Panel that its overall approach when contracts approach their end-date is to use Direct Award Process C unless the performance of the incumbent provider suggests that this may not be suitable.

7. On 17 February 2025, HNY ICB's Finance, Performance and Delivery Committee approved a recommendation to award a new NEPTS contract to YAS using Direct Award Process C. On 25 February 2025, the ICB published a notice on Find a Tender Service (FTS) announcing its intention to award the new contract to YAS. The new contract was intended to commence on 1 April 2025, with a five year duration and no option to extend. The contract's indicative value is £82 million across the five year term.

8. On 7 March 2025, prior to the expiry of the standstill period, EMED, a NEPTS provider elsewhere in England, made representations to HNY ICB about the provider selection process and requested further information. In response, HNY ICB reviewed its contract award decision and wrote to EMED on 31 March 2025 confirming its decision to award the contract to YAS as originally intended.

9. The Panel's assessment of EMED's representations address whether HNY ICB complied with the PSR regulations in relation to:
    - first, awarding the NEPTS contract under the PSR;
    - second, deciding that YAS's existing NEPTS contracts could be replaced with a single new contract;
    - third, deciding that the new NEPTS contract did not meet the considerable change threshold for Direct Award Process C;
    - fourth, deciding that YAS was satisfying its existing NEPTS contracts, and was likely to satisfy the new contract, to a sufficient standard;
    - fifth, the notice of intention to award a new contract to YAS; and
    - finally, the response to EMED's request for information about the provider selection process.

10. The Panel finds that HNY ICB, in deciding to award a new NEPTS contract to YAS using Direct Award Process C breached the PSR regulations in the following respects.

    - First, the Panel finds that HNY ICB, in deciding to use Direct Award Process C, breached Regulation 6(5)(c), which prohibits commissioners from using this process where the considerable change threshold is met. In the absence of any record of HNY ICB's assessment of whether there are any material differences in the character of the new and existing contracts, the Panel cannot be assured that it was reasonable for HNY ICB to conclude that the considerable change threshold was not met. Moreover, in the absence of a more detailed description of the content of the planned Service Development Improvement Plan that will be included in the new contract it was not possible for HNY ICB to carry out a comprehensive comparison between the new and existing contracts.

    - Second, the Panel finds that HNY ICB, in carrying out the provider selection process using Direct Award Process C, breached Regulation 9(2), which requires commissioners to decide, taking into account the key criteria and applying the basic selection criteria, whether it is content that the existing provider is satisfying the original contract and will likely satisfy the proposed contract to a sufficient standard. The Panel finds that it was not reasonable to reach this decision based on the assessment it had carried out. Consistent with this, the Panel also finds that HNY ICB breached Regulation 6(5)(d), which imposes a similar obligation on commissioners when deciding to use Direct Award Process C to award a new contract.

    - Third, the Panel finds that HNY ICB, in publishing its notice of intention to award a new NEPTS contract to YAS using Direct Award Process C, breached Regulations 9(3) and 9(4), which require it to include a statement in the notice explaining its reasons for selecting the chosen provider, with reference to the key criteria.

    - Finally, the Panel finds that HNY ICB, in refusing to provide EMED with any substantive response to its request for information, breached Regulation 12(4), which requires it to promptly provide any information requested by an aggrieved provider where the relevant authority has a duty to record that information under Regulation 24, subject to the exclusions set out in Regulation 12(5). The Panel also finds that the breach of Regulation 12(4) is,

at least in part, a result of HNY ICB breaching its recordkeeping obligations under Regulation 24.

11. Given the Panel's findings that HNY ICB breached the PSR regulations when deciding to award a new NEPTS contract to YAS using Direct Award Process C, three options are open to the Panel. The Panel may advise that:
    - the breaches had no material effect on HNY ICB's selection of a provider and it should proceed with awarding the contract as originally intended;
    - HNY ICB should return to an earlier step in the provider selection process to rectify the issues identified by the Panel; or
    - HNY ICB should abandon the current provider selection process.

12. The Panel's view is that the breaches it has identified may have had a material effect on HNY ICB's selection of a provider. This is because a robust assessment of whether YAS was satisfying its existing NEPTS contracts and was likely to satisfy a new NEPTS contract, as required by Regulation 6(5)(d) and Regulation 9(2), may have led to HNY ICB reaching a different conclusion as to whether HNY ICB was able to award a new NEPTS contract to YAS using Direct Award Process C.

13. The Panel's advice is that HNY ICB should return to an earlier step in the provider selection process, namely its decision on which provider selection process will be used to award a new NEPTS contract. HNY ICB should reassess whether it is eligible to use Direct Award Process C based on: (a) a new analysis of whether the new contract meets the material change threshold; and (b) a new analysis of whether YAS was satisfying the original contract, and will likely satisfy the proposed contract, to a sufficient standard.

14. Returning to this stage of the provider selection process will ensure that HNY ICB is taking a proportionate approach to deciding whether YAS should be directly awarded a new £82 million contract (i.e. without testing offers from alternative providers). It will also allow HNY ICB, if it decides that it is eligible to award a new NEPTS contract using Direct Award Process C, to carry out this provider selection process without repeating the other breaches of the PSR regulations that are identified in this report.

15. More broadly, this is the first case to come to the Panel concerning an award under Direct Award Process C. As a result, many of the issues discussed in this report are being considered for the first time. The Panel hopes that commissioners find the Panel's conclusions of some assistance when using Direct Award Process C in the future.

16. In terms of some wider observations, the Panel notes that commissioners, when deciding which providers are potentially eligible for a new contract using Direct Award Process C, should take care to carry out an assessment of their providers' performance that is proportionate to the importance of the contract, and to employ a process that gives the commissioner the opportunity to decide, following the assessment, that it will not use Direct Award Process C to award a new contract.

17. The Panel appreciates that commissioners do not have limitless capacity to assess providers' performance, and notes that the need for resources to carry out any assessment will be alleviated where contract monitoring is effectively capturing relevant performance data from providers.

18. The Panel also notes that ICBs may find it helpful, in approaching their strategic commissioning remit, to have systems and processes to identify those contracts within their portfolio that warrant a more, or less, detailed assessment of their providers' performance as their contracts near an end. This will help ICBs assure themselves that they have taken a proportionate approach to this assessment and, in addition, help satisfy the requirements of the PSR regulations. Other relevant authorities, such as local authorities and NHS trusts, may similarly find this approach helpful.

2. Introduction

19. On 7 April 2025, EMED Group (EMED) asked the Panel to advise on the selection of a provider by Humber and North Yorkshire Integrated Care Board (HNY ICB) for its Non-Emergency Patient Transport Services (NEPTS) in Humber and North Yorkshire.

20. The Panel accepted EMED's request on 10 April 2025 in accordance with its case acceptance criteria. These criteria set out both eligibility requirements and the prioritisation criteria that the Panel applies when it is approaching full caseload capacity.[1] EMED'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.

21. The Panel's Chair appointed three members to a Case Panel for this review (in line with the Panel's procedures). The Case Panel consisted of:
    - Andrew Taylor, Panel Chair;
    - Carole Begent, Case Panel Member; and
    - Daria Prigioni, Case Panel Member.[2]

22. The Case Panel's review has been carried out in accordance with the Panel's Standard Operating Procedures ("procedures").[3]

23. This report provides the Panel's assessment and advice to HNY ICB[4] 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 EMED;
    - 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 HNY ICB.

[1] 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/.
[2] 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/.
[3] 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/.
[4] 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.

24. The Panel thanks HNY ICB and EMED for their assistance and cooperation during this review.

3. Role of the Panel

25. The PSR regulations, issued under the Health and Care Act 2022, put into effect the Provider Selection Regime (PSR) for commissioning health care services by the NHS and local authorities. The PSR regulations came into force on 1 January 2024.[5]

26. Previously, health care services were purchased under the Public Contracts Regulations 2015 and the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013. The Provider Selection Regime, however, provides relevant authorities (i.e. commissioners) with greater flexibility in selecting providers of health care services.

27. The Panel'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.

28. 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

29. HNY ICB is a statutory body that is responsible for planning health services to meet the needs of the Humber and North Yorkshire population and managing the budget for the provision of NHS services to this population.[6] The Humber and North Yorkshire area served by HNY ICB includes six localities, namely East Riding of Yorkshire; North Yorkshire; York; Hull; North Lincolnshire; and North East Lincolnshire.

30. NEPTS in the Humber and North Yorkshire ICB area, with the exception of North East Lincolnshire, are supplied by Yorkshire Ambulance Service (YAS).[7] NEPTS cater for patients whose illness means they are unable to travel to hospital without assistance or for whom travelling could cause their condition to deteriorate.

31. YAS operates a lead provider model for NEPTS, using its own staff and vehicles to transport patients with higher mobility needs, while using other providers, such as taxi services, to cater for patients with lesser mobility needs. As well as NEPTS, YAS also supplies emergency ambulance services and NHS 111 services in the HNY ICB area.

32. YAS has three contracts for NEPTS with HNY ICB. These three contracts were originally entered into with the Clinical Commissioning Groups (CCGs) that previously

[5] 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/.
[6] Further information on HNY ICB can be found on its website at https://humberandnorthyorkshire.icb.nhs.uk/.
[7] YAS also provides NHS 111 services across all of the HNY ICB area, and emergency ambulance services across all of the HNY ICB area other than North Lincolnshire and North East Lincolnshire. Further information on YAS is available on its website at https://www.yas.nhs.uk/.

served the HNY ICB area. The three contracts are: (i) the East Riding of Yorkshire contract (the East Riding contract);[8] (ii) the Vale of York, Scarborough Harrogate, Hambleton, Richmondshire & Whitby contract (the Vale of York contract);[9] and (iii) the Hull & North Lincolnshire contract (originally awarded as two separate contracts that were merged in 2022). All three contracts were inherited by HNY ICB when it took over the former CCGs' responsibilities.

33. The Vale of York and East Riding contracts were awarded by competitive tender in 2017 and 2018, respectively. YAS was awarded the Hull contract in 2019 following a competitive tender, and was directly awarded the North Lincolnshire contract in 2020 following the failure of the previous provider.[10]

34. HNY ICB told the Panel that YAS reports monthly on key performance indicators (KPIs) for NEPTS and that the ICB and YAS hold quarterly contract management meetings. In addition, there are daily system calls between the ICB, YAS and other partners in relation to patient flows in urgent and emergency care, which allow immediate operational priorities for NEPTS to be addressed.[11]

35. With the three NEPTS contracts due to expire on 31 March 2025, HNY ICB assessed whether a new contract should be awarded to YAS using Direct Award Process C under the PSR regulations. HNY ICB told the Panel that its overall approach when contracts approach their end-date is to use Direct Award Process C unless the performance of the incumbent provider suggests that this may not be suitable.[12]

36. On 17 February 2025, HNY ICB's Finance, Performance and Delivery Committee approved a recommendation to award a new NEPTS contract to YAS using Direct Award Process C. On 25 February 2025, the ICB published a notice on Find a Tender Service announcing its intention to award the new contract to YAS. The new contract was intended to commence on 1 April 2025, with a five year duration and no option to extend. The contract's indicative value is £82 million across the five year term.[13]

37. Prior to the expiry of the standstill period, EMED, a NEPTS provider elsewhere in England,[14] made representations to HNY ICB about the provider selection process and requested further information.[15] In response, HNY ICB reviewed its contract award decision and wrote to EMED on 31 March 2025 confirming its decision to award the contract to YAS as originally intended.

38. On 7 April 2025, following receipt of HNY ICB's response, EMED requested that the Panel review HNY ICB's provider selection decision. The Panel accepted EMED's

[8] This contract was awarded by the former NHS East Riding of Yorkshire CCG (see https://www.contractsfinder.service.gov.uk/notice/f5a32346-fa77-41c2-8373-1da54781c663?origin=SearchResults&p=1).
[9] This contract was awarded by the former NHS Vale of York, NHS Scarborough & Ryedale, NHS Harrogate & Rural District and NHS Hambleton, Richmondshire & Whitby CCGs (see https://www.contractsfinder.service.gov.uk/notice/c775d59c-38ba-45ac-8a50-bdc650188658?origin=SearchResults&p=1).
[10] The predecessor contracts were awarded by the former NHS Hull and NHS North Lincolnshire CCGs. A copy of the contract award notice for the NHS Hull CCG contract can be found at https://www.contractsfinder.service.gov.uk/notice/7249b66a-f13f-48cc-a87d-cebdee552bb2?origin=SearchResults&p=2).
[11] HNY ICB, Panel meeting, 9 May 2025.
[12] HNY ICB, Panel meeting, 9 May 2025.
[13] HNY ICB, Contract Award Notice on Find a Tender Service, 25 February 2025.
[14] Further details on EMED are available on its website at https://www.emedgroup.co.uk/.
[15] EMED first contacted HNY ICB on 5 March 2025 requesting information about the provider selection process. Following correspondence with HNY ICB, EMED made representations to the ICB on 7 March 2025.

request on 10 April 2025. On being made aware of this, HNY ICB confirmed that it would hold the standstill period open for the duration of the Panel's review.

5. Representations by EMED

39. EMED's concerns about the provider selection process for NEPTS as set out in its submission to the Panel, are as follows:

> "As acknowledged by the authority, YAS's performance has been unsatisfactory. However, they have failed to provide reasons why it considers both that YAS's performance is and has been satisfactory and why it considers that YAS's performance of the new contract will be satisfactory despite being (a) required to do so in the notice of intention to award (per schedule 3, point 7 of the regulations); (b) subject to a duty of transparency; and (c) specifically asked by EMED to state the reasons for these conclusions. The published intention to award notice simply states the criteria and their weightings and that the authority was satisfied but does not state why the authority was satisfied."
>
> "This concern is particularly pressing given that journey volume data, and price/journey and price/mile were not considered as it did not form part of the assessment against the value criterion. This is the core data upon which the value of a non-emergency patient transport services would typically be assessed."
>
> "Regulation 9(3) and (4) require the authority to submit a notice containing the information detailed in schedule 3 of the regulations prior to entry into contract with the selected supplier. Schedule 3 requires, amongst other things, "a statement explaining the award decision-makers' reasons for selecting the chosen provider, with reference to the key criteria". The notice states the key criteria and explains how they were weighted for the purposes of the award. However, it contains no explanation at all as to the reasons why the authority was satisfied as to existing or future performance."
>
> "In fact, the existing provider is not satisfying the existing contract based on publicly available KPI performance data. EMED is concerned that the authority has not used appropriate means to assess the value criterion. However, despite being asked by EMED the authority has refused to give any explanation compliant with the requirements of (1) the duty of transparency; or (2) the specific requirements of Regulation 9(4) as to its reasons for those decisions"
>
> "EMED has made a good faith representation in order to obtain information so as to satisfy itself that the authority has followed a proper and lawful procedure in compliance with the Regulations. EMED Group's requests are for information that the authority holds and which, in consequence it is obliged to provide under Regulation 12(4). However, the authority has adopted a near-blanket refusal to provide information that it holds. The authority has relied upon the exemption from disclosure available under regulation 12(5) in response to 7 of our 9 information requests. The authority's view is that a Competitive Process would involve the assessment of the same Key Criteria as used for Direct Award Process C and (it appears) that as such sharing the information would be prejudicial. EMED views that position as incorrect."

6. PSR regulations relevant to the Panel's assessment

40. In its representations to the Panel, EMED suggested that HNY ICB breached the PSR regulations in relation to: Regulation 6, which relates to when Direct Award Process C may be used; Regulation 9, which relates to the conduct of provider selection processes using Direct Award Process C; Regulation 12, which relates to the representations review process; Regulation 24, which relates to recordkeeping requirements for commissioners.

41. Other PSR regulations relevant to this review are Regulation 3, which relates to when the PSR regulations apply, and Regulation 4, which sets out the general obligations on commissioners when conducting provider selection processes under the PSR regulations.

42. Those elements of these PSR regulations most relevant to this review are set out below.

- Regulation 3 sets out when the PSR regulations apply. It says that for mixed procurements (i.e. a contract that encompasses relevant health care services and "other goods or services"), where the "other goods or services" could not reasonably be supplied under a separate contract, the PSR applies where the estimated lifetime value of the relevant health care services are higher in value than the estimated lifetime value of the "other goods or services".

- Regulation 4 sets out the general obligations that apply to relevant authorities (i.e. commissioners) when selecting a provider of health care services. 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 6(5) sets out the general conditions that apply to relevant authorities (i.e. commissioners) when using Direct Award Process C. It states that a relevant authority can use Direct Award Process C when "the considerable change thresholds are not met" and "the relevant authority is of the view that the existing provider is satisfying the existing contract and will likely satisfy the proposed contract to a sufficient standard".

- Regulation 6(10) says that the considerable change threshold in 6(5) is "met:
  (a) where the proposed contracting arrangements are materially different in character to the existing contract when that contract was entered into, or
  (b) where:
  (i) Changes in the relevant health care services to which the proposed contracting arrangements relate (compared to the existing contract) are attributable to a decision of the relevant authority,
  (ii) the lifetime value of the proposed contracting arrangements is at least £500,000 higher than the lifetime value of the existing contract when that existing contract was entered into, and
  (iii) the lifetime value of the proposed contracting arrangements is at least 25% higher than the lifetime value of the existing contract when that existing contract is entered into.

- Regulation 6(11) says that the considerable change threshold is not met where:
  (a) Regulation (10)(a) applies solely as a result of a change in the identity of the provider due to succession into the position of provider following corporate

changes including takeover, merger, acquisition or insolvency and the relevant authority is satisfied that the provider meets the basic selection criteria, and

(b) Regulation (10)(b) does not apply.

- Regulation 6(12) says that the considerable change threshold is not met where:
  (a) Regulation 6(10)(a) does not apply, and
  (b) Regulation 6(10)(b) applies where the change between existing and proposed contracting arrangements is in response to external factors beyond the control of the relevant authority and provider including, but not limited to changes in patient or service user volume or changes in prices in accordance with a formula provided for in the contract documents.

- Regulation 9 describes the process to be followed when using Direct Award Process C.

  Regulation 9(2) says "Step 1 is that the relevant authority decides, taking into account the key criteria[16] and applying the basic selection criteria,[17] whether it is content that the existing provider is satisfying the original contract and will likely satisfy the proposed contract to a sufficient standard".

  Regulations 9(3) and 9(4) relate to the notification the commissioner must publish when using Direct Award Process C: "If the relevant authority is so content, step 2 is that the relevant authority submits for publication on the UK e-notification service a notice of intention to make an award to the existing provider" and "The notice referred to in paragraph (3) must include the information set out in Schedule 3".

- Schedule 3 sets out the required content of the notice of intention to award a contract under Direct Award Process C. This should contain:
  1. A statement that the relevant authority is intending to award a contract to an existing provider following Direct Award Process C.
  2. The contract title and reference.
  3. The name and address of the registered office or principal place of business of the provider to whom an award is to be made.
  4. A description of the relevant health care services to which the contract relates, including the most relevant CPV code.
  5. The approximate lifetime value of the contract.
  6. Details of the award decision-makers.
  7. A statement explaining the award decision-makers' reasons for selecting the chosen provider, with reference to the key criteria.
  8. Any declared conflicts or potential conflicts of interest.
  9. Information as to how any conflicts or potential conflicts of interest were managed.

43. The Provider Selection Regime Statutory Guidance "sits alongside the Regulations to support organisations to understand and interpret the PSR regulations".[18] Reference is

[16] The key criteria set out in the PSR regulations are: (i) Quality and innovation; (ii) Value; (iii) Integration, collaboration and service sustainability; (iv) Improving access, reducing health inequalities and facilitating patient choice; and (v) Social value.
[17] The basic criteria are set out in Schedule 16 of the Regulations. The basic selection criteria may relate to: (a) suitability to pursue a particular activity; (b) economic and financial standing; (c) technical and professional ability."
[18] NHS England, The Provider Selection Regime: statutory guidance, 21 February 2024, p.2.

made to relevant provisions of the Statutory Guidance in the Panel's assessment of the issues in Section 7.[19]

7. Panel Assessment

44. This section sets out the Panel's assessment of EMED's representations and its findings on whether HNY ICB complied with the PSR regulations in relation to:
    - first, awarding the NEPTS contract under the PSR (Section 7.1);
    - second, deciding that YAS's existing NEPTS contracts could be replaced with a single new contract (Section 7.2)
    - third, deciding that the new NEPTS contract did not meet the considerable change threshold for Direct Award Process C (Section 7.3);
    - fourth, deciding that YAS was satisfying its existing NEPTS contracts, and was likely to satisfy the new contract, to a sufficient standard (Section 7.4);
    - fifth, the notice of intention to award a new contract to YAS (Section 7.5); and
    - finally, the response to EMED's request for information about the provider selection process (Section 7.6).

7.1 Eligibility to award a new contract under the Provider Selection Regime

45. This section sets out the Panel's assessment of HNY ICB's decision to award the NEPTS contract under the PSR. This is relevant to the Panel's review as it determines whether the provider selection process conducted by HNY ICB falls within the Panel's remit.

46. The PSR applies "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" (PSR Regulation 3). Relevant health care services are defined in the PSR statutory guidance, which says that "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)".[20]

47. In discussing those health care services that fall inside the PSR, the statutory guidance specifically references patient transport services, saying that in scope health services include "patient transport services for which the provider requires Care Quality Commission (CQC) registration". It further says that the definition of relevant health care services "purposefully excludes 'non health care' or 'health adjacent' services from being arranged under the regime", and cites patient transport services that do not require CQC registration as an example of a service that is excluded from the regime.[21]

[19] 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.
[20] PSR Statutory Guidance, February 2024, p.6.
[21] PSR Statutory Guidance, February 2024, p.7.

48. HNY ICB said that its contract for NEPTS includes both patient transport services where CQC registration is, and is not, required.[22] As a result, there is a question as to whether the procurement of the NEPTS contract can be carried out under the PSR. Mixed procurements (i.e. the procurement of services that include a mix of relevant health care services and other services) fall within the scope of the PSR when the estimated lifetime value of the relevant health care services forms a majority of the contract's value (see PSR Regulation 3).

49. HNY ICB told the Panel that it had assessed the services and concluded that relevant health care services formed a majority of the value of the new NEPTS contract based on the mix of patient journeys that are currently provided by this service. Around 60% of patient journeys are carried out using staff and vehicles to cater for patients with higher mobility needs and for which CQC registration is required.[23] The remaining 40% of patient journeys are carried out by taxis. These are cheaper to provide than comparable journeys using specialist vehicles and accompanying staff. On this basis HNY ICB determined that the majority of the contract's value was dedicated to relevant health care services.

50. The Panel's view is that the approach taken by HNY ICB to determine whether the new NEPTS contract was eligible to be awarded under the PSR was reasonable and, based on the information available, correct. As a result, the Panel finds that HNY ICB, in deciding to award a new NEPTS contract to YAS under the Provider Selection Regime, did not breach the PSR regulations, and in particular Regulation 3, which governs when contracts may be awarded under the Provider Selection Regime.

7.2 Eligibility for Direct Award Process C: replacement of existing contracts

51. This section sets out the first part of the Panel's assessment of whether HNY ICB was able to award a new NEPTS contract using Direct Award Process C. (EMED, in its representations to the Panel, suggested that the new contract was not eligible to be awarded using this provider selection process.)

52. Regulation 6(5) of the PSR regulations sets out five conditions that must be satisfied for Direct Award Process C to be used. These are:
    (a) the relevant authority is not required to follow Direct Award Process A or Direct Award Process B,
    (b) the term of an existing contract is due to expire and the relevant authority proposes a new contract to replace the existing contract at the end of its term,
    (c) the considerable change threshold is not met,
    (d) the relevant authority is of the view that the existing provider is satisfying the existing contract and will likely satisfy the proposed contract to a sufficient standard, and
    (e) the procurement is not to conclude a framework agreement.

53. Conditions (a) and (e) were satisfied as the NEPTS service does not meet the conditions for Direct Award Process A or B, and HNY ICB was not concluding a

[22] HNY ICB, Provider Selection Regime – Contract Award Proposal (Part 1).
[23] HNY ICB, Provider Selection Regime – Contract Award Proposal (Part 1).

framework agreement.[24] The remainder of this section discusses whether condition (b) was satisfied (i.e. the term of an existing contract was due to expire and HNY ICB proposed a new contract to replace the existing contract at the end of its term). Section 7.3 discusses whether condition (c), the considerable change threshold, was satisfied, and Section 7.4 discusses whether condition (d) was satisfied.

54. In relation to condition (b), the Panel considered whether HNY ICB was able to replace three existing contracts with a single new contract given that condition (b) refers to the expiry of an existing contract (i.e. one contract) rather than the expiry of multiple contracts.

55. Under Section 6 of the Interpretation Act 1978 words in the singular include the plural unless the contrary intention appears. The Panel notes that there is no such contrary intention in the PSR regulations. As a result, the Panel finds that HNY ICB is able to award a single contract to replace multiple existing contracts using Direct Award Process C (provided that the other conditions for using Direct Award Process C are satisfied).

7.3 Eligibility for Direct Award Process C: considerable change threshold

56. This section sets out the Panel's assessment of whether the considerable change threshold was met (i.e. condition (c) in the list at paragraph 52). Where the considerable change threshold is met, a commissioner is unable to award a new contract using Direct Award Process C.

57. The conditions for meeting the considerable change threshold are set out in PSR Regulations 6(10), 6(11) and 6(12).

58. Regulation 6(10) says that the considerable change threshold is met:
    (a) where the proposed contracting arrangements are materially different in character to the existing contract when that existing contract was entered into, or
    (b) where –
        (i) changes in the relevant health care services to which the proposed contracting arrangements relate (compared with the existing contract) are attributable to a decision of the relevant authority,
        (ii) the lifetime value of the proposed contracting arrangements is at least £500,000 higher than the lifetime value of the existing contract when that existing contract was entered into, and
        (iii) the lifetime value of the proposed contracting arrangements is at least 25% higher than the lifetime value of the existing contract when that existing contract was entered into.

59. Regulation 6(11) states that the considerable change threshold is not met if paragraph 10(b) does not apply and paragraph 10(a) applies solely as the result of a change in the identity of the provider due to corporate changes (including takeover, merger, acquisition or insolvency) and the relevant authority is satisfied that the provider meets

[24] The NEPTS service did not meet the conditions for Direct Award Process A because NEPTS are capable of being supplied by other providers as well as YAS. The NEPTS service did not meet the conditions for Direct Award Process B because it is not a service where patients are offered a choice of provider.

the basic selection criteria. The Panel notes that there has been no change in the identity of the provider, namely YAS, since the contracts were awarded to it.

60. Regulation 6(12) says that the considerable change threshold is not met where –
    (a) Regulation 6(10)(a) does not apply, and
    (b) Regulation 6(10)(b) applies where the change between existing and proposed contracting arrangements is in response to external factors beyond the control of the relevant authority and provider including, but not limited to changes in patient or service user volume or changes in prices in accordance with a formula provided for in the contract documents.

61. The Panel's assessment is in two parts:
    - first, whether the new contractual arrangements are materially different in character to the existing contracts as per Regulation 6(10)(a) (see Section 7.3.1); and
    - second, whether the new contract's value exceeded the existing contracts' values by at least £500,000 and at least 25% (as per Regulation 6(10)(b)) (see Section 7.3.2).

7.3.1 Whether the new contract is materially different in character to the existing contracts (PSR Reg. 6(10)(a))

62. HNY ICB told the Panel that it had assessed the contracts and concluded that the new NEPTS contract was not materially different in character to YAS's existing NEPTS contracts because the service specifications, service thresholds and KPIs would all remain the same.[25] HNY ICB also told the Panel that while there was variation between the existing NEPTS contracts in the service standards required of YAS, these varying service standards would be preserved in the new NEPTS contract.[26]

63. The Panel notes that HNY ICB has no record of its assessment of whether there are any material differences in the character of these contracts. The Panel also notes that HNY ICB intends to include a Service Development Improvement Plan (SDIP) in the new contract as a means of driving improvement in the quality and value of services supplied by YAS (see paragraphs 87 to 90). The Panel notes that the planned content of the SDIP has only been described in high-level terms, and as a result, it is not clear whether the SDIP will be limited to supporting the performance of the contract in a way that does not vary its terms, or whether it will result in a material change to the characteristics of the services that are supplied or the contractual arrangement.

64. As a result, the Panel finds that HNY ICB, in deciding to use Direct Award Process C, breached Regulation 6(5)(c), which prohibits commissioners from using this process where the considerable change threshold is met. In the absence of any record of HNY ICB's assessment of whether there are any material differences in the character of the new and existing contracts, the Panel cannot be assured that it was reasonable for HNY ICB to conclude that the considerable change threshold was not met. Moreover, in the absence of a more detailed description of the content of the planned Service Development Improvement Plan that will be included in the new contract it was not

[25] HNY ICB, Response to Panel questions, 15 & 30 April 2025.
[26] HNY ICB, Response to Panel questions, 30 April 2025.

possible for HNY ICB to carry out a comprehensive comparison between the new and existing contracts.

7.3.2 Whether the new contract's value exceeded the existing contracts' value by £500,000 and 25% (PSR Reg. 6(10)(b))

65. Even when a new contract is not materially different in character to an existing contract, the considerable change threshold can still be exceeded under the terms of Regulation 6(10)(b) (set out at paragraph 58).

66. Regulation 6(10(b), which is financially focused, says that the considerable change threshold is met if the new contract's lifetime value exceeds the existing contract's lifetime value (at the time the existing contract was awarded) by a total of at least £500,000 and at least 25%. This is, however, qualified by Regulation 6(12), which says that where any increase in the new contract's lifetime value is in response to external factors beyond the control of the commissioner and provider, then this increase in value should not be taken into account. This includes, but is not limited to, changes in patient volumes or changes in prices in accordance with a formula provided for in the contract.

67. HNY ICB was unable to provide figures for the lifetime value of YAS's existing NEPTS contracts at the time they were awarded.[27] Instead, HNY ICB provided the Panel with an analysis that compared the new contract's value against a baseline of the amount paid to YAS under the NEPTS contracts five years ago. This analysis shows that a total of £13.3 million was paid to YAS in 2020-21, and if this was converted to a notional 5 year contract value, then it would imply a total contract value of £66.5 million.

68. The proposed payment to YAS for NEPTS services under the new contract will be £82 million (see paragraph 36). This represents a total increase of £15.5 million and 23%, indicating that the new contract does not exceed both of the material change contract value thresholds set out in the PSR regulations when a comparison is made with the notional 5 year contract value based on the amount paid to YAS in 2020-21.[28] Moreover, HNY ICB's analysis shows that all of the increase in annual payments to YAS (from £13.3 million in 2020-21 to £16.8 million in 2025-26) can be accounted for by nationally mandated funding increases (e.g. for national inflation, national growth funding and national pay awards), which must be passed on to providers under NHS payment guidance. The Panel's view is that these funding increases fall within the exemption set out in Regulation 6(12).

69. The Panel was able to locate on the Contracts Finder website contract award notices for three of the four contracts originally entered into with YAS, namely the East Riding, Vale of York and Hull contracts as well as the contract award notice for the North Lincolnshire contract that was originally awarded to another provider and later

[27] HNY ICB, email to EMED, 6 March 2025.
[28] HNY ICB's analysis was based on the new contract having a lifetime value of £83.8 million, rather than the published figure of £82 million. This larger contract value took account of the most recent increase in annual payments to YAS arising from nationally mandated funding increases. This, in turn, meant the new contract's lifetime value exceeded both £500,000 and 25%. However, for the reasons set out elsewhere in paragraph 68 the threshold was not exceeded given the nationally mandated nature of these funding increases.

transferred to YAS (see paragraph 33).[29] Lifetime contract values for these four contracts, as published in the contract award notices were, respectively, £28-30 million, £17.55 million, £1 to £7.5 million and £7.9 million.

70. Aggregating the contracts' lifetime values at the maximum value in each range gives a total lifetime contract amount of £62.95 million (slightly less than the £66.5 million used in HNY ICB's analysis). The new contract's lifetime value of £82 million is 30% greater than the combined lifetime value of the current contracts when they were awarded. However, the nationally mandated funding increases between 2020-21 and 2024-25 (see paragraph 68) means that the 25% threshold would not be exceeded once these are taken into account.

71. As a result, the Panel finds that HNY ICB, by concluding that the new contract's lifetime value does not exceed the considerable change threshold set out in PSR Regulation 6(10)(b), that is, an increase of more than £500,000 and 25%, did not breach the PSR regulations.

7.4 Whether YAS was satisfying its existing contracts, and will likely satisfy the new contract, to a sufficient standard

72. This section sets out the Panel's assessment of whether HNY ICB was able to conclude that YAS was satisfying its existing NEPTS contracts to a sufficient standard and was likely to satisfy its new contract to a sufficient standard. This test is set out in Regulation 6(5)(d) as one of the conditions that must be met for a commissioner to be eligible to use Direct Award Process C, and also in Regulation 9(2) as Step 1 in the process for awarding a conduct using Direct Award Process C.[30]

73. The Panel's assessment is in five parts:
    - first, an overview of HNY ICB's methodology for carrying out its assessment (Section 7.4.1);
    - second, a discussion of HNY ICB's assessment of YAS's performance against the following four key criteria: (i) Quality and innovation, (ii) Integration, collaboration and service accountability, (iii) Improving access, reducing health inequalities and facilitating choice, and (iv) Social value (Section 7.4.2);
    - third, a discussion of HNY ICB's assessment of YAS's performance against the final key criterion of Value (Section 7.4.3);
    - fourth, a discussion of HNY ICB's assessment of YAS's likely future performance (Section 7.4.4); and
    - finally, the Panel's conclusions (Section 7.4.5).

7.4.1 Methodology for HNY ICB's assessment of YAS's performance

74. HNY ICB told the Panel that it has a template document for its assessments of existing providers' performance as part of its process for deciding whether a new contract should be awarded using Direct Award Process C. This template provides guidance on

[29] The contract award notice for the North Lincolnshire contract is at https://www.contractsfinder.service.gov.uk/notice/b61610d0-e5e6-4756-adaf-5744662a3efb?origin=SearchResults&p=1. Links to the other three contract award notices can be found in the footnotes to paragraph 32.
[30] The Panel's view is that a commissioner, when using Direct Award Process C, will only need to carry out any assessment needed to satisfy this test once, and can then rely on this assessment for the purposes of both deciding that it is eligible to use Direct Award Process C, and as Step 1 in carrying out Direct Award Process C.

the information needed for the assessment, arranged under the five key criteria set out in PSR Regulation 5. For each of the five key criteria, there are sub-headings based on Annex D of the PSR statutory guidance (which provides additional guidance on how to carry out assessments against the key criteria).[31] HNY ICB told the Panel that the extent of the assessment was, in each case, proportionate to the contract's value and complexity.[32] A copy of the template and the completed assessment for YAS was shared with the Panel.

75. Consistent with what HNY ICB told us was its usual practice, YAS was scored against the key criteria on a 0 to 3 scale as per the scoring matrix set out in the following table, which has been taken from the Contract Award Proposal that was presented to the Finance, Performance and Delivery Committee on 17 February 2025. HNY ICB said that all existing providers assessed for a new contract using Direct Award Process C needed to score either 2 or 3 against each of the key criteria to be eligible for a new contract.[33]

Key Criteria

Assessment	Description	Score
Meets requirements	Demonstration and evidence of the Key Criteria requirement will be achieved, which is proportionate to the healthcare service being commissioned.	3
Meets requirements with some reservation - action plan in place	Demonstration and evidence of the Key Criteria requirement with some reservations, which is proportionate to the healthcare service being commissioned. For identified reservations an action plan is in place to address concerns / issues with clear timescales for resolution.	2
Meets requirements with some reservation - no action plan in place	Demonstration and evidence of the Key Criteria requirement with some reservations, which is proportionate to the healthcare service being commissioned. For identified reservations no action plan in place to address concerns / issues.	1
Doesn't meet requirements	No demonstration, or evidence that the Key Criteria requirement will be achieved.	0

Source: HNY ICB, PSR Quality Assurance Assessment, 7 February 2025.

76. HNY ICB told the Panel that the evaluation and scoring of YAS's performance was carried out by members of the commissioning and procurement teams. It described the process for carrying out the assessment, which involved internal meetings of relevant ICB staff to discuss the evidence that was needed, and to identify where this evidence might be located, such as within the ICB's records or in the public domain. Meetings were then held with YAS to discuss the gaps in the evidence base and to request relevant evidence. HNY ICB said that the evidence supplied by YAS came from, for example, corporate strategy documents and addressed areas such as sustainability, staff supervision, and training and quality oversight.[34]

77. The Contract Award Proposal submitted to the Finance, Performance and Delivery Committee on 17 February 2025 recommended the award of a new NEPTS contract to YAS using Direct Award Process C, and this recommendation was accepted by the Committee.

[31] Annex D has, however, been removed from the latest version of the PSR statutory guidance.
[32] HNY ICB, Panel meeting, 9 May 2025.
[33] HNY ICB, DAP C Assessment Evaluation query, 30 April 2025.
[34] HNY ICB, Panel meeting, 9 May 2025.

7.4.2 HNY ICB's assessment of YAS's NEPTS performance against the non-value key criteria

78. This section discusses HNY ICB's assessment of YAS's NEPTS service against four of the five key criteria set out in the PSR regulations (collectively referred to as the non-value key criteria). These key criteria are:
    - Quality and innovation;
    - Integration, collaboration and service sustainability;
    - Improving access, reducing health inequalities and facilitating choice; and
    - Social value.

79. HNY ICB evaluates and scores its existing providers against quality and innovation separately, and the scores that HNY ICB awarded to YAS for its NEPTS service against the non-value key criteria are set out in the table below.

Non-value key criteria	Score
Quality	2
Innovation	3
Integration, collaboration and service sustainability	2
Improving access, reducing health inequalities and facilitating choice	3
Social value	3

Source: Panel analysis based on HNY ICB, Procurement Panel PSR Quality Assurance Assessment, 17 February 2025.

80. The Panel has considered two aspects of HNY ICB's assessment of YAS's performance against the non-value key criteria:
    - first, whether HNY ICB's analysis allowed it to reach a view that YAS was performing against the non-value criteria to a sufficient standard (see paragraphs 81 to 91); and
    - second, the relevance of the KPIs referred to by EMED in its representations to the Panel in HNY ICB's assessment (see paragraphs 92 to 96).

HNY ICB's analysis of YAS's performance

81. HNY ICB's assessment of YAS's performance against the four non-value key criteria was, as set out in paragraph 74, structured under five headings with sub-headings as set out in the table below. A narrative commentary was provided under each sub-heading describing YAS's activities and setting out some supporting evidence in relation to YAS's performance, such as quality metrics reported to the ICB, regulatory reports (e.g. CQC inspections) and other data.

Key criteria	Sub-headings for HNY ICB's assessment
Quality	(i) Governance, (ii) Quality assurance & governance of sub-contractors, (iii) Safety, (iv) Effectiveness, (v) Providing a positive experience of care, (vi) Well-led, (vii) Sustainably resourced, (viii) Local & national information, (ix) Quality outcomes, (x) Clinical governance engagement

Innovation	(i) Examples of PTS quality improvements, (ii) Strategic ambition & future developments, (iii) Research
Integration, collaboration and service sustainability	(i) Integration between YAS services & local transport partners, (ii) Integration and operational collaboration with local stakeholders & external services, (iii) Collaboration with HNY Integrated Care System, (iv) Service sustainability, (v) Workforce
Improving access, reducing health inequalities and facilitating choice	(i) Service access, (ii) Community engagement (improving access and outcomes for vulnerable groups, (iii) Reducing health inequalities and disparities, (iv) Facilitating choice
Social value	(i) Addressing climate change and progressing to net zero, (ii) YAS sustainability, (iii) Staff well-being, (iv) Inclusive employment; (iv) Community engagement (supporting communities and the wider social determinants of health; (v) Local inclusive sustainable economies

Source: HNY ICB, Provider Selection Regime – Contract Award Proposal, 17 February 2025.

82. The Panel notes that HNY ICB's assessment reflects considerable effort by HNY ICB and covers a broad range of performance areas and gives consideration to both inputs (e.g. YAS's policies and procedures) and outcomes. However, much of the assessment is descriptive, with only a limited amount of critical analysis that, for example, allows HNY ICB to draw conclusions about the processes or outcomes that it is describing. Critical analysis of YAS's performance could be expected to include a discussion of the strengths and weaknesses of different aspects of YAS's performance, the reasons for any underperformance or overperformance, and the potential for improvement.

83. The Panel appreciates that commissioners' capacity to assess the performance of a provider so as to decide whether it is eligible for a new contract using Direct Award Process C may be affected by resource constraints. The Panel, however, notes that at least some of this resource constraint will be alleviated where contract monitoring is effective at capturing relevant performance data from providers.

84. The Panel also notes that it may be helpful for ICBs, in approaching their strategic commissioning remit, to have systems and processes that allow ICBs to identify those contracts within their portfolio that warrant a more, or less, detailed assessment of the provider's performance. Amongst other benefits, this will help commissioners show that their assessment of whether a provider should be awarded a new contract using Direct Award Process C has been proportionate (as required by the PSR regulations). Other relevant authorities, such as local authorities and NHS trusts, may similarly find this approach helpful.

85. In relation to HNY ICB's decision to award a new NEPTS contract to YAS using Direct Award Process C, the Panel notes that, in the absence of any other information or analysis that could inform a view on the proportionality of the ICB's assessment, the size of the new NEPTS contract (i.e. a contract value of £82 million) suggests that a more in-depth assessment of YAS's performance than that carried out by HNY ICB was warranted.

86. The Panel notes that HNY ICB, on the basis of its assessment, awarded YAS the scores set out in the table at paragraph 79. However, HNY ICB does not set out the rationales for these scores in its assessment and, as set out above, the assessment lacks the critical analysis that could have informed the rationale for these scores. As a

result, the Panel finds that HNY ICB is unable to show that it was reasonable for it to conclude that YAS was performing against the non-value criteria to a sufficient standard.

87. The Panel asked HNY ICB to supply the Panel with the action plans for Quality and Integration, collaboration & service sustainability that, according to the scoring matrix, should be in place where a score of 2 is awarded. A score of 2 is awarded for "Meets requirements with some reservation – action plan in place", and the description of the score says "For identified reservations an action plan is in place to address concerns / issues with clear timescales for resolution" (see scoring matrix at paragraph 75).

88. HNY ICB told the Panel that these action plans had not yet been drafted, but would be included as an annex to the new contract in the form of a Service Delivery Improvement Plan (assuming a new contract is awarded to YAS following the completion of the Panel's review).[35] The Contract Award Proposal submitted to HNY ICB's Finance, Performance and Delivery Committee says "The future contract will include a Service Development and Improvement Plan (SDIP) which describes the agreed programme for the provider and HNY ICB to work collaboratively with West and South Yorkshire ICBs to align service provision including eligibility criteria and explore opportunities for improving productivity".[36]

89. In response to the Panel's query as to whether YAS had met the requirements for a score of 2, given that no action plan (or Service Development Improvement Plan) was in place, HNY ICB said that "action plan in place" in the scoring matrix should be interpreted as meaning that an action plan would be put in place in the future. It contrasted this to a score of 1, which is defined in the scoring matrix as "Meets requirements with some reservation – no action plan in place", where the management of a service was not willing to agree an action plan as part of a new contract. The Panel, however, does not agree that it is possible to interpret "action plan in place" as meaning "action plan not currently in place but will be put in place in the future".

90. The Panel notes that the description of the planned Service Development Improvement Plan is limited (see paragraph 88). It focuses on productivity and alignment of eligibility criteria and other issues with neighbouring ICBs, but does not obviously address the two criteria where HNY ICB awarded YAS a score of 2 (i.e. Quality and Integration, collaboration & service sustainability). Moreover, the assessment, as well as lacking any rationale for the scores that were awarded, does not identify the specific areas within these criteria where HNY ICB has reservations about YAS's performance.

91. In summary, the Panel has four concerns about the HNY ICB's assessment of YAS's performance against the four non-value key criteria: first, HNY ICB's assessment lacked sufficient critical analysis and was not proportionate to the value of the contract that was being awarded; second, HNY ICB's assessment did not set out any rationale for the scores that were awarded to YAS for its performance; third, HNY ICB did not follow its own rules for deciding whether YAS was eligible to be awarded a new contract under Direct Award Process C (i.e. requiring an action plan to be in place to

[35] HNY ICB told the Panel that work on drafting the action plans was suspended after receipt of EMED's representations in case the outcome of the representations review process rendered them unnecessary (HNY ICB, *Panel meeting*, 9 May 2025).
[36] HNY ICB, Provider Selection Regime – Contract Award Proposal (Part 1).

address the shortcomings identified by HNY ICB); and finally, the high level description of the planned content of the Service Development Improvement Plan does not appear to address the reservations identified by HNY ICB in its evaluation of YAS's performance.

Relevance of the published KPIs in HNY ICB's assessment

92. EMED, in its representations to the ICB, drew attention to YAS's performance against a set of KPIs published, as the Panel understands it, in YAS's publicly available board papers. EMED said that YAS had failed to meet four out of five targets for patient collection and drop-off since 2023.

93. HNY ICB, in responding to EMED's representations, told the Panel that "KPIs are one of many factors for the ICB to consider in assessing quality", and noted that KPIs are just one of the thirteen potential sources for information about quality identified in the PSR statutory guidance. HNY ICB further told the Panel that the KPIs referenced by EMED relate to YAS's NEPTS performance across the three ICBs where it provides NEPTS and were not specific to HNY ICB.[37]

94. The Panel notes that HNY ICB's assessment of YAS's performance refers to various KPIs relating to YAS's NEPTS services. For example, the assessment notes that "KPI4 on-day discharge responsiveness is most sensitive to increasing demand and acuity, creating challenges in regularly achieving the contract standard of 90% on-day discharge pickups within 2 hours". It goes on to say that the service "demonstrates ongoing responsiveness with >95% of on-day discharges collected within 4 hours of notification".[38]

95. The Panel's view is that it was for HNY ICB to determine, within reason, which factors to take into account when assessing YAS's performance. It was not unreasonable for it to have regard to KPIs for those services it contracts from YAS in preference to the KPIs referenced by EMED (which encompass NEPTS services provided to other ICBs as well as HNY ICB).

7.4.3 HNY ICB's assessment of YAS's NEPTS service against the value criterion

96. This section sets out the Panel's assessment of HNY ICB's assessment of YAS's NEPTS service against the Value criterion, one of the five key criteria set out in the PSR regulations.

97. HNY ICB's assessment (set out in the Contract Award Proposal presented to HNY ICB's Finance, Performance and Delivery Committee on 17 February 2025) is organised under four headings: (i) Service benefits, (ii) Efficiency, (iii) Impact on the ICB's wider commissioning priorities, and (iv) TUPE.[39] HNY ICB awarded YAS a score of 2 "Meets requirements with some reservation – action plan in place".

98. The PSR statutory guidance, in discussing how commissioners should go about assessing value, says that commissioners "must give due consideration to the need to ensure good value in terms of costs, overall benefits and financial implications of an

[37] HNY ICB, Panel meeting, 9 May 2025.
[38] HNY ICB, Provider Selection Regime – Contract Award Proposal (Part 1).
[39] Transfer of undertakings [protection of employment] regulation.

arrangement. When assessing the value of a service/arrangement with a provider, relevant authorities are expected to consider:

- The benefits of the arrangement with a provider. Benefits may be evaluated in relation to the other criteria in the regime and may relate to patients (in terms of patient outcomes or experience), the population (in terms of improved health and wellbeing) and to taxpayers (by reducing the cost burden of ill-health over the whole life of the arrangement within the resources available).
- The costs (or likely costs) of the arrangement, including but not limited to the efficiency of the service, the cost over the length of contract, value for money, the historical market valuation of certain services and any benchmarking of costs against other similar services."[40]

99. HNY ICB's assessment of YAS against the value criterion indicates the benefits that HNY ICB derives from having: (a) a block contract with YAS for NEPTS where the cost to HNY ICB does not vary with activity; and (b) a single provider of NEPTS and emergency ambulance services with the potential for economies of scale and scope that this brings. For example, the assessment says that:
    - "NEPTS funding is now contained within system control totals, linked to the success of the wider system … not locked in a separate commercial contract value for 5+ years";
    - "Global sum financial alignment has shared the risk of rising activity and acuity … smoothing out in-year financial pressures across systems"; and
    - "global sum creates the foundation for integration between 999 and NEPTS (e.g. integrated care pilot shares resources between NEPTS and 999 low acuity tier crews for faster responses to discharge)".[41]

100. The Panel notes, however, that HNY ICB's assessment does not contain any analysis that supports or elaborates on the potential benefits from having a block contract or a single provider for NEPTS and ambulance services.

101. HNY ICB's assessment further says that "YAS employs a range of measures to monitor and improve the efficiency of the HNY NEPTS service". The Panel notes that HNY ICB's assessment describes these measures but does not include any data or analysis to show YAS's performance against these measures. The Panel also notes that in relation to other factors that commissioners are expected to consider, such as "the cost over the length of contract, value for money, the historical market valuation of certain services and any benchmarking of costs against other similar services", there is little or no analysis or reference to any previous analysis carried out during the term of the contract.

102. The Panel also notes that the assessment does not set out the rationale for awarding YAS a score of 2 for its performance against the Value criterion, and does not identify the specific concerns about Value that should be addressed in an action plan. There is no action plan in place to address HNY ICB's reservations about YAS's performance in relation to Value, and there is little in the high level description of the planned content of the SDIP to suggest that it might address HNY ICB's concerns about Value.

[40] PSR Statutory Guidance, February 2024, p.53.
[41] HNY ICB, Provider Selection Regime – Contract Award Proposal, 17 February 2025.

103. In summary, the Panel has three main concerns about HNY ICB's assessment of YAS's performance against the value criterion: first, there appear to be significant gaps in HNY ICB's assessment of YAS's performance against the Value criterion; second, HNY ICB's assessment does not set out any rationale for the score that was awarded to YAS for its performance against the Value criterion nor does it identify any specific areas that should be addressed in an action plan; and finally, there is little in the high level description of the planned content of the SDIP to suggest that it might address HNY ICB's concerns about Value.

7.4.4 Whether YAS is likely to satisfy the new NEPTS contract to a sufficient standard

104. This section sets out the Panel's assessment of whether it was reasonable for HNY ICB to conclude that YAS is likely to satisfy the new NEPTS contract to a sufficient standard (i.e. the second part of condition (d) set out in paragraph 52).

105. HNY ICB told the Panel that it considered past service delivery performance to be a reliable indicator of future performance.[42] That is, HNY ICB considered its assessment of YAS's current performance as sufficient to reach a view on whether YAS would be likely to satisfy the new contract to a sufficient standard.

106. The Panel notes that HNY ICB's assessment of YAS's performance contains some forward-looking elements. For example, the assessment notes that YAS's service delivery model has features that allow it "to adapt the service model to take account of system changes and pressures (e.g. rising demand, acuity of case-mix)". Elsewhere, the assessment details "strategic ambitions and future developments" which discusses potential future innovations, including:
    - improved use of technology and data to improve care and efficiency;
    - better engagement with partners;
    - embedding pilots;
    - improving consistency in applying patient eligibility criteria;
    - some discussion of what opportunities could be presented by a 5 year contract, including a common computer aided dispatch system across 999 and PTS services and a new integrated hub station in Hull; and
    - workforce developments, including recruitment trajectories and turnover meeting its KPI target.

107. The Panel's view is that, contrary to HNY ICB's suggestion, it is unlikely that an assessment of current performance will be sufficient, on its own, to reach a robust view on likely future performance. This is because there will be a need to take account of factors such as likely changes in health policy, likely changes in demand for services, expectations about the financial environment and other pressures or trends that could impact on the provider's performance. The Panel's view is that, notwithstanding the forward looking elements of HNY ICB's assessment, the assessment was not sufficient for the HNY ICB to be able to reasonably conclude that YAS is likely to satisfy the new contract to a sufficient standard.

[42] HNY ICB, Panel meeting, 9 May 2025.

7.4.5 Panel conclusions on HNY ICB's assessment of YAS's performance

108. In summary, the Panel, in reviewing HNY ICB's decision that YAS was satisfying its existing contracts and would likely satisfy the proposed contract to a sufficient standard, identified several shortcomings in HNY ICB's assessment of YAS's performance. These included:

    (i) a lack of critical analysis in HNY ICB's assessment of YAS's performance against the five key criteria as well as significant gaps in this analysis, particularly in relation to the Value criterion and whether YAS was likely to satisfy the proposed contract to a sufficient standard;

    (ii) a depth of analysis by HNY ICB that does not appear proportionate to the value of the contract that is being awarded; and

    (iii) decision-making in relation to the proposed contract award that was inconsistent with HNY ICB's own rules.

109. As a result, the Panel finds that HNY ICB, in carrying out the provider selection process using Direct Award Process C, breached Regulation 9(2), which requires commissioners to decide, taking into account the key criteria and applying the basic selection criteria, whether it is content that the existing provider is satisfying the original contract and will likely satisfy the proposed contract to a sufficient standard. The Panel finds that it was not reasonable to reach this decision based on the assessment it had carried out.

110. Consistent with this, the Panel also finds that the award of a new NEPTS contract to YAS using Direct Award Process C did not satisfy Regulation 6(5), because HNY ICB, based on the assessment it carried out, could not reasonably be of the view that YAS was satisfying its existing contracts and was likely to satisfy the proposed contract to a sufficient standard.

7.5 HNY ICB's notice of intention to award a contract to YAS

111. This section sets out the Panel's assessment of EMED's concerns that HNY ICB's notice of intention to award a new NEPTS contract to YAS did not meet the requirements of the PSR regulations (see paragraph 39).

112. Under PSR regulations 9(3) and 9(4), HNY ICB was required to publish a notice of intention of its decision to award a new NEPTS contract to YAS using Direct Award Process C. This notice had to include the content set out in Schedule 3 of the PSR regulations, which includes "a statement explaining the award decision makers' reasons for selecting the chosen provider, with reference to the key criteria".

113. The notice of intention published by HNY ICB stated that:

> "NHS Humber and North Yorkshire ICB has conducted an assessment of the Provider against the stated Basic Selection Criteria and Key Criteria and considers that the existing provider is satisfying its current existing contract, will likely satisfy the new

contract to a sufficient standard, and the proposed contracting arrangements are not changing considerably".[43]

114. EMED's view is that this statement does not meet the requirements of Regulation 9 because it "contains no explanation at all as to the reasons why the authority was satisfied as to existing or future performance". HNY ICB, however, said that its notice "clearly makes reference to explain that the reason for awarding the contact has been arrived at following an assessment of the Basic Criteria and the Key Criteria. There is no requirement in the Regulations or Statutory Guidance for the ICB to publish any scores or detailed narrative in respect of the assessment".[44]

115. The Panel notes that HNY ICB's statement explaining its reasons for selecting YAS for the award of the NEPTS contract simply re-states the relevant regulatory provisions. The Panel's view is that this is not sufficient to meet the requirements of Regulations 9(3) and 9(4) as it does not constitute an explanation of the reasons for HNY ICB's decision.

116. As a result, the Panel finds that HNY ICB, in publishing its notice of intention to award a new NEPTS contract to YAS using Direct Award Process C, breached its obligations under Regulation 9(3) and 9(4), which require it to include a statement in the notice explaining its reasons for selecting the chosen provider, with reference to the key criteria.

7.6 HNY ICB's response to EMED's request for information

117. This section sets out the Panel's assessment of whether HNY ICB complied with the requirements of the PSR regulations when responding to EMED's request for information as part of its representations to HNY ICB.

118. PSR regulation 12(4) says that "where the relevant authority receives representations … it must: (a) ensure each provider who made representations is afforded such further opportunity to explain or clarify the representations made as the relevant authority considers appropriate; and (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)".

119. Regulation 24 says that a relevant authority must keep a record of:
    (a) the name of any provider to whom it awards a contract;
    (b) the name of any provider who is a party to a framework agreement;
    (c) the address of the registered office or principal place of business of each provider referred to in paragraph (a) or (b);
    (d) the decision-making process followed, including the identity of individuals making decisions;
    (e) where Direct Award Process C or the Most Suitable Provider Process was followed, a description of the way in which the key criteria were taken into account and the basic selection criteria were assessed when making a decision;

[43] HNY ICB, contract award notice [as a "Provider Selection Regime (PSR) intention to award notice"] on Find a Tender Service, 25 February 2025.
[44] HNY ICB, PTS Representation EMED - ICB Response.

(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;
(j) where a procurement is abandoned, the date on which it is abandoned.

120. PSR regulation 12(5) says that a commissioner is not required to provide requested information where provision: (a) would prejudice the legitimate commercial interests of any person, including those of the relevant authority; (b) might prejudice fair competition between providers; or (c) would otherwise be contrary to the public interest.

121. EMED in making its representations to HNY ICB requested the following information:

- "Please provide reasons for the decision to award the proposed contract to Yorkshire Ambulance Service NHS Trust including but not limited to:
  - how the assessment of the successful provider against the key criteria was made and the reasons for these decisions?
  - scores achieved by Yorkshire Ambulance Service NHS Trust against the weighted key criteria and the basis on which Yorkshire Ambulance Service was scored including whether it submitted a response to the criteria.
  - Reasons for the scores awarded to Yorkshire Ambulance Service NHS Trust against the key criteria.
- Can you share what evidence the successful provider submitted as part of the evaluation and how this was benchmarked against market norms?
- Can you please provide the journey volumes on which the evaluation was based, the price per journey and price per mile and any other factors used to assess what constituted best value?
- Please provide reasons for the decision to utilise Direct Award Process C including but not limited to:
  - The reasons for the conclusion that the existing provider is satisfying the existing contract and will likely satisfy the proposed contract. We would expect those reasons to address the existing provider's current and historic performance against KPIs as a minimum.
  - The reasons for the conclusion that the considerable change threshold is not met.
  - A description of the way in which the key criteria were taken into account when deciding to utilise Direct Award Process C (noting in particular that it is a non-competitive process so there was no competitive pressure on price and quality).
  - A description of the way in which the relative importance of each of the key criteria was determined."[45]

[45] EMED, Representations to HNY ICB, 7 March 2025.

122. HNY ICB, in responding to EMED's information request, refused to provide any of the requested information on the grounds that this information would "prejudice legitimate commercial interests … and prejudice fair competition between providers".[46] However, later, during the Panel's review, HNY ICB provided further information to EMED, namely a copy of its assessment of YAS's performance as included in the Contract Award Proposal of 17 February 2025, but with the content of the assessment other than the headings redacted.

123. The Panel notes that not all of the information requested by EMED necessarily falls within the scope of the records that HNY ICB is required to keep under Regulation 24. However, at least some of the information requested by EMED clearly did fall within HNY ICB's record keeping obligations. This includes, for example, EMED's request for information on "how the assessment of the successful provider against the key criteria was made and the reasons for these decisions", which corresponds to the requirement that commissioners keep a record of "the decision-making process followed" and where Direct Award Process C was followed "a description of the way in which the key criteria were taken into account and the basic selection criteria were assessed when making a decision".

124. The Panel notes that the lack of recorded reasons for HNY ICB's decision, as discussed in Section 7.4.2, may be a contributing factor to HNY ICB's difficulties in responding to EMED's information request. However, the Panel's view is that HNY ICB, in not providing EMED with any information where it has a duty to record that information under Regulation 24, has gone beyond what might be a reasonable interpretation of the provisions of PSR regulation 12(5) (i.e. withholding information on the grounds of prejudicing legitimate commercial interests or fair competition between providers).

125. As a result, the Panel finds that HNY ICB, in refusing to provide EMED with any substantive response to its request for information, breached Regulation 12(4), which requires it to promptly provide any information requested by an aggrieved provider where the relevant authority has a duty to record that information under Regulation 24, subject to the exclusions set out in Regulation 12(5). The Panel also finds that the breach of Regulation 12(4) is, at least in part, a result of HNY ICB breaching its recordkeeping obligations under Regulation 24.

8. Panel Advice

126. In summary, the Panel finds that HNY ICB, in deciding to award a new NEPTS contract to YAS using Direct Award Process C has breached the PSR regulations in several respects.

- First, the Panel finds that that HNY ICB, in deciding to use Direct Award Process C, breached Regulation 6(5)(c), which prohibits commissioners from using this process where the considerable change threshold is met. In the absence of any record of HNY ICB's assessment of whether there are any material differences in the character of the new and existing contracts, the Panel cannot be assured that it was reasonable for HNY ICB to conclude that the

[46] HNY ICB, Representation response to EMED, 31 March 2025.

considerable change threshold was not met. Moreover, in the absence of a more detailed description of the content of the planned Service Development Improvement Plan that will be included in the new contract it was not possible for HNY ICB to carry out a comprehensive comparison between the new and existing contracts.

- Second, the Panel finds that HNY ICB breached Regulation 9(2), when carrying out the provider selection process using Direct Award Process C, as it was not reasonable for HNY ICB to decide, taking into account the key criteria and applying the basic selection criteria, that it was content that YAS was satisfying the original contract, and would likely satisfy the proposed contract, to a sufficient standard. (Consistent with this, the Panel also finds that HNY ICB breached Regulation 6(5)(d) when deciding to use Direct Award Process C.)
- Third, the Panel finds that HNY ICB, in publishing its notice of intention to award a new NEPTS contract to YAS using Direct Award Process C, breached Regulations 9(3) and 9(4), which require it to include a statement in the notice explaining its reasons for selecting the chosen provider, with reference to the key criteria.
- Finally, the Panel finds that HNY ICB, in refusing to provide EMED with any substantive response to its request for information, breached Regulation 12(4), which requires it to promptly provide any information requested by an aggrieved provider where the relevant authority has a duty to record that information under Regulation 24, subject to the exclusions set out in Regulation 12(5). The Panel also finds that the breach of Regulation 12(4) is, at least in part, a result of HNY ICB breaching its recordkeeping obligations under Regulation 24.

127. The Panel also finds that the provider selection process carried out by HNY ICB for its new NEPTS contract did not breach the PSR regulations in two other respects.
    - First, the Panel finds that HNY ICB, in deciding to award a new NEPTS contract under the Provider Selection Regime, did not breach Regulation 3, which governs when contracts may be awarded under the PSR.
    - Second, the Panel finds that HNY ICB, by concluding that the new contract's lifetime value does not exceed the considerable change threshold set out in PSR Regulation 6(10)(b), that is, an increase of more than £500,000 and 25%, did not breach the PSR regulations.

128. Given the Panel's findings that HNY ICB breached the PSR regulations when deciding to award a new NEPTS contract to YAS using Direct Award Process C, three options are open to the Panel. The Panel may advise that:
    - the breaches had no material effect on HNY ICB's selection of a provider and it should proceed with awarding the contract as originally intended;
    - HNY ICB should return to an earlier step in the provider selection process to rectify the issues identified by the Panel; or
    - HNY ICB should abandon the current provider selection process.

129. The Panel's view is that the breaches it has identified may have had a material effect on HNY ICB's selection of a provider. This is because a robust assessment of whether YAS was satisfying its existing NEPTS contracts and was likely to satisfy a new NEPTS contract, as required under Regulation 6(5)(d) and Regulation 9(2), may have led to HNY ICB reaching a different conclusion about YAS's performance, and as a result, a different conclusion as to whether HNY ICB was able to award a new NEPTS contract to YAS using Direct Award Process C.

130. The Panel's advice is that HNY ICB should return to an earlier step in the provider selection process, namely its decision on which provider selection process will be used to award a new NEPTS contract. HNY ICB should reassess whether it is eligible to use Direct Award Process C based on: (a) a new analysis of whether the new contract meets the material change threshold; and (b) a new analysis of whether YAS was satisfying the original contract, and will likely satisfy the proposed contract, to a sufficient standard.

131. Returning to this stage of the provider selection process will ensure that HNY ICB is taking a proportionate approach to deciding whether YAS should be directly awarded a new £82 million contract (i.e. without testing offers from alternative providers). It will also allow HNY ICB, if it decides that it is eligible to award a new NEPTS contract using Direct Award Process C, to carry out this provider selection process without repeating the other breaches of the PSR regulations that are identified in this report.

132. More broadly, this is the first case to come to the Panel concerning an award under Direct Award Process C. As a result, many of the issues discussed in this report are being considered for the first time. The Panel hopes that commissioners find the Panel's conclusions of some assistance when using Direct Award Process C in the future.

133. In terms of some wider observations, the Panel notes that commissioners, when deciding which providers are potentially eligible for a new contract using Direct Award Process C, should take care to carry out an assessment of their providers' performance that is proportionate to the importance of the contract, and to employ a process that gives the commissioner the opportunity to decide, following the assessment, that it will not use Direct Award Process C to award a new contract.

134. The Panel appreciates that commissioners do not have limitless capacity to assess providers' performance, and notes that the need for resources to carry out any assessment will be alleviated where contract monitoring is effectively capturing relevant performance data from providers.

135. The Panel also notes that ICBs may find it helpful, in approaching their strategic commissioning remit, to have systems and processes to identify those contracts within their portfolio that warrant a more, or less, detailed assessment of their providers' performance as their contracts near an end. This will help ICBs assure themselves that they have taken a proportionate approach to this assessment and, in addition, help satisfy the requirements of the PSR regulations. Other relevant authorities, such as local authorities and NHS trusts, may similarly find this approach helpful.