

# **Independent Patient Choice and Procurement Panel**

**Review of a proposed contract award**

**Whitehawk Alternative Provider Medical Services (APMS)  
Primary Care Services**

**Case Reference: CR0020-25**

**23 July 2025**

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## 1 Executive Summary

1. On 23 May 2025, Wellsbourne Healthcare Community Interest Company (Wellsbourne) asked the Panel to advise on the selection of a provider by NHS Sussex Integrated Care Board (Sussex ICB) for an Alternative Provider Medical Service (APMS) contract to provide primary care services to the population of Whitehawk and the surrounding area of Brighton and Hove (the Whitehawk APMS contract). The Panel accepted Wellsbourne's request on 28 May 2025.
2. Wellsbourne, under the terms of the Whitehawk APMS contract, offers primary care services to patients in the Whitehawk area who are registered with the practice (the Whitehawk practice). The Whitehawk area has higher than average levels of deprivation and includes a number of socio-economic disadvantaged communities. Approximately 8,300 patients were registered with Wellsbourne as of January 2024.
3. On 15 December 2023, Sussex ICB decided to select a provider for a new Whitehawk APMS contract using the competitive process under the PSR regulations.
4. On 8 January 2024, Sussex ICB published a Prior Information Notice (PIN) for the new contract on the Find a Tender Service, and on 17 May 2024, Sussex ICB published a contract notice inviting proposals from interested providers. The new contract is to have a seven year term, with the option of a two year extension, and was due to commence on 1 April 2025. The estimated total contract value, including the extension period, is approximately £10.4m (excluding VAT).
5. The deadline for proposals, after a pause to consider bidders' questions on TUPE-related matters, was 11 October 2024. On 14 March 2025, Sussex ICB published a contract award notice announcing the successful bidder as One Medicare t/a One Primary Care LLP (One Medicare). Wellsbourne's proposal was ranked third out of four compliant bids.
6. On 20 March 2025, prior to the standstill period ending, Wellsbourne made representations to Sussex ICB raising concerns about the provider selection process and requesting information. This was followed by further representations on 4 April and 8 May. Sussex ICB confirmed its selection of One Medicare as the successful bidder following each of these representations. On 20 May, after communicating its third further decision to Wellsbourne, namely that it would proceed with the contract award to One Medicare, Sussex ICB told Wellsbourne that it would not be responding to any new representations.
7. The Panel's assessment of Wellsbourne's representations and its findings on whether Sussex ICB complied with the PSR regulations address:
  - first, pre-procurement public engagement;
  - second, the quality-related questions asked of bidders and their evaluation;
  - third, the financial questions asked of bidders and their evaluation; and
  - finally, evaluation governance and the independence of the representations review panel.
8. The Panel finds that Sussex ICB's provider selection process for the Whitehawk APMS contract has breached the PSR regulations in four respects.

- First, the Panel finds that Sussex ICB, by conducting the evaluation and scoring process differently to the way in which it was described to Wellsbourne, breached the PSR regulations, and in particular its obligations under Regulation 4 to act transparently and fairly.
- Second, the Panel finds that Sussex ICB, in evaluating Wellsbourne's response to Question ITT02 (Communications) erred by concluding that Wellsbourne did not address certain issues when this was not the case, and as a result breached Regulation 4, which requires it to act transparently and fairly.
- Third, the Panel finds that Sussex ICB: (i) in not providing information to bidders about the locally commissioned services (LCSs) they might potentially supply, (ii) in lacking clarity about its expectations of the LCSs that the successful bidder would deliver, (iii) in requesting bidders' estimates of their likely income from LCSs and other sources without supplying information about these LCSs, and (iv) in evaluating proposals that contained a significant disconnect between the additional revenue estimates and the workforce and costs necessary to deliver this revenue, breached the PSR regulations, and in particular its obligations under Regulation 4 to act transparently and fairly.
- Finally, the Panel finds that Sussex ICB, in its evaluation and scoring of Wellsbourne's financial proposal, breached the PSR regulations, and in particular Regulation 24(g), which requires the ICB to keep a record of the reasons for its decisions.

9. The Panel also finds that Sussex ICB's provider selection process for the Whitehawk APMS contract did not breach the PSR regulations in four other respects.

- First, the Panel finds that Sussex ICB, in its pre-procurement public engagement, did not breach the PSR regulations, and in particular its obligations under Regulation 4, which requires it to act with a view to securing the needs of the people who use the services, and to act transparently, fairly and proportionately.
- Second, the Panel finds that Sussex ICB, in the formulation of its ITT questions, did not breach the PSR regulations, and in particular its obligations under Regulation 4, which requires it to act fairly.
- Third, the Panel finds that Sussex ICB, in deciding the weightings for the key criteria, did not breach the PSR regulations, and in particular its obligations under Regulations 5(e) and 11(2), which state that "Step 1 [of the competitive process] is that the relevant authority determines the contract or framework award criteria, taking into account the key criteria and applying the basic selection criteria".
- Finally, the Panel finds that Sussex ICB, in the selection of an evaluator related to Healthwatch, and in setting out the composition of its representations review panel, did not breach the PSR regulations, and in particular its obligations under Regulation 4, which requires it to act fairly.

10. Given the Panel's findings that Sussex ICB breached the PSR regulations, three options are open to the Panel. The Panel may advise that:

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

11. The Panel's view is that Sussex ICB's breaches of the PSR regulations are sufficiently serious to have had a material effect on its selection of a provider. This is particularly the case in relation to the Sussex ICB's provision of information about LCSs in the provider selection process and its request for bidders' estimated income from delivering LCSs (i.e. the third bullet point in paragraph 8).
12. The Panel's advice to Sussex ICB is that it returns to an earlier step in the provider selection process, namely the publication of a new contract notice and issuance of ITT documentation suitably revised to address the issues identified by the Panel in this review. This will allow a new provider selection process to take place that addresses all of the issues identified by the Panel in this report.
13. The Panel also recommends that Sussex ICB ensures that, in future, sufficiently detailed notes are kept of moderation meeting discussions so that bidders, internal review panels and the Panel can follow the reasoning of those involved in decision making.

## 2 Introduction

14. On 23 May 2025, Wellsbourne Healthcare Community Interest Company (Wellsbourne)<sup>1</sup> asked the Panel to advise on the selection of a provider by NHS Sussex Integrated Care Board (Sussex ICB) for an Alternative Provider Medical Service (APMS) contract to provide primary care services to the population of Whitehawk and the surrounding area of Brighton and Hove (the Whitehawk APMS contract).
15. The Panel accepted Wellsbourne's request on 28 May 2025 in accordance with its case acceptance criteria. These criteria set out both eligibility requirements and the prioritisation criteria the Panel will apply when it is approaching full caseload capacity.<sup>2</sup> Wellsbourne's request met the eligibility requirements, and as the Panel was not approaching full capacity, there was no need to apply the prioritisation criteria.
16. 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;
  - Albert Sanchez-Graells, Case Panel Member; and
  - Daria Prigioni, Case Panel Member.<sup>3</sup>

<sup>1</sup> Wellsbourne is a GP surgery and community organisation in East Brighton. Further information can be found on its website at <https://www.wellsbournehealthcare.org.uk/>

<sup>2</sup> The Panel's case acceptance criteria are available at <https://www.england.nhs.uk/commissioning/how-commissioning-is-changing/nhs-provider-selection-regime/independent-patient-choice-and-procurement-panel/>.

<sup>3</sup> Biographies of Panel members are available at <https://www.england.nhs.uk/commissioning/how-commissioning-is-changing/nhs-provider-selection-regime/independent-patient-choice-and-procurement-panel/panel-members/>.

17. The Case Panel's review has been carried out in accordance with the Panel's Standard Operating Procedures.<sup>4</sup>
18. This report provides the Panel's assessment and advice to Sussex 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 Wellsbourne;
  - Section 6 summarises the provisions of the PSR regulations relevant to this review;
  - Section 7 sets out the Panel's assessment of the issues; and
  - Section 8 sets out the Panel's advice to Sussex ICB.<sup>5</sup>
19. The Panel thanks Sussex ICB and Wellsbourne for their assistance and cooperation during this review.

### **3 Role of the Panel**

20. 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 Provider Selection Regime came into force with the adoption of the PSR regulations on 1 January 2024, and gives relevant authorities (i.e. commissioners) greater flexibility when selecting providers of health care services.<sup>6</sup>
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's 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. Sussex ICB is a statutory body responsible for planning health services to meet the health needs of the Sussex population and managing the budget for the provision of NHS services to this population.<sup>7</sup>
24. Wellsbourne, under the terms of the Whitehawk APMS contract, offers primary care services to patients in the Whitehawk area who are registered with the practice (the Whitehawk practice). The Whitehawk area has higher than average levels of

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<sup>4</sup> The Panel's Standard Operating Procedures are available at <https://www.england.nhs.uk/commissioning/how-commissioning-is-changing/nhs-provider-selection-regime/independent-patient-choice-and-procurement-panel/>.

<sup>5</sup> The Panel's advice is provided under paragraph 23 of the PSR Regulations and takes account of the representations made to the Panel prior to forming its opinion.

<sup>6</sup> The PSR Regulations are available at <https://www.legislation.gov.uk/ksi/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/>.

<sup>7</sup> Further information on Sussex ICB can be found on its website at <https://www.sussex.ics.nhs.uk/nhs-sussex/>.

deprivation and includes a number of socio-economic disadvantaged communities. Approximately 8,300 patients were registered with Wellsbourne as of January 2024.<sup>8</sup>

25. Wellsbourne's APMS contract was due to expire on 31 March 2023, and on 15 December 2023, Sussex ICB decided to select a provider for a new Whitehawk APMS contract using the competitive process under the PSR regulations. Wellsbourne's contract was subsequently extended to 31 March 2024, and has since been extended again to cover the duration of the current provider selection process.
26. On 8 January 2024, Sussex ICB published a Prior Information Notice (PIN) for the new contract on the Find a Tender Service.<sup>9</sup> Six expressions of interest were received from potential providers.<sup>10</sup> Sussex ICB also carried out a survey of residents in the Whitehawk area in February and March 2024 to gain a better understanding of their experience of healthcare services, receiving 56 responses from members of the public.<sup>11</sup> Feedback from providers and the survey was incorporated into a revised specification for the procurement.
27. On 17 May 2024, Sussex ICB published a contract notice inviting proposals from interested providers. The new contract is to have a seven year term, with the option of a two year extension, and was due to commence on 1 April 2025.<sup>12</sup> The estimated total contract value, including the extension period, is approximately £10.4m (excluding VAT).<sup>13</sup>
28. The deadline for proposals was 11 October 2024. The deadline was extended to this date following a pause in the procurement process to clarify information supplied by Wellsbourne, and shared with bidders, about the number and cost of staff Wellsbourne considered eligible to transfer to a new provider under TUPE rules. Wellsbourne's information indicated that the annual cost of these staff exceeded the new contract's annual value. Following Wellsbourne's confirmation of its view on the eligibility of staff to transfer to a new provider under TUPE rules, the tender process resumed. Bids were received from six interested providers, including Wellsbourne.<sup>14</sup>
29. During the evaluation process, bidders were asked to resubmit their financial model with estimates of additional income that bidders expected to derive from operating the Whitehawk practice, beyond APMS contract revenues. These potential additional income sources included, for example, Quality and Outcomes Framework (QOF) funding and income from locally commissioned services (LCSs).

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<sup>8</sup> Sussex ICB, *Whitehawk APMS Primary Care Services Background Information (Part D of the ITT documentation)*, 17 May 2024.

<sup>9</sup> Sussex ICB, *Prior Information Notice on Find a Tender Service*, 8 January 2024.

<sup>10</sup> Sussex ICB, *Whitehawk APMS tender evaluation report*, 7 January 2025.

<sup>11</sup> This included three responses from residents outside the Whitehawk area (Sussex ICB, *Whitehawk Survey Insight Report*, 5 March 2024).

<sup>12</sup> Sussex ICB later revised the contract commencement date to 1 September 2025, because of the delay caused by the procurement pause between 13 June 2024 and 20 September 2024.

<sup>13</sup> Sussex ICB, *Contract Notice on Find a Tender Service*, 17 May 2024.

<sup>14</sup> During the Selection Questionnaire (SQ) stage of the process one bidder withdrew its bid, and another bidder failed the initial completeness and compliance checks. Four bidders remained in the process and were further evaluated. STW ICB, *Whitehawk APMS tender evaluation report*, 7 January 2025.

30. On 14 March 2025, Sussex ICB published a contract award notice announcing the successful bidder as One Medicare t/a One Primary Care LLP (One Medicare).<sup>15</sup> Wellsbourne's proposal was ranked third out of four compliant bids.
31. On 20 March 2025, prior to the standstill period ending, Wellsbourne made representations to Sussex ICB raising concerns about the provider selection process and requesting information. Sussex ICB – following a review of Wellsbourne's representations by the ICB's representations review panel – wrote to Wellsbourne on 28 March 2025, communicating its further decision to award the contract to One Medicare as intended, and at the same time disclosing documentation in response to Wellsbourne's request.
32. On 4 April 2025, Wellsbourne submitted further representations to Sussex ICB, including a further request for information. On 30 April 2025, Sussex ICB responded to Wellsbourne and communicated its second further decision to award the contract to One Medicare, as originally intended, provided that "no further substantive correspondence" was received from Wellsbourne by the end of the standstill period.
33. On 8 May 2025, Wellsbourne made further representations to Sussex ICB, including a further request for information. On 20 May 2025, Sussex ICB communicated its third further decision to Wellsbourne, namely that it would proceed with the contract award to One Medicare as originally intended. It also told Wellsbourne that it would not be responding to any new representations.
34. On 23 May 2025, prior to the end of the standstill period, Wellsbourne asked the Panel to review Sussex ICB's provider selection decision. The Panel accepted this request on 28 May 2025. On being made aware of this, Sussex ICB confirmed that it would hold the standstill period open for the duration of the Panel's review.

## 5 Representations by Wellsbourne

35. Wellsbourne's concerns about the provider selection process, as summarised in its representations to the Panel, are as follows:

### 1. Engagement and Equality

The public engagement that was undertaken was inadequate. The Equalities and Health Inequalities Impact Assessment (EHIA) claimed no need for engagement with targeted groups despite acknowledging health inequalities locally. Without consulting staff or assessing risks, the EHIA assumed there would be no impact from replacing a non-profit practice with a for-profit provider. The EHIA remains in draft form and was neither reviewed nor signed off before procurement concluded – suggesting a breach of the Equality Act 2010 and Public Sector Equality Duty.

### 2. Scoring and Evaluation Bias

Social value, a statutory requirement under PSR Regulation 5(e), was considered in only 2 of 21 questions. Local context and service integration were not meaningfully weighted, despite PSR guidance that requires commissioners to consider continuity and system alignment.

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<sup>15</sup> One Medicare is a provider of primary, community and urgent care services and healthcare estates. One Medicare is part of One Medical Group and further information can be found on its website at <https://onemedicalgroup.co.uk/>.

The evaluation methodology used in this procurement introduced structural disadvantages for the incumbent provider. Key criteria lacked transparency, moderation was inconsistent, and responses grounded in existing delivery were scored less favourably than speculative proposals from new entrants.

Moderation notes contain acknowledged errors and inconsistencies. The ICB has argued that these did not affect outcomes, yet no documented re-moderation process has been provided.

"No scoring framework was shared, which limits transparency and the ability to understand evaluation outcomes, in breach of regulation 7 of the PSR [clarified with Wellsbourne to be referring to regulation 4].

### 3. TUPE and Financial Modelling

The financial and staffing elements of this procurement process were marked by shifting expectations, unclear guidance, and decisions that may have created legal and structural disadvantage for providers operating on community-led or not-for-profit models. For example: Evaluators comments suggest that outdated financial templates influenced evaluators' perceptions of our bid, creating residual bias that was not adequately addressed in the ICB's response to representations. These issues appear to have breached regulations 5(b), 5(d), 5(f), and 7 of the PSR [clarified with Wellsbourne to be referring to regulation 4 and 5(b)].

### 4. Governance

NHS Sussex failed to respond to our request under Regulation 24 of the PSR for documentation explaining its decision not to pursue a direct award process.

Healthwatch Brighton was cited by the ICB as an independent validation of patient insight however, their CEO was a bid evaluator. Healthwatch cannot be presented as both an objective observer and an active participant in bid scoring without a conflict of interest.

The representation review panel included members of the Procurement Steering Group who had designed and approved the original procurement process, raising concerns about impartiality of the review. This appears to breach Regulation 3(5) and Regulation 7 of the PSR [clarified with Wellsbourne to be referring to regulation 4, 12 and 21].

No account appears to have been taken of the public visibility of this decision or its impact on trust in local services. This appears to breach Regulation 5(c), 5(d), and 5(f) and 7 of the PSR [clarified with Wellsbourne to be referring to regulation 5(c), 5(d) and 5(e)].

The Quality Impact Assessment acknowledges but does not mitigate against the risks to service stability, staff continuity, and patient confidence.

### 5. Broader Failures

This decision appears misaligned with patient needs and undermines the principles of continuity, proportionality, and fairness set out by the PSR. The QIA states Wellsbourne 'indicated that they would be unable to continue ... without a continued uplift'. On the contrary, we confirmed our acceptance of a direct award in August 2023."<sup>16</sup>

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<sup>16</sup> To the extent that the concerns raised by Wellsbourne relate to matters that occurred prior to the adoption of the Provider Selection Regime, these fall outside the Panel's remit and are not considered further in this report.

## 6 PSR regulations relevant to this review

36. In its representations to the Panel, Wellsbourne suggested that Sussex ICB had breached the PSR regulations in relation to the general requirements on commissioners (as set out in Regulation 4), the application of basic and key criteria (as set out in Regulation 5), the requirements in relation to responding to representations (as set out in Regulation 12), the requirements in relation to the management of conflicts of interest (as set out in Regulation 21), and the requirement to keep a record of all decisions made and their rationale (as set out in Regulation 24).
37. Those parts of the PSR regulations most relevant to this review are set out below:
  - Regulation 4 sets out the general requirements on 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 the people who use the services; (ii) improving the quality of the services, and; (iii) improving the 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 procuring relevant health care services. The 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 requirements on 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 (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, (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), (c) review the decision to award the contract or conclude the framework agreement, taking into account the representations made …”.
  - Regulation 21 sets out the requirements on relevant authorities in relation to the management of conflicts of interest. This states that “(1) a relevant authority must take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement process under these Regulations …”.
  - 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 …”.

38. The Provider Selection Regime Statutory Guidance “sits alongside the Regulations to support organisations to understand and interpret the PSR regulations”.<sup>17</sup> Reference is made to relevant provisions of the Statutory Guidance in the Panel’s assessment of the issues in Section 7.<sup>18</sup>

## 7 Panel Assessment

39. This section sets out the Panel’s assessment of Wellsbourne’s representations and its findings on whether Sussex ICB complied with the PSR regulations in relation to:

- first, pre-procurement public engagement (Section 7.1);
- second, the quality-related questions asked of bidders and their evaluation (Section 7.2);
- third, the financial questions asked of bidders and their evaluation (Section 7.3); and
- finally, evaluation governance and the independence of the representations review panel (Section 7.4).

### 7.1 Pre-procurement public engagement

40. This section sets out the Panel’s assessment of Wellsbourne’s concerns about Sussex ICB’s public engagement prior to the provider selection process.

41. Wellsbourne, in its representations to the Panel, said:

“The public engagement that was undertaken was inadequate. The Equalities and Health Inequalities Impact Assessment (EHIA) claimed no need for engagement with targeted groups despite acknowledging health inequalities locally. Without consulting staff or assessing risks, the EHIA assumed there would be no impact from replacing a non-profit practice with a for-profit provider. The EHIA remains in draft form and was neither reviewed nor signed off before procurement concluded – suggesting a breach of the Equality Act 2010 and Public Sector Equality Duty” (see paragraph 35).

42. Assessing compliance with legal obligations outside of the PSR regulations (including the Equality Act 2010 and Public Sector Equality Duty) does not fall within the scope of the Panel’s responsibilities. As a result, the Panel’s review does not address Sussex ICB’s compliance with these obligations.

43. The Panel’s remit does, however, extend to assessing whether Wellsbourne’s concerns about Sussex ICB’s pre-procurement public engagement breached its obligations under the PSR regulations. The Panel notes that there are no specific obligations on commissioners in relation to pre-procurement public engagement in either the PSR regulations or statutory guidance. Commissioners are, however, under wider obligations, such as those set out in Regulation 4, which requires commissioners to act with a view to “securing the needs of the people who use the services”, and to act “transparently, fairly and proportionately”.

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<sup>17</sup> NHS England, *The Provider Selection Regime: statutory guidance*, 21 February 2024, p.2.

<sup>18</sup> 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.

44. The Panel notes that, prior to the procurement, Sussex ICB engaged with both potential providers and the public, and information from this engagement was used to inform the specification for the new Whitehawk APMS contract (see paragraph 26).
45. The Panel's view is that the evidence on Sussex ICB's pre-procurement public engagement does not support a conclusion that it breached its obligations under the PSR regulations. As a result, the Panel finds that Sussex ICB, in its pre-procurement public engagement, did not breach the PSR regulations and in particular its obligations under Regulation 4, which requires it to act with a view to securing the needs of the people who use the services and to act transparently, fairly and proportionately.

## **7.2 Quality-related questions for bidders and their evaluation**

46. This section sets out the Panel's assessment of Wellsbourne's concerns about the quality-related (i.e. non-financial) questions asked of bidders in the tender documentation and their evaluation.<sup>19</sup>
47. Wellsbourne, in its representations to the Panel, said that:
  - “Social value, a statutory requirement under PSR Regulation 5(e), was considered in only 2 of 21 questions. Local context and service integration were not meaningfully weighted, despite PSR guidance that requires commissioners to consider continuity and system alignment.
  - “The evaluation methodology used in this procurement introduced structural disadvantages for the incumbent provider.
  - “Key criteria lacked transparency, moderation was inconsistent, and responses grounded in existing delivery were scored less favourably than speculative proposals from new entrants.
  - “Moderation notes contain acknowledged errors and inconsistencies. The ICB has argued that these did not affect outcomes, yet no documented re-moderation process has been provided.
  - “No scoring framework was shared, which limits transparency and the ability to understand evaluation outcomes, in breach of regulation 7 of the PSR [clarified with Wellsbourne to be referring to regulation 4]” (see paragraph 35).
48. The Panel's assessment of Wellsbourne's concerns about the quality-related questions asked of bidders and their evaluation is set out as follows:
  - first, the number of social value questions and their weighting, and the weighting of local context and service integration considerations is reviewed (see Section 7.2.1);
  - second, information provided to bidders (including to Wellsbourne during the representations review process) on the evaluation methodology and scoring framework is discussed (see Section 7.2.2); and

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<sup>19</sup> The Panel uses the term 'quality-related questions' to refer to all questions asked under the four key criteria of (i) Quality and innovation, (ii) Integration, collaboration and service sustainability, (iii) Improving access, reducing health inequalities and facilitating choice, and (iv) Social value. The Panel uses the term 'financial questions' to refer to all questions asked under the fifth key criterion, namely Value.

- finally, the extent to which Wellsbourne, as the incumbent provider, was unfairly treated through the scoring framework, evaluation methodology and other aspects of the provider selection process is considered (see Section 7.2.3).

### 7.2.1 Social Value, local context and service integration

49. Wellsbourne told the Panel that it had concerns that “Social value, a statutory requirement under PSR Regulation 5(e), was considered in only 2 of 21 questions”. It also said that “Local context and service integration were not meaningfully weighted, despite PSR guidance that requires commissioners to consider continuity and system alignment” (see paragraph 35).

50. Sussex ICB applied the following weighting to the five key criteria:

Key criteria	Weighting
Quality and Innovation	25%
Social Value	10%
Integration, Collaboration and Service Sustainability	25%
Improving Access, Reducing Health Inequalities and Facilitating Choice	30%
Financial Value	10%

Source: Sussex ICB, *Whitehawk APMS ITT Document*, 17 May 2024.

51. The PSR statutory guidance states that “the relative importance of the key criteria is not predetermined by the Regulations or this guidance and there is no prescribed hierarchy or weighting for each criterion. Relevant authorities must decide the relative importance of the key criteria for each decision they make under this regime, based on the proposed contracting arrangements and what they are seeking to achieve from them/the services, including scenarios where a particular criterion is ‘pass/fail’, or where certain key criteria are of equal importance. All criteria must be considered, and none is expected to be discounted when following a provider selection process”.<sup>20</sup>

52. The PSR statutory guidance also advises commissioners to be aware of other requirements and duties, including “duties and guidance related to social value”, including the national Social Value Model. Cabinet Office guidance states that “a minimum weighting of 10% of the total score for social value should be applied in the procurement to ensure that it carries a heavy enough score to be a differentiating factor in bid evaluation; a higher weighting can be applied if justified”.<sup>21</sup> The recently adopted NHS Social Value Playbook similarly stresses, by reference to the PSR statutory guidance, that “Authorities are expected to assign at least 10% to social value when commissioning healthcare providers”.<sup>22</sup> The Panel notes that Sussex ICB’s

<sup>20</sup> NHS England, *The Provider Selection Regime: statutory guidance*, 21 February 2024, p.21. (The PSR statutory guidance has since been revised but similarly says that “The relative importance of the key criteria is not predetermined by the Regulations or this guidance and there is no prescribed hierarchy or weighting for each criterion. Relevant authorities must decide their relative importance for each decision they make under this regime, based on the proposed contracting arrangements and what they are seeking to achieve from them or the services, including for scenarios where a particular criterion is ‘pass or fail’ or certain key criteria are equally important”.)

<sup>21</sup> Cabinet Office, *PPN 002: Taking account of social value in the award of contracts*, 13 February 2025. (While this guidance was put in place after the provider selection process that is the subject of this review, it repeats earlier Cabinet Office guidance on this subject.)

<sup>22</sup> NHS England, *NHS Social Value Playbook*, 14 July 2025, p.4.

weighting of its two social value questions is consistent with Cabinet Office guidance and the newly adopted NHS Social Value Playbook.

53. In relation to local context and service integration, the Panel notes that “integration, collaboration and service sustainability” is one of the five key criteria that a commissioner must take into account when selecting a provider. There is no specific requirement in the PSR regulations or statutory guidance as to the weighting that must be accorded to this criterion.
54. The Panel’s view is that, given commissioners’ flexibility under the PSR regulations to decide weightings for the five key criteria and the guidance on weighting social value, there is no evidence to suggest that the weightings chosen by Sussex ICB breached the PSR regulations. As a result, the Panel finds that Sussex ICB, in deciding the weightings for the key criteria, did not breach the PSR regulations and in particular its obligations under Regulations 5(e) and 11(2), which state that “Step 1 [of the competitive process] is that the relevant authority determines the contract or framework award criteria, taking into account the key criteria and applying the basic selection criteria”.

### **7.2.2 Information on the evaluation methodology and scoring framework**

55. Wellsbourne told the Panel that “no scoring framework was shared ...” (see paragraph 35) and in response to questions from the Panel asking for further clarification of its concerns, Wellsbourne said “we don’t have any information to help us to understand how the scores were reached. Was there a structured approach to evaluating or scoring? Was there guidance for the evaluators on how to score each question? Were they looking for particular points to be addressed? The discussion and moderation notes do not make this clear. In representations, we requested this information from the ICB but did not receive it”.<sup>23</sup>
56. Wellsbourne also told the Panel that “It is unclear from the moderation notes and feedback received how individual elements of each response were weighted. No consistent scoring framework was shared to explain how different components within each question contributed to the final score, which limits transparency and the ability to understand or challenge the evaluation outcomes in breach of regulation 7 of the PSR [clarified with Wellsbourne to be referring to regulation 4]”.<sup>24</sup>
57. Given Wellsbourne’s concerns, this section reviews: (i) information provided during the procurement process about the evaluation methodology and scoring framework; and (ii) the extent to which the evaluation and scoring of bidders’ responses was consistent with the description set out in the tender documentation and the information subsequently supplied to Wellsbourne.

#### **Information about the evaluation methodology and scoring framework in the tender documentation**

58. Sussex ICB’s Invitation to Tender (ITT) document for the Whitehawk APMS contract set out: (i) the weighting to be applied to each of the five key criteria; and (ii) the individual questions asked in relation to each of the key criteria, with a weighting for

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<sup>23</sup> Wellsbourne, *Response to Panel questions*, 30 June 2025.

<sup>24</sup> Wellsbourne, *Accompanying representations letter to the Panel*, 23 May 2025.

each question. Nineteen questions addressed the four quality-related key criteria, and three questions addressed the value criterion.<sup>25</sup>

59. The ITT document also set out the scoring framework. It said that bidders' responses to scored quality-related questions would be evaluated and scored on a scale of 0-4 using the matrix below.

Assessment	Interpretation	Score
Deficient	A significantly deficient answer, unanswered or unacceptable response.	0
Limited	A limited answer that does not meet the stated requirement or one that provides little detail or evidence.	1
Acceptable	An acceptable answer meeting the stated requirement with a sufficient level of detail and evidence.	2
Good	A good answer, with a comprehensive level of detail and strong evidence.	3
Excellent	An excellent answer, exceeding the stated requirement with exceptional detail and evidence and/or one that is likely to result in increased quality, improved patient experience or innovation.	4

Source: Sussex ICB, *Whitehawk APMS ITT Document*, 17 May 2024.

60. In relation to the evaluation process, the ITT documentation said that:

“Bid Evaluators will complete an individual evaluation of Bids using the responses received. Evaluators will be required to provide an explanation in support of each score. No prior information or knowledge of Bidders will be used, unless the information provided by a Bidder is known to be false or inaccurate.

“The evaluation methodology provides evaluators with a way of applying a clear rationale to their decision making and will ensure equality in the treatment of Bidders.

“When the individual evaluation process has been completed, a moderation process will take place to agree a final moderated score for each question, for each Bidder. When the moderation process is complete, a final moderated score will exist for each applicable question (subject to confirmation of Bid compliance). This moderated scoring will have the relevant weighting applied and the total weighted score will be used to determine the successful Bidder.”<sup>26</sup>

61. On the role of evaluators, the tender documentation said that:

“Members of the evaluation panel will:

- Read and review Bid responses allocated to them;
- Evaluate Bid submissions in line with the evaluation criteria; and
- Participate in the moderation process.

“The majority of evaluators will not score the entire Bid submission therefore Bidders must ensure the response to each question is self-contained.”<sup>27</sup>

<sup>25</sup> Sussex ICB, *Whitehawk APMS ITT Document – Appendix 5 ITT Questions*, 17 May 2024.

<sup>26</sup> Sussex ICB, *Whitehawk APMS ITT Document*, 17 May 2024.

<sup>27</sup> Sussex ICB, *Whitehawk APMS ITT Document*, 17 May 2024.

## Conduct of the evaluation and scoring process

62. Wellsbourne, in its representations to Sussex ICB, requested information on (a) “Information gathered during the independent scoring and moderation session, including reasons for scores awarded”; (b) “the key criteria which were evaluated when scoring”; and (c) “any other considerations made when scoring e.g. weighting around quality, cost, and social value”.<sup>28</sup>

63. Sussex ICB responded to Wellsbourne’s information request as follows:

“[a] Information gathered during the independent scoring and moderation session, including reasons for scores awarded.

Response – The ICB always seeks to be completely transparent in the way it undertakes a tender and evaluation. Please see attached the individual evaluators initial assessment of your bid, with a summary of the feedback for each question. We have also enclosed for you the notes taken for every question at the moderation meetings, which detail the assessment and scoring of your bid.

“[b] The key criteria which were evaluated when scoring.

Response – The key criteria for scoring were set out in the Invitation to Tender pack.

“[c] Any other considerations made when scoring e.g. weighting around quality, cost, and social value.

Response – The Invitation to Tender sets out clearly the considerations that evaluators must make when assessing your bid. In addition to this, each Evaluator is required to undertake project-specific training, led by the procurement lead, before the evaluation of bids can take place.”<sup>29</sup>

64. The Panel also asked Sussex ICB about the conduct of the evaluation and scoring process. Sussex ICB told the Panel that:

- “Evaluators were required to conduct their individual assessment of the bids via the Atamis portal. The individual evaluations did not require any scores to be given at the initial evaluation stage ... Evaluators comments were downloaded by the procurement lead and copied to the Moderation Meeting Agenda.
- “Moderation meetings were chaired by the procurement lead for the project ... Each evaluator was asked to summarise their initial assessment of the bids. Once all of the evaluators had given their summary, the floor was opened for [discussion]. The procurement chair then agreed with the evaluation team for each question the summary of feedback comments that would be returned to bidders for each question.
- “The Chair then asked each of the evaluators to give their scores based on their individual assessment, the subsequent discussion during the moderation meeting and the scoring criteria provided in the Invitation to Tender. Where there were any differences of opinion the floor was opened for further discussion on why evaluators may have given their initial thoughts on a score differently from other evaluators. This discussion continued under a consensus score was reached by all evaluators ...”.<sup>30</sup>

<sup>28</sup> Wellsbourne, *Representations to Sussex ICB*, 20 March 2025.

<sup>29</sup> Sussex ICB, *Wellsbourne Representation response letter*, 28 March 2025.

<sup>30</sup> Sussex ICB, *Response to Q7 RA Evaluation Process*, 3 June 2025.

65. The Panel notes that the description of the evaluation and scoring process that Sussex ICB provided to the Panel is not consistent with the description set out in the Moderation Discussion Notes that were shared with Wellsbourne in response to its information request. The Moderation Discussion Notes state that “For every question, individual evaluator scores and comments will be shared with the panel (through sharing screen on MS Teams). Scores/comments will either be read aloud or time given for panel members to read”. That is, the Moderation Discussion Notes described a process whereby each evaluator carried out a scored individual evaluation before the moderation meeting; whereas the ICB's explanation to the Panel was that no scores were given until after the moderation discussion.
66. Sussex ICB told the Panel that the inconsistency between the information supplied to the Panel and that supplied to Wellsbourne arose from the use of template wording in the Moderation Discussion Notes. That is, the template wording did not accurately reflect the process that was used by the ICB in practice.
67. The Panel's view is that, by conducting the evaluation and scoring process differently to the way in which it was described to Wellsbourne, Sussex ICB prevented Wellsbourne from raising concerns about the conduct of the evaluation process, and as a result, did not act transparently or fairly. As a result, the Panel finds that Sussex ICB, by conducting the evaluation and scoring process differently to the way in which it was described to Wellsbourne, breached the PSR regulations, and in particular its obligations under Regulation 4 to act transparently and fairly.

### **7.2.3 Fairness of ITT questions and their evaluation**

68. Wellsbourne told the Panel that “the evaluation methodology used in this procurement introduced structural disadvantages for the incumbent provider” (see paragraph 35). It also said:

“The structure and content of several ITT questions, particularly those on mobilisation [ITT01], communications [ITT02] and promoting change [ITT16], systematically disadvantaged the incumbent provider. Answers that reflected embedded, proven local delivery were scored lower than speculative proposals from new providers. This reflects inherent bias against continuity, not a neutral assessment of capability. These issues are outlined in our representations ..., but the ICB's response to these appears to be an attempt to rebut our appeal than to genuinely consider our concerns ...”<sup>31</sup>
69. Wellsbourne also told the Panel that “Moderation notes contain acknowledged errors and inconsistencies. The ICB has argued that these did not affect outcomes, yet no documented re-moderation process has been provided” (see paragraph 35).
70. In considering Wellsbourne's concerns, the Panel reviewed Sussex ICB's evaluation of Wellsbourne's responses to the three questions where Wellsbourne's concerns were most specifically elaborated, namely Questions ITT01 (Mobilisation), ITT02 (Communications) and ITT16 (Promoting change).

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<sup>31</sup> Wellsbourne, *Accompanying representations letter to the Panel*, 23 May 2025.

### Question ITT01 (Mobilisation Plan)

71. Wellsbourne raised concerns that the question on mobilisation and its evaluation was unfair to it as the incumbent provider (see paragraph 68). Question ITT01 (Mobilisation Plan) was as follows:

“Provide your mobilisation plan for this service to go-live 1 April 2025. This must be in the form of a Gantt chart. You must include narrative with detail on:

- Timeline and key milestones
- Transition Plan
- Setup of IT & Systems
- Identification and management of potential risks”

72. During the bid response period, Wellsbourne and another bidder asked for clarification of this question. The clarification questions, and Sussex ICB’s responses, are set out below.

Bidder	Question	Response
Wellsbourne	[56] As the incumbent, our mobilisation plan will be much lighter touch than if we were mobilising this contract from scratch. Should we provide a mobilisation plan for the actual steps that will be taken, or a plan covering all steps that would be taken if we were a new provider? If it is the first option, can we still score full marks for this response?	The incumbent should make note of their position and that mobilisation will be less intensive, however the response should reference any adaptations that would be required due to the revisions in the new specification and KPIs.
Other	[28] Regarding ITT01 could commissioners clarify what is meant by a transition plan and what is expected from this?	Transition plan will outline how a service will move from one provider to another and how the new provider will move to implement the new service.

Source: Sussex ICB, *Clarifications Questions Log*, 4 October 2024.

73. The tender documentation sets out that a minimum ‘Pass’ threshold would be applicable to ITT01, meaning that “Bidders are expected to achieve a minimum of an ‘Acceptable’ standard … or an equivalent minimum numerical score of 2. The Commissioner reserves the right to reject any Bid which does not meet this threshold as a minimum in respect to one or more of these criteria”.<sup>32</sup>

74. Wellsbourne’s response was awarded a score of 1 (Limited). Sussex ICB, in the tender outcome letter sent to Wellsbourne, said that it had “failed to meet the minimum criteria for this question” although it did not reject Wellsbourne’s bid on this basis. The ICB gave Wellsbourne the following feedback:

“The bidder provided a limited answer that does not meet the stated requirement and provides little detail or evidence. Positive aspects of the response included:

- A description of key risks identified.

“The response could potentially have been improved by:

- Providing a more detailed plan as the mobilisation plan was a list of around 20 generic tasks with no timeframes, resource requirements or named leads.
- Being clearer on the risk management process. Where potential risks have been identified, they are very high level, which does not provide assurance that

<sup>32</sup> Sussex ICB, *Whitehawk APMS ITT Document*, 17 May 2024.

a clear process is in place to identify, monitor and manage risk e.g., clinical focus.

- Providing a Gantt chart with more detail of key tasks, duration, timelines and milestones.
- Providing more detail to support the response as the narrative and supporting evidence is very high level and lacking in detail.
- Providing more detail on IT as the bidder only mentioned system 1 and nothing about cloud telephony, online consultations etc.
- Detailing how they will engage staff in the process as it was not included as a risk.”<sup>33</sup>

75. Sussex ICB later shared with Wellsbourne, following Wellsbourne’s request during its representations to the ICB, records from the evaluation process (see paragraph 63). These records took the form of two documents:

- first, Moderation Discussion Notes, which include evaluators’ initial comments on bidders’ answers, a record of the discussions between evaluators, the individual evaluators’ scores and the moderated score; and
- second, Moderation and Clarification Meeting notes, which set out an annotated agenda for the moderation meeting and a completed assessment for bidders’ responses to each question.

76. The completed assessment, from the Moderation and Clarification Meeting notes, took the form of a table with three main boxes:

- first, a box for the evaluators’ initial comments (which, consistent with the process described in paragraph 64, had been entered into the Atamis portal by the evaluators prior to the meeting and then downloaded and copied into the moderation meeting agenda);
- second, the outcome summary, which is the feedback comment agreed by evaluators and supplied to the bidder in its tender outcome letter; and
- finally, the agreed overall score.

77. Wellsbourne, having reviewed the Moderation Discussion Notes and Moderation and Clarification Meeting notes for ITT01 (Mobilisation Plan), raised concerns in its second set of representations to Sussex ICB about the individual evaluators’ initial comments, including the following.

- “Evaluator 1 in initial comments notes ‘*all musts referenced*’ ... The evaluators comments around KPIs are contradictory - KPI’s are noted to not ‘*be relevant during mobilisation*’, despite confirmation in the clarification question that the incumbent should focus on the updated KPIs in their mobilisation plan. The guidance in respect of ITT01 was accordingly misleading. The evaluator’s feedback shows that they were clearly unhappy with this as a focus, despite their review of Question 56 of the clarification log during the moderation meeting”.
- “One evaluator notes that there was “*no mention of TUPE if they are unsuccessful*”. This was a tender for a new contract, in respect of which the exit strategy from the current contract was of no relevance, yet it is clear that the absence of an exit strategy adversely impacted on our score. Effectively, you [Sussex ICB] have debited our score because we did not include items of no relevance to an

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<sup>33</sup> Sussex ICB, *Procurement outcome letter to Wellsbourne*, 14 March 2025.

incumbent (such as a mobilisation plan as detailed as that for a new provider and early recruitment of leaders) and have further debited it by pointing to the absence of irrelevant factors (such as an exit plan) which only affected an incumbent and should never have been factored in to the assessment".<sup>34</sup>

78. Sussex ICB, in responding to Wellsbourne's concerns about the feedback and its concern that "the evaluators comments around KPIs are contradictory" (see paragraph 77), said that:

"The [ICB review] Panel noted the Evaluators comments that the Mobilisation Plan contained only a high-level plan and lacked sufficient detail to be awarded a higher score for this question. The [ICB review] Panel observed that the Evaluators consistently awarded a higher score where there was evidence of task descriptions, allocated duration periods and assignment of tasks to named appointments for each themed area of work.

"In response to CQ56, Wellsbourne were advised that 'The incumbent should make note of their position and that mobilisation will be less intensive, however the response should reference any adaptations that would be required due to the revisions in the new specification and KPIs'. The [ICB review] Panel was satisfied that the evaluators score reflected the lack of evidence in this regard."

"The [ICB review] Panel noted that the bid contained the following reference 'MONITORING AND CONTROL (01/04/2025 - 01/04/2026): Performance will be tracked, and quality assurance processes will ensure readiness for the service launch.' Following discussion with the evaluator the [ICB review] Panel is satisfied that this comment was intended to be treated as an example of how a Mobilisation Plan could have been improved in terms of readiness for improved KPI reporting such that the quality of the bid to have been awarded a higher score."<sup>35</sup>

79. Sussex ICB, in responding to Wellsbourne's concern about one of the evaluators saying there was "no mention of TUPE if they are unsuccessful" (the TUPE issue) (see paragraph 77), said that:

"The [ICB review] Panel accepts the observation that a mobilisation plan submitted by an incumbent provider should not include any actions that would be required of them in the event of being unsuccessful in its bid. The [ICB review] Panel has investigated this point and is satisfied that this comment did not negatively impact on the final score awarded, which was influenced by the lack of detail of relevant actions only."

80. Given the concerns raised by Wellsbourne, the Panel considered: (i) whether the question on mobilisation was unfair to it as the incumbent provider; (ii) whether the evaluation of this question was unfair to it as the incumbent provider.

81. On the first issue, the Panel's view is that the question on mobilisation was not unfair to Wellsbourne as the incumbent provider. The Panel observes that most, and perhaps all, provider selection processes ask bidders about mobilisation plans and that incumbent providers will need to answer these questions in a way that reflects their position as the incumbent provider and any changes that are taking place as a result of

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<sup>34</sup> Wellsbourne, *Representations to Sussex ICB*, 4 April 2025.

<sup>35</sup> Sussex ICB, *Representations response report to Wellsbourne*, 30 April 2025.

the new contract. Sussex ICB's answer to Wellsbourne's clarification question recognises these points (see table at paragraph 72).

82. On the second issue (i.e. whether the evaluation of the mobilisation question was unfair to Wellsbourne), the Panel observes that the notes of the evaluators' discussion of Wellsbourne's response are limited, stating only that "The GANTT Chart is of exceptionally poor detail. The incumbent did not cover in any detail the new KPIs in their response", and do not address the evaluator's individual comment about Wellsbourne's TUPE obligations if its bid was not successful. The Panel further notes that the agreed feedback comment does not refer to the TUPE issue either.
83. Taken together, the Panel's view is that, on balance, it does not appear that the individual evaluator's comments on TUPE influenced the agreed score awarded to Wellsbourne for its answer to this question. However, the Panel notes that the brevity of the discussion notes from the moderation meeting make it difficult to trace the evolution of evaluator's views from their initial thoughts to the final agreed feedback.

### **Question ITT02 (Communications)**

84. Wellsbourne raised concerns that the question on communications and its evaluation was unfair to it as the incumbent provider (see paragraph 68). Question ITT02 (Communications) was as follows:

"How do you plan to communicate with patients in the first year of the service? You must include:

- How to explain any changes and provide reassurance
- An understanding of stakeholders and their communication needs
- Channels of communication"

85. Wellsbourne's response was awarded a score of 1 (Limited). Sussex ICB gave Wellsbourne the following feedback:

"The bidder provided a limited answer that does not meet the stated requirement and provides little detail or evidence.

"Positive aspects of the response included:

- A good mix of digital and offline methods of communication e.g., print and digital newsletters and in person engagement sessions.
- Points on measuring the effectiveness of communications.

"The response could potentially have been improved by:

- Addressing the bullet point on how to explain any changes and provide reassurance to the patients.
- Referencing the particular needs of the local community, including low literacy levels, interpretation and translation needs and easy read etc., along with accessible communication for people with visual impairment, the deaf community and people with learning disabilities.
- Providing information about ongoing regular communication and how the practice would utilise the Patient Participation Groups (PPG) to communicate with patients or wider stakeholders such as community groups and the Voluntary, Community and Social Enterprises (VCSE) etc."<sup>36</sup>

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<sup>36</sup> Sussex ICB, *Procurement outcome letter to Wellsbourne*, 14 March 2025.

86. Wellsbourne told Sussex ICB that it had concerns that the ITT criteria were not applied fairly and that “insufficient weight appears to be given to the fact that an incumbent simply has less need than a new provider to communicate changes to patients during the first year” and that “the main change for the incumbent provider is the new KPI’s, and we have described how we would communicate this”.<sup>37</sup>

87. In response to Wellsbourne’s concerns, Sussex ICB said:

“[Wellsbourne’s] bid merely referenced an intention to implement a communication plan in the first year, however, as noted in the feedback, this response lacked reference to particular patient needs and examples of support provided.

“The [ICB review] Panel observed that the Evaluators consistently awarded a higher score where there was evidence of greater explanation, as per the feedback provided, with no evidence to support this bidder’s assertion of being unfairly treated.”<sup>38</sup>

88. Given the concerns raised by Wellsbourne, the Panel considered: (i) whether the question on communications was unfair to it as the incumbent provider; (ii) whether the evaluation of this question was unfair to it as the incumbent provider.

89. On the first issue, the Panel’s view is that the question on communications was not unfair to Wellsbourne as the incumbent provider. Wellsbourne’s position as incumbent provider meant that if its bid was successful, its need to communicate with patients would be of a different order compared to a new provider. However, this did not make the question, of itself, unfair to Wellsbourne.

90. On the second issue (i.e. whether the evaluation of the question was unfair to Wellsbourne), the Panel’s view is that Sussex ICB erred by saying that:

(a) Wellsbourne did not address the bullet point on “how to explain any changes and provide reassurance to patients”; and (b) Wellsbourne did not provide information about ongoing regular communication with patients. Wellsbourne’s response addresses these two issues, even if Sussex ICB may have wished for a different or more detailed response.

### **Question ITT16 (Promoting Change)**

91. Wellsbourne raised concerns that the question on promoting change and its evaluation was unfair to it as the incumbent provider (see paragraph 68). Question ITT16 (Promoting Change) was as follows:

“Describe how you will work with and influence wider community partners (e.g. schools, VCSE), to provide the best care and promote change for the benefit of the patient population. Include examples of working with partnerships and other organisations aimed at enhancing service accessibility and addressing health inequalities.”

92. Wellsbourne’s response was awarded a score of 1 (Limited). In its tender outcome letter, Sussex ICB gave Wellsbourne the following feedback:

“The bidder provided a limited answer that does not meet the stated requirement and provides little detail or evidence.

“Positive aspects of the response included:

<sup>37</sup> Wellsbourne, *Representations to Sussex ICB*, 4 April 2025.

<sup>38</sup> Sussex ICB, *Representations response report to Wellsbourne*, 30 April 2025.

- Examples showcase inclusion and impact.
- A reference made to both physical and mental health.
- Evidencing proven success: They have set out how they have reduced health inequality by targeting care to specific cohorts meeting their population health need.
- Some examples of working in partnership.

“The response could potentially have been improved by:

- Referencing links with Secondary Care.
- Providing less focus on how the practice enhances patient access, reduces A&E visits etc. which are not relevant to this question.
- Being clearer about their own role in the scheme being run by Bridging Change.
- Providing detail on how they will integrate and collaborate working with and influencing wider community partners.
- Concentrating on the benefits to the patients within the partner network rather than benefits to the ICB.”<sup>39</sup>

93. Wellsbourne, in its representations, asked Sussex ICB to:

“outline how the score of 1 point (A limited answer that does not meet the stated requirement or one that provides little detail or evidence) was reached for our response to this question, given our comprehensive demonstration of our innovative partnership working and the evaluators’ own positive feedback, particularly this point: ‘Evidencing proven success: They have set out how they have reduced health inequality by targeting care to specific cohorts meeting their population health need’. This is not clear from the moderation discussion notes provided.”

94. In responding to Wellsbourne’s concerns, Sussex ICB said that:

“The [ICB review] Panel observed that the Evaluators consistently awarded a higher score where there was evidence of greater explanation and evidence of wider system working and whilst the examples provided were highly creditable as examples of working with VCSE partners this response lacked substantiation as per the feedback provided. Furthermore the [ICB review] Panel supported the Lead Evaluators view that a significant proportion of the Wellsbourne response described how the practice enhanced patient access, reduced A&E visits etc which was not relevant to this question and agreed with the feedback already provided.”<sup>40</sup>

95. The Panel notes that the evaluators’ initial comments for this question included both positive and negative comments in the assessment of Wellsbourne’s response.<sup>41</sup> The discussion notes of the moderation meeting, which resulted in a moderated score of 1, contain a record of the reasons for the moderated scoring, including the following:

“[Evaluator 2] Score – 1 based on not talking enough about influence on wider stakeholders”

“Discussion: Where is the innovation? Promoting change for the future? The response is missing on these issues. [Evaluator 2] now agrees that these elements are missing from the response”.

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<sup>39</sup> Sussex ICB, *Procurement outcome letter to Wellsbourne*, 14 March 2025.

<sup>40</sup> Sussex ICB, *Representations response report to Wellsbourne*, 30 April 2025.

<sup>41</sup> Sussex ICB, *Moderation and Clarification Meeting – ITT16*, 9 December 2024.

“Following the discussion, all of the evaluators confirmed agreement with a moderated score of 1.”<sup>42</sup>

96. Given the concerns raised by Wellsbourne, the Panel considered: (i) whether the question on promoting change was unfair to it as the incumbent provider; (ii) whether the evaluation of this question was unfair to it as the incumbent provider.
97. On the first issue, the Panel’s view is that the question on promoting change was not unfair to Wellsbourne as the incumbent provider. Wellsbourne’s position as incumbent provider does not appear to have placed it in a significantly different position from other bidders in terms of explaining how it would “work with and influence wider community partners (e.g. schools, VCSE), to provide the best care and promote change for the benefit of the patient population”.
98. On the second issue (i.e. whether the evaluation of the question was unfair to Wellsbourne), the Panel’s view is that Sussex ICB’s record of the moderation meeting provided sufficient explanation of the rationale for the moderated score.

### **Panel conclusions on the evaluation of Wellsbourne’s proposal**

99. The Panel has assessed the fairness of the ITT questions and their evaluation, focusing on three specific questions raised by Wellsbourne, namely the questions on mobilisation, communications and promoting change. The Panel’s view is that none of these questions systematically disadvantaged Wellsbourne as the incumbent provider. However, the Panel has concerns about the evaluation of Wellsbourne’s response to the questions on mobilisation and communications.
  - On mobilisation, the Panel’s view is that, on balance, it does not appear that the individual evaluator’s comments on TUPE influenced the agreed score awarded to Wellsbourne for its answer to this question. However, the Panel notes that the brevity of the discussion notes from the moderation meeting make it difficult to trace the evolution of evaluator’s views from their initial thoughts to the final agreed feedback.
  - On communications, the Panel’s view is that Sussex ICB erred by saying that Wellsbourne’s response did not address certain issues when this was not the case.
100. As a result, the Panel finds that Sussex ICB, in evaluating Wellsbourne’s response to Question ITT02 (Communications) erred by concluding that Wellsbourne did not address certain issues when this was not the case, and as a result breached Regulation 4, which requires it to act transparently and fairly.
101. The Panel also recommends that Sussex ICB ensures that, in future, sufficiently detailed notes are kept of moderation meeting discussions so that bidders, internal review panels and the Panel can follow the reasoning of those involved in decision making.

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<sup>42</sup> Sussex ICB, *Moderation Discussion Notes – ITT16*, 9 December 2024.

### 7.3 Financial questions for bidders and their evaluation

102. This section sets out the Panel's assessment of Wellsbourne's concerns about the financial questions asked of bidders and their evaluation. These concerns primarily centre on Sussex ICB's actions following bidders' questions about the annual cost of staff likely to transfer to a new provider under TUPE rules exceeding the annual value of the new APMS contract (see paragraphs 28 and 29).

103. Wellsbourne, in its representations to the Panel, said that:

"The financial and staffing elements of this procurement process were marked by shifting expectations, unclear guidance, and decisions that may have created legal and structural disadvantage for providers operating on community-led or not-for-profit models. For example: Evaluators comments suggest that outdated financial templates influenced evaluators' perceptions of our bid, creating residual bias that was not adequately addressed in the ICB's response to representations. These issues appear to have breached regulations 5(b), 5(d), 5(f), and 7 of the PSR [clarified with Wellsbourne to be referring to regulation 4 and 5(b)]" (see paragraph 35).

104. Wellsbourne further told the Panel that:

"The ICB requested via email ... that Wellsbourne [as incumbent provider] adjust its TUPE assumptions by separating out staff costs which were funded through the core contract and therefore eligible for TUPE, from those funded via QOF and Local Enhanced Services, which would therefore be excluded from TUPE protection. This approach appears to disregard standard TUPE protections and may have placed the bidder in a legally and ethically compromised position. This distinction, applied mid-process and without legal grounding, created confusion and potential legal risk, and may have artificially suppressed cost modelling to the advantage of less established bidders.

"The financial modelling template (FMT) was revised and reissued five times during the process, with critical corrections (e.g. non-APMS income) only added after evaluation had begun, creating structural disadvantages. The multiple versions of the FMT have been acknowledged by NHS Sussex ... There has been no response to the impact these repeated errors within versions 1-4 of the FMT spreadsheet had on bidders, or evaluation, given that evaluators evidently had sight of version 4 of the FMT as only that version contained the deficit mentioned in [moderation notes]."

105. Wellsbourne first raised concerns about these matters in its representations to Sussex ICB on 4 April 2024. In response, Sussex ICB said that:

"The [ICB review] Panel was satisfied that the assessment criteria has been applied fairly and appropriately commensurate with the level of detailed with the scoring methodology advised. The [ICB review] Panel is aware that all bidders were invited to resubmit their Finance and Activity Model, and all bidders were reassessed using Version 5 at the time of the Moderation".<sup>43</sup>

106. In response, Wellsbourne made further representations to Sussex ICB, to which Sussex ICB responded that "additional time was afforded to all bidders during the

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<sup>43</sup> Sussex ICB, *Representation response report to Wellsbourne*, 30 April 2025.

relevant procurement process to ensure revised financial bids, concluding with version 5 of the FMT, could be submitted and then evaluated on an equitable basis".<sup>44</sup>

107. The Panel's assessment of Wellsbourne's concerns about Sussex ICB's evaluation of bidders' financial proposals is set out as follows:

- first, the financial questions for bidders are set out (Section 7.3.1);
- second, the TUPE information supplied to bidders is reviewed (Section 7.3.2);
- third, the information supplied to bidders on locally commissioned services and other income potentially available to the operator of the Whitehawk practice is reviewed, as well as Sussex ICB's expectations for locally commissioned services (Section 7.3.3);
- fourth, Sussex ICB's evaluation of bidders' responses to ITT21 (Financial Model Template) is reviewed (Section 7.3.4); and
- finally, the Panel's conclusions about Sussex ICB's evaluation of bidders' financial proposals are set out (Section 7.3.5).

### 7.3.1 Financial questions for bidders

108. Bidders were asked three questions under the Value criterion – see table below.

Qn no.	Question	Q type	Q (Sub) Weighting
ITT20a	The total Bid Price submitted for the 9 years must be below the maximum total financial envelope for each and all contract years. Bids submitted that are over the maximum financial envelope will be excluded	Pass / Fail	0%
ITT20b	Bidder must refer to and complete the Financial Model template (FMT). 5% will be awarded based on lowest cost bid (see ITT document 3, section C.7.4).	Scored	5%
ITT21	Referring to the 'Bidder Costs' tab within 7. Financial Template, describe your workforce plan. This must include roles, responsibilities, staffing structure, governance and sample rota. The evaluation will consider both your written response to this question and your FMT submission.	Scored (0-4)	5%

Note: Scoring of ITT20b was as follows - full marks (weighting 5%) were given to the lowest cost bid, while the highest cost compliant bid was awarded 1%. Other bids were assigned marks in direct proportion to the lowest cost bid using the formula set out in the tender documentation.

Source: Sussex ICB, *ITT Questions Whitehawk*, 17 May 2025.

109. In relation to the Financial Model Template (FMT), bidders were supplied with several versions during the provider selection process. The first version was included in the ITT pack distributed on 17 May 2024. Two further versions, which corrected errors in the template, were issued during the bid response period. A fourth version was issued on 17 October 2024, six days after the bid deadline, to correct an inconsistency between two of the FMT worksheets. As this was after the bid deadline, Sussex ICB asked bidders to complete and submit a new FMT, using the fourth version of the template, to replace the version already submitted.

110. A fifth, and final, version of the FMT was issued on 22 November 2024. This followed evaluators' assessment of bidders' responses and an initial moderation meeting. The fifth version of the FMT was required to be completed by 26 November 2024 and

<sup>44</sup> Sussex ICB, *Representation response report to Wellsbourne*, 20 May 2025.

asked bidders, for the first time, to include estimates of additional income that would arise from operating the Whitehawk practice (i.e. income additional to that payable under the APMS contract).<sup>45</sup>

### 7.3.2 TUPE information for bidders

111. Bidders were provided with a 'TUPE pack' in the tender documentation.<sup>46</sup> This included a list of staff that Wellsbourne considered eligible to transfer to a new provider under TUPE rules (the TUPE list). Wellsbourne prepared the TUPE list for Sussex ICB and included in the list all of its current staff members.<sup>47</sup>
112. The annual cost of the staff included in the TUPE list exceeded the annual amount payable under the new APMS contract. This resulted in questions from bidders as set out below.

No.	Question	Response
4	<p>Having reviewed the TUPE list, the total salary spend on staff is significantly higher than the total contract value (TCV) within the Finance and Activity Model (FAM). Please can you confirm:</p> <p>a) all members of staff listed in the TUPE document will transfer across to a new service provider under TUPE?;</p> <p>b) if QoF/LES/DES income can be included within the FAM?;</p> <p>Under our current understanding of the FAM, it appears that to provide a passing bid the supplier would be operating under significant loss on a yearly basis. The staff salary costs alone are c.£1.6m, therefore, under tab 1. Bid Price and Financial Summary within the FAM, if we were to TUPE all existing staff, this would constitute an automatic failure.</p> <p>Please can you clarify this anomaly?</p>	<p>a) The TUPE document includes all staff who would transfer to a new service provider. The staff costs are correct, they reflect the salary of the staff member and their correct working hours.</p> <p>b) QoF/LCS/DES income is not included in the FAM as this is commercially sensitive information and varies according to practice performance</p>
47	<p>There is a discrepancy between our actual staff costs for Net wages, PAYE &amp; Pensions and the costs estimated by the spreadsheet. The difference is just under £200,000, which seems too large to overlook. Please advise.</p>	<p>The bid-price is for the APMS service specification. There are likely other income streams available that could contribute towards staff involved in delivering this core service.</p>

Source: Sussex ICB, *Whitehawk Clarification Log*, 4 October 2024.

113. As a result of these questions, Sussex ICB paused the procurement on 13 June 2024 to explore this issue with Wellsbourne.<sup>48</sup> Sussex ICB asked Wellsbourne whether all of its current staff should be on the TUPE list given that the practice also derived income from other sources, such as QOF (Quality and Outcomes Framework) funding<sup>49</sup> and Locally Enhanced Services (LES) (also known as Locally Commissioned Services (LCS)).<sup>50</sup> Wellsbourne, responding to Sussex ICB's questions, said that,

<sup>45</sup> Sussex ICB, *Response to Panel questions*, 12 June 2025.

<sup>46</sup> Sussex ICB, *Response to Panel questions*, 26 June 2025.

<sup>47</sup> Panel meeting with Wellsbourne, 20 June 2025.

<sup>48</sup> Panel meeting with Sussex ICB, 23 June 2025.

<sup>49</sup> QOF is a voluntary programme that practices can opt into in order to receive payments based on good performance against a number of indicators. NHS England, *Quality and Outcomes Framework*, 27 March 2025.

<sup>50</sup> LCS (or LES) are focussed to meet the needs of local care pathways and local population health profile and are generally commissioned by ICBs through NHS GP contracts, or via a Standard NHS Contract. NHS England, *Local enhanced service commissioning through GP contracts*, 5 September 2023.

notwithstanding its additional income streams, it was not possible to exclude any of its existing staff from the TUPE list.<sup>51</sup>

114. On 20 September 2024, Sussex ICB restarted the procurement, telling bidders that the financial envelope for the APMS contract would stay the same, but that other income would be available to the holder of the Whitehawk APMS contract, including QOF funding, Locally Enhanced Services and Primary Care Network Direct Enhanced Services.<sup>52</sup>

### **7.3.3 Information for bidders on additional services and income streams**

115. During the provider selection process, Sussex ICB provided bidders with limited information about: (i) the additional, locally commissioned services that the operator of the Whitehawk practice would have the opportunity to supply; (ii) Sussex ICB's expectations about the additional services it wanted the successful bidder to supply; and (iii) the income that the operator of the Whitehawk practice could potentially earn from supplying additional services and from other sources.
116. By way of background, GP practices in the Sussex ICB area have the opportunity to supply locally commissioned services (LCS) that are commissioned by the ICB and the local authority as well as Directed Enhanced Services (DES) that are commissioned by NHS England.<sup>53</sup> In addition, GP practices in the Sussex ICB area, and elsewhere, can earn income under the Quality and Outcomes Framework (QOF).
117. Sussex ICB currently commissions around 25 LCS services. All local GP practices are able to sign up to provide these services voluntarily without any selection process. Wellsbourne is currently signed up to provide all, or nearly all, of these services. It also supplies four local authority commissioned services and thirteen NHS England DES services. Sussex ICB's LCS services account for around 80% of Wellsbourne's planned revenue from additional services in 2025/26.<sup>54</sup>
118. In the tender documentation, Sussex ICB did not provide any overview of its locally commissioned services (or similar services commissioned by NHSE England or the local authority) nor did it provide bidders with any information about income that bidders could potentially earn from these services.
119. During the provider selection process, Sussex ICB indicated to bidders that it had expectations that certain LCSs currently supplied by Wellsbourne would be continued by the successful bidder.
  - In the tender documentation, it said that "patients will be offered Locally Commissioned Services as agreed with NHS Sussex. Weight Management Services and Learning Disabilities Health Check Enhanced Service will also be offered to appropriate registered patients".<sup>55</sup>

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<sup>51</sup> Wellsbourne told the Panel that this position was informed by expert external advice.

<sup>52</sup> PCN DES is a national NHS contract arrangement that sets out the core requirements and entitlements for a PCN, supporting GP practices to work together within a network to enable greater provision of personalised, coordinated and integrated health and social care to local communities. NHS England, *Network Contract DES*, 27 March 2025.

<sup>53</sup> DES are nationally agreed services commissioned by NHS England, which any GP practice in England can sign up to.

<sup>54</sup> Wellsbourne, *Response to Panel questions*, 2 July 2025.

<sup>55</sup> Sussex ICB, *Whitehawk APMS ITT Document - Background Information*, 17 May 2024.

- In responding to a clarification question, Sussex ICB said that Wellsbourne provides sexual health services under the APMS contract and LCS services, and the successful bidder “would be expected to continue these services” (see clarification question 23 in table at paragraph 120).

120. In response to bidders’ clarification questions, Sussex ICB provided information on Wellsbourne’s QOF performance, but not on the LCS or DES services supplied by Wellsbourne, citing commercial confidentiality (see clarification question no.2 below).<sup>56</sup> Other clarification questions asked by bidders about additional services and income streams and Sussex ICB’s response are set out in the table below (and also in the table at paragraph 112).

No.	Question	Response
2	Could we please have the QOF/LES/DES financial performance over the last two years provided?	QOF achievement 21/22 = 91.09% QOF achievement 22/23 91.86% LES/DES performance = not available as commercially sensitive
23	Please could commissioners provide details regarding what sexual health services are offered, how these are funded and if the new provider is expected to continue these services?	Any sexual health services provided under the general APMS service, plus LCS services. No stand-alone sexual health service provided by this contract. New Provider would be expected to continue these services.
48	Our Costs are much higher than the Contract Value because our non-APMS contract income cannot be included in the spreadsheet. Without this information, it is impossible to fit the service within the envelope. As this is a Pass/Fail question, how can we progress our bid, given the limitations of the spreadsheet?	Whilst the bid price is a pass / fail question, the collective costs of the bidder do not feature in any pass / fail question. It is not required that these costs are less than the bid price for the APMS service.
108	Document 1, Page 12: Please can commissioners confirm whether the £1,157,738 income includes the additional income (QOF/Enhanced/Deprivation Premium). The table appears to indicate that this is income in addition to the £1,157,738.	Page 12: The £1,158,738 includes a Deprivation element (APMS price premium). QOF and Enhanced services are not included.

Source: Sussex ICB, *Whitehawk Clarification Log*, 4 October 2024.

#### 7.3.4 Sussex ICB’s request for additional income estimates from bidders

121. Sussex ICB’s evaluation of bidders’ responses to the financial questions commenced with the individual assessment by the evaluators. This individual evaluation was based on bidders’ responses to the fourth version of the FMT (see paragraph 110).

122. The first moderation meeting for the financial questions was on 22 November 2024. Following this meeting, bidders were issued with the fifth and final version of the FMT. Sussex ICB told bidders that “the evaluators have asked all bidders to submit their Financial Modelling Template (FMT) again with the inclusion of other streams of income that can be accessed. This includes and is not limited to QOF, LCS, PCN DES etc”.<sup>57</sup>

<sup>56</sup> Wellsbourne separately told the Panel that it would have been willing to share this information with other bidders but no request to this effect was received from Sussex ICB (Panel meeting with Wellsbourne, 20 June 2025).

<sup>57</sup> Sussex ICB, *Response to Panel questions*, 12 June 2024.

123. The Panel notes that information about bidders' additional income sources was necessary to demonstrate the sustainability of their service given that the cost of staff on the TUPE list exceeded the revenue that would be earned from the APMS contract.

124. The Panel asked Sussex ICB about the information on which bidders could base estimates of other income streams. Sussex ICB told the Panel that:

- “All commissioned GP practices have access to the NHS Sussex intranet. All specifications for available locally commissioned services are stored there. They describe the detail of the service including responsibilities and accountability of the practice. If a practice chooses to offer any or all of those services then they sign up to them via an online form on the intranet which acts as a declaration that they will comply with the requirements stated in the specification. Once they have signed up then they can begin claiming as per the relevant payment schedule. These contracts are available to any practice so no expressions of interest, or approval process is required.”<sup>58</sup>
- “Potential bidders would have had access to information available in the public domain. Practice size information is publicly available, therefore potential providers could calculate income that could be earned from QOF and PCN Network Participation”.<sup>59</sup>
- “you would imagine that other systems [ICBs] elsewhere in the country would have a similar system of locally commissioned services, so they [bidders] should be aware of the principle and the opportunity that, should they wish to go for some LCS that they would be able to … sign up if that was something they would want to deliver”.<sup>60</sup>

125. The Panel has concerns about: (i) Sussex ICB’s provision of information to bidders about the LCSs they might potentially supply, (ii) Sussex ICB’s lack of clarity about its expectations of the LCSs that the successful bidder would deliver, (iii) Sussex ICB’s request, after proposals had been submitted, for bidders’ estimates of their likely income from LCSs and other sources, and (iv) the disconnect between these additional revenue estimates and the workforce and cost information in bidders’ proposals.

126. Setting out these concerns in more detail:

- First, Sussex ICB was not clear about the LCSs that the operator of the Whitehawk practice could supply and the income that it could potentially derive from these services. While Sussex ICB does not commission all LCSs, it is responsible for commissioning a large proportion of these services, and as a result, was in a position to provide significantly more information to bidders than it made available.
- Second, Sussex ICB was not clear with bidders about what LCSs it expected the successful bidder to supply. Some indication of these expectations was

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<sup>58</sup> Sussex ICB, *Response to Panel questions*, 3 July 2025.

<sup>59</sup> Sussex ICB, *Response to Panel questions*, 3 July 2025

<sup>60</sup> Panel meeting with Sussex ICB, 23 June 2025.

given in the tender documentation and in response to one of the clarification questions but this was by no means comprehensive.

- Third, the lack of information about LCSs meant that bidders were unable to respond meaningfully to Sussex ICB's request for estimates about the revenue they were likely to earn from these services. Sussex ICB referred the Panel to the information available on its intranet. However, this would not have been available to all bidders.
- Finally, while bidders were asked to include estimates of additional income in their revised FMTs, they were not asked to provide adequate details on costs or other information (e.g. workforce implications) associated with earning this additional income. The omission of these details means that Sussex ICB's evaluation of bidders' workforce and financial models is likely to have been based on a misleading picture.

127. Given these concerns, the Panel's view is that the provider selection process was neither transparent nor fair. As a result, the Panel finds that Sussex ICB: (i) in not providing information to bidders about the LCSs they might potentially supply, (ii) in lacking clarity about its expectations of the LCSs that the successful bidder would deliver, (iii) in requesting bidders' estimates of their likely income from LCSs and other sources without supplying information about these LCSs, and (iv) in evaluating proposals that contained a significant disconnect between the additional revenue estimates and the workforce and costs necessary to deliver this revenue, breached the PSR regulations, and in particular its obligations under Regulation 4 to act transparently and fairly.

### **7.3.5 Evaluation of Wellsbourne's responses to ITT21 (Financial Model Template)**

128. Wellsbourne's concerns about the evaluation of the financial questions additionally relate to the specific comments made by evaluators regarding its own proposal. In particular, one evaluator commented that "The bidder is planning to run at a deficit of £463k pa. There is no assurance given on how they would bridge this gap ... There is no assurance on how they will cover their deficit".<sup>61</sup>

129. Wellsbourne said that this comment must have related to version 4 of the FMT given that this was the only version that contained the deficit referred to by the evaluator. Wellsbourne, however, noted that it should have been evaluated on version 5 of the FMT, not version 4.

130. Sussex ICB told the Panel that the comments of concern to Wellsbourne were recorded before the initial moderation meeting for the FMT on 22 November 2024. It said that a further moderation meeting was held on 28 November 2024 to evaluate and score the fifth and final version of the FMT.

131. The Panel notes, however, that the second moderation meeting notes do not explain that evaluators' initial comments relate to version 4 of the FMT, while the evaluation outcome and agreed score relate to version 5 of the FMT. The Panel's view is that, as a result, Sussex ICB's reasons for its evaluation and scoring of Wellsbourne's

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<sup>61</sup> Sussex ICB, *Modification and Clarification Meeting*, 25 November 2024.

response did not adequately capture the rationale for the movement from individual evaluators' comments to the agreed feedback. This, in turn, mean that Wellsbourne could not fully ascertain the reasons for its feedback and moderated score.

132. As a result, the Panel finds that Sussex ICB, in its evaluation and scoring of Wellsbourne's financial proposal, breached the PSR regulations, and in particular Regulation 24(g), which requires the ICB to keep a record of the reasons for its decisions.

#### **7.4 Evaluation governance and representations review panel**

133. This section sets out the Panel's assessment of Wellsbourne's concerns about the governance and independence of Sussex ICB's evaluators and its representations review panel.
134. Wellsbourne, in its representations to the Panel, said that:

"Healthwatch Brighton was cited by the ICB as an independent validation of patient insight however, their CEO was a bid evaluator. Healthwatch cannot be presented as both an objective observer and an active participant in bid scoring without a conflict of interest.<sup>62</sup>

The representation review panel included members of the Procurement Steering Group who had designed and approved the original procurement process, raising concerns about impartiality of the review. This appears to breach Regulation 3(5) and Regulation 7 of the PSR [clarified with Wellsbourne to be referring to regulation 4, 12 and 21]" (see paragraph 35).

135. Wellsbourne told the Panel that it felt it did not have enough information to understand Healthwatch's role in the procurement, but felt that it could not both represent patients and represent Sussex ICB as an evaluator.<sup>63</sup>
136. Sussex ICB told the Panel that Healthwatch "supported the commissioner in helping to determine the components of the service specification and what features needed to be considered as part of the new service model. The individual was involved in that golden thread of continuity through the rest of the process in terms of helping to draft and determine the evaluation questions and then also being part of the evaluation panel ... working alongside the commissioner".<sup>64</sup>
137. The Panel questioned Wellsbourne further about potential concerns about Healthwatch's involvement in the provider selection process, including potential conflicts of interest, and Wellsbourne was unable to suggest how a potential conflict of interest might come about. The Panel's view is that there is no evidence to suggest that a conflict of interest arose from Healthwatch's involvement in the provider selection process.

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<sup>62</sup> The Panel notes that the issue raised by Wellsbourne in relation to the involvement of Healthwatch Brighton arose from Sussex ICB's provision of information on the members of the evaluation panel to Wellsbourne during the representations review process, and was raised directly with the Panel with Wellsbourne rather than with Sussex ICB, due to the ICB's position that it would not be responding to any new representations.

<sup>63</sup> Panel meeting with Wellsbourne, 20 June 2025.

<sup>64</sup> Panel meeting with Sussex ICB, 23 June 2025.

138. In response to Wellsbourne's concern about Sussex ICB's representations review panel, Sussex ICB told Wellsbourne that:

"The PPSSG [Procurement and Provider Selection Steering Group] is primarily responsible for providing oversight of the procurement processes, ensuring effective controls are in place and maintaining a record of decisions throughout the award process in compliance with the appropriate procurement legislation and in accordance with the NHS Sussex Operational Scheme of Delegation. The remit of this Group is to review, challenge and endorse procurement proposals, and recommending progression of procurements to the Commissioning Group. Both Panel Members have considerable experience of healthcare procurement processes and as neither member was directly involved in this procurement the ICB considers both Members of this Representation Panel to be both independent and impartial."<sup>65</sup>

139. The PSR statutory guidance says that "relevant authorities should ensure that appropriate internal governance mechanisms are in place to deal with representations made against provider selection decisions. To this end, relevant authorities should, where possible, ensure that decisions are reviewed by individuals not involved in the original decision. Where this is not possible, relevant authorities should ensure that at least one individual not involved in the original decision is included in the review process".<sup>66</sup>

140. The Panel notes that Sussex ICB's representations review panel had two members, namely the Head of Contracting & Procurement (who is Chair of the Procurement Steering Group) and the Deputy Director of Primary Care Commissioning, who was "a non-conflicted representative from within [the] Integrated Care Board with knowledge and experience of the services to be provided that has not been involved during the procurement process".<sup>67</sup>

141. The Panel notes that, while best practice would be to have a representations review panel with no members involved in the decision that is being reviewed, Sussex ICB met the requirement set out in the PSR statutory guidance to ensure that at least one of its review panel members was not involved in the original decision.

142. The Panel finds that Sussex ICB, in the selection of an evaluator related to Healthwatch, and in setting out the composition of its representations review panel, did not breach the PSR regulations, and in particular its obligations under Regulation 4, which requires it to act fairly.

## 8 Panel Advice

143. In summary, the Panel finds that Sussex ICB's provider selection process for the Whitehawk APMS contract has breached the PSR regulations in four respects.

- First, the Panel finds that Sussex ICB, by conducting the evaluation and scoring process differently to the way in which it was described to Wellsbourne, breached the PSR regulations, and in particular its obligations under Regulation 4 to act transparently and fairly.

<sup>65</sup> Sussex ICB, *Representations response report to Wellsbourne*, 20 May 2025.

<sup>66</sup> NHS England, *The Provider Selection Regime: statutory guidance*, 21 February 2024, p.33.

<sup>67</sup> Sussex ICB, *Representations response report to Wellsbourne*, 30 April 2025 and 20 May 2025.

- Second, the Panel finds that Sussex ICB, in evaluating Wellsbourne's response to Question ITT02 (Communications) erred by concluding that Wellsbourne did not address certain issues when this was not the case, and as a result breached Regulation 4, which requires it to act transparently and fairly.
- Third, the Panel finds that Sussex ICB: (i) in not providing information to bidders about the LCSs they might potentially supply, (ii) in lacking clarity about its expectations of the LCSs that the successful bidder would deliver, (iii) in requesting bidders' estimates of their likely income from LCSs and other sources without supplying information about these LCSs, and (iv) in evaluating proposals that contained a significant disconnect between the additional revenue estimates and the workforce and costs necessary to deliver this revenue, breached the PSR regulations, and in particular its obligations under Regulation 4 to act transparently and fairly.
- Finally, the Panel finds that Sussex ICB, in its evaluation and scoring of Wellsbourne's financial proposal, breached the PSR regulations, and in particular Regulation 24(g), which requires the ICB to keep a record of the reasons for its decisions.

144. The Panel also finds that Sussex ICB's provider selection process for the Whitehawk APMS contract did not breach the PSR regulations in four other respects.

- First, the Panel finds that Sussex ICB, in its pre-procurement public engagement, did not breach the PSR regulations, and in particular its obligations under Regulation 4, which requires it to act with a view to securing the needs of the people who use the services and to act transparently, fairly and proportionately.
- Second, the Panel finds that Sussex ICB, in the formulation of its ITT questions, did not breach the PSR regulations, and in particular its obligations under Regulation 4, which requires it to act fairly.
- Third, the Panel finds that Sussex ICB, in deciding the weightings for the key criteria, did not breach the PSR regulations and in particular its obligations under Regulations 5(e) and 11(2), which state that "Step 1 [of the competitive process] is that the relevant authority determines the contract or framework award criteria, taking into account the key criteria and applying the basic selection criteria".
- Finally, the Panel finds that Sussex ICB, in the selection of an evaluator related to Healthwatch, and in setting out the composition of its representations review panel, did not breach the PSR regulations, and in particular its obligations under Regulation 4, which requires it to act fairly.

145. Given the Panel's findings that Sussex ICB breached the PSR regulations, three options are open to the Panel. The Panel may advise that:

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

146. The Panel's view is that Sussex ICB's breaches of the PSR regulations are sufficiently serious to have had a material effect on its selection of a provider. This is particularly the case in relation to the Sussex ICB's provision of information about LCSs in the provider selection process and its request for bidders' estimated income from delivering LCSs (i.e. the third bullet point in paragraph 8).
147. The Panel's advice to Sussex ICB is that it returns to an earlier step in the provider selection process, namely the publication of a new contract notice and issuance of ITT documentation suitably revised to address the issues identified by the Panel in this review. This will allow a new provider selection process to take place that addresses all of the issues identified by the Panel in this report.
148. The Panel also recommends that Sussex ICB ensures that, in future, sufficiently detailed notes are kept of moderation meeting discussions so that bidders, internal review panels and the Panel can follow the reasoning of those involved in decision making.